



U.S. Department of Justice

Civil Division

Washington, DC 20530

December 7, 2012

VIA FACSIMILE (212) 287-1045 AND U.S. MAIL

Joel Peterson
Legal Assistant
Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway
New York, New York 10006

Re: Complaint of W. William Hodes and Sidney K. Powell
Docket No. 2012.1807

Dear Mr. Peterson:

This office represents Mr. Andrew Weissmann in the above-referenced complaint filed by Mr. William Hodes and Ms. Sidney K. Powell ("Hodes/Powell Complaint"). The complaint arises from Mr. Weissmann's service as director of the Department of Justice's Enron Task Force ("ETF"), in which he supervised the prosecution of more than 30 individuals in connection with the company's collapse.¹ Specifically, the complaint relates to the prosecution of James A. Brown, a former Merrill Lynch executive who was convicted of perjury and obstruction of justice in connection with an Enron accounting scheme. *United States v. Bayly, et al.*, No. 03-363 (S.D. Tex.).

After the United States Court of Appeals for the Fifth Circuit affirmed these convictions,² Mr. Brown filed motions for a new trial and to dismiss the indictment, alleging prosecutorial misconduct in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Mr. Brown claimed that ETF prosecutors failed to disclose exculpatory evidence and denied access to exculpatory witnesses.

¹ Mr. Weissmann currently serves as General Counsel of the Federal Bureau of Investigation.

² See *United States v. Brown*, 459 F.3d 509 (5th Cir. 2006).

These same claims of prosecutorial misconduct formed the basis of various bar complaints he filed against Mr. Weissmann and other ETF prosecutors. Specifically, in 2008, Mr. Brown filed a complaint against Mr. Weissmann with this Committee. At the same time, Mr. Brown filed identical complaints against Kathryn Ruemmler with the District of Columbia and Virginia Bars, and against Matthew Friedrich with the Texas Office of the Chief Disciplinary Counsel.³ On December 11, 2008, this Committee closed its investigation into Mr. Brown's complaint pending the district court's resolution of his motions to dismiss the indictment and for a new trial. The case was never reopened. Meanwhile, the D.C., Virginia, and Texas bars dismissed outright the complaints against Ms. Ruemmler and Mr. Friedrich.

On August 23, 2010, the district court denied Mr. Brown's motions in a ruling that makes plain that there was no merit to his allegations of prosecutorial misconduct. *See United States v. Brown*, No. 03-363, 2010 WL 3359471 (S.D. Tex. Aug. 23, 2010).⁴ The court conducted what it termed "an exhaustive study" of the claims that ETF lawyers withheld *Brady* evidence and interfered with witnesses. The court ruled that his claims were factually and legally unsubstantiated. ETF lawyers did not suppress any materially favorable evidence. To the contrary, all of the evidence that Mr. Brown claimed was "concealed" was actually disclosed to him well in advance of trial in multiple disclosure letters from the ETF. Moreover, the supposedly concealed evidence was cumulative of other evidence presented at trial. The court held that Mr. Brown also had multiple opportunities to elicit favorable testimony at trial through the exercise of reasonable diligence, but that he failed to do so. Finally, the court rejected Mr. Brown's claim that ETF lawyers blocked access to exculpatory witnesses, finding that there was absolutely no evidence of any coercion or strong-arm tactics by the prosecution team. The court accordingly rejected Mr. Brown's claims of prosecutorial misconduct and denied his motions to dismiss the indictment and for a new trial.⁵ The court's judgment was affirmed on appeal. *United States v. Brown*, 650 F.3d 581 (5th Cir. 2011).⁶

In substance, the Hodes/Powell complaint is the same as the complaint that was filed against Mr. Weissmann in 2008. It presents *no* new evidence. Instead, it rehashes and tries to

³ In connection with all of the bar complaints, Mr. Brown was represented by Sidney Powell, one of the complainants in this matter. The other complainant, William Hodes, represented Mr. Brown in his unsuccessful appeal of his perjury and obstruction of justice convictions.

⁴ For convenience, a copy of the district court's opinion is attached at Tab 1.

⁵ The district court was not alone in rejecting the *Brady* claims that Mr. Brown raised. The court's reasoning was guided by *United States v. Skilling*, 554 F.3d 529 (5th Cir. 2009), in which the Fifth Circuit rejected former Enron president Jeffrey Skilling's claim that ETF prosecutors suppressed favorable evidence—specifically, the notes of former Enron CFO Andrew Fastow's FBI interviews. Mr. Brown's complaint before this Committee relied on the same allegations already rejected by the Fifth Circuit.

⁶ For convenience, a copy of the Fifth Circuit's opinion is attached at Tab 2.

resurrect the same *Brady* and other misconduct claims that have already been rejected by multiple courts. Notably—just as Mr. Brown did in 2008—Mr. Hodes and Ms. Powell filed similar bar complaints against ETF prosecutors Kathryn Ruemmler and Matthew Friedrich with the D.C. and Texas bars. Those complaints have already been dismissed.

I respectfully urge this Committee to do the same. Over several years, the claims of prosecutorial misconduct raised in this complaint have been fully examined and rejected. The fact that the *Brady* claims are now being raised not by Mr. Brown, but by the same attorney who helped him draft and litigate his old complaint, does not change the analysis or the result. For these reasons, I respectfully request the Committee's prompt dismissal of the complaint against Mr. Weissmann.

Thank you for your consideration of this request. I would be pleased to provide any additional information or answer any questions the Committee may have about the issues addressed in this letter.

Sincerely,



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Enclosures

cc: W. William Hodes, Esq.
Sidney K. Powell, Esq.