

Beyond DeLay

The 22 most corrupt members of Congress (and two to watch)



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EXECUTIVE SUMMARY

This is CREW's third annual report on congressional corruption. Over the past few years, corruption has become a significant political issue. In the 2006 mid-term elections, exit polls showed that 42% of voters called corruption an extremely important issue in their choices at the polls, ahead of terrorism, the economy and the war in Iraq. Nevertheless, despite the 2006 election and increased media and public awareness of ethics issues, many members of Congress continue to act as if federal laws and House and Senate rules do not apply to them.

Of the 25 members included in last year's report, ten are no longer in Congress, many losing their seats as a result of their unethical conduct, and another eight are under federal investigation. Those eight, Reps. Ken Calvert, John Doolittle, Tom Feeney, William Jefferson, Jerry Lewis, Gary Miller, Alan Mollohan and Rick Renzi, are again included in this year's edition, as is Rep. John Murtha, who has moved from the category of dishonorable mention to one of the most corrupt. The remainder of those named last year -- Reps. Roy Blunt, Chris Cannon, Dennis Hastert, Marilyn Musgrave, Pete Sessions and Maxine Waters -- are not included this year, not because their conduct is no longer problematic, but because we have discovered no new information to add to last year's report.

New to this year's list are Sens. Larry Craig, Pete Domenici, Mitch McConnell, Lisa Murkowski, Ted Stevens and David Vitter, and Reps. Doc Hastings, Duncan Hunter, Tim Murphy, Steve Pearce, Hal Rogers, David Scott, Jerry Weller, Heather Wilson and Don Young. Of this year's list of 24, at least 11 are under federal investigation. Two, Sens. Craig and Domenici are under investigation by the Senate ethics committee, and Rep. Wilson may be under investigation by the House ethics committee.

As we discovered last year, the most serious problem is that members continue to use their positions for the financial benefit of themselves, their friends and their families. Earmarks for large campaign contributors are commonplace and many members have traded legislative assistance for personal favors. Perhaps most striking this year is the number of members who have provided incorrect information or failed to include information on their personal financial disclosure forms. Members would do well to remember that lying on personal financial disclosure forms is a federal crime, punishable by up to five years in jail under 18 U.S.C. § 1001. Although prosecutions have been rare, the Department of Justice and the House and Senate ethics committees should take a stronger stand against members who deliberately provide erroneous information or withhold information on these forms.

Also worth noting is that the entire Alaska delegation is now on the list. Senator Stevens and Rep. Young are both under federal investigation, and an ethics complaint was filed against Sen. Murkowski by the National Legal and Policy Center.

Sadly, despite an election in which Democrats ran on a platform of eradicating the "culture of corruption" and the fact that voters overwhelmingly turned against members with ethics problems, very little appears to have changed. Members of both parties have boasted of Congress' progress on this front, yet only tepid ethics reforms were passed and no new enforcement mechanisms were added. The bi-partisan House ethics task force, originally

charged with reporting back by May 1, 2007, has yet to issue any recommendations, and the ethics committees in both Houses remain loathe to consider the unethical conduct of their colleagues unless, of course, gay sex is involved as we learned watching the Senate Republicans' radically disparate treatment of the crimes committed by Sen. Craig and Sen. Vitter.

As we said last year, if Congress is not going to police itself – and the evidence continues to demonstrate that it is not – the ethics committees should be disbanded and the charade ended. Thankfully, the Department of Justice does not share Congress's willful myopia to corruption.

METHODOLOGY

To create this report, CREW reviewed news media articles, Federal Election Commission reports,¹ court documents, and members' personal financial and travel disclosure forms. We then analyzed that information in light of federal laws and regulations as well as congressional ethics rules.

¹ References to companies making campaign contributions are shorthand for campaign contributions by those companies' political action committees and employees and, in some cases, their immediate families. We are not insinuating that any company named in the report has made contributions in violation of federal campaign finance laws.

MEMBERS OF THE HOUSE

REP. KEN CALVERT

Rep. Ken Calvert (R-CA) is a seventh-term member of Congress, representing California's 44th congressional district. Rep. Calvert's ethics issues stem from his use of earmarks for personal gain and his connections to a lobbying firm under investigation. Rep. Calvert was included in CREW's 2006 report on congressional corruption.

Earmarks for Self Enrichment

In 2005, Rep. Calvert and his real estate partner, Woodrow Harpole Jr., paid \$550,000 for a four-acre piece of land at Martin Street and Seaton Avenue in Perris, just four miles south of the March Air Reserve Base in California.¹ Less than a year after buying the land, without making any improvements to the parcel, they sold the property for \$985,000, a 79% increase.² During this period, Rep. Calvert pushed through an earmark to secure \$8 million for an overhaul and expansion of a freeway interchange 16 miles from the property, as well as an additional \$1.5 million for commercial development in the area around the airfield.³

Rep. Calvert and his partner have argued that the increase in value of the land had nothing to do with the earmarks.⁴ In 2005, however, Rep. Calvert made a point of noting that the improved interchange would "provide efficient and direct connectivity for the March Air Reserve Base," which would certainly increase the value of the land.⁵ In addition to making money on the sale of the land, Calvert Real Properties, Inc., Rep. Calvert's real estate firm, received brokerage fees, for representing both buyer and seller in the land deal.⁶

In 2005, another deal was brokered by Mr. Harpole with a group of investors.⁷ The group of investors bought property at 20330 Temescal Canyon Road, a few blocks

¹ Tom Hamburger, Lance Pugmire and Richard Simon, Calvert's Land Of Plenty, *Los Angeles Times*, May 15, 2006 (Exhibit 1); Kimberly Trone and Claire Vitucci, Calvert Denies Any Wrongdoing In Land Deal, *Press Enterprise*, May 16, 2006 (Exhibit 2).

² Id.; Corona Rep. Ken Calvert Earned Big Bucks in Land Deals, *Associated Press*, May 15, 2006 (Exhibit 3).

³ *Associated Press*, May 15, 2006.

⁴ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

⁵ Id.

⁶ Id.

⁷ Id.

from the site of the then-proposed interchange, for \$975,000.⁸ Within six months, after the earmark for the interchange was appropriated, the parcel of land sold for \$1.45 million.⁹ Rep. Calvert's firm received a commission on the sale.¹⁰

Rep. Calvert also owns other Corona properties likely affected by earmarking.¹¹ He and Mr. Harpole own multiple properties close to a bus depot for which Rep. Calvert earmarked money.¹² One of those lots was sold in 2005, but Rep. Calvert maintains that the earmark had no impact on the land's value.¹³ Rep. Calvert and Mr. Harpole also own a 1,200 square foot office building at 63 W. Grand Boulevard, which will be affected by a \$1.7 million earmark for the Corona Transit Center.¹⁴

Not only has Rep. Calvert benefited from earmarks, it appears that he has also benefited from preferential treatment on a four-acre land deal with Jurupa Community Services District.¹⁵ Under the \$1.2 million deal, Rep. Calvert and business associates were allowed to buy a parcel of public land without competition, at a time when the regional real estate market was booming.¹⁶ Although California law requires government agencies to first offer public land for sale to other public entities before making a private sale,¹⁷ Rep. Calvert was able to purchase the land without an initial public offering.¹⁸ Jurupa, in turn, has benefited from water supply legislation that Rep. Calvert sponsored.¹⁹

⁸ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Trone and Vitucci, *Press Enterprise*, May 16, 2006; Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

¹² Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

¹³ *Id.*

¹⁴ Trone and Vitucci, *Press Enterprise*, May 16, 2006.

¹⁵ David Danelsky and Sandra Stokley, Sale Of Park Site Draws Questions, *Press-Enterprise*, August 18, 2006 (Exhibit 4).

¹⁶ *Id.*

¹⁷ Cal. Gov't Code § 54222 (2006).

¹⁸ Danelsky and Stokley, *Press-Enterprise*, Aug. 18, 2006.

¹⁹ Santa Ana River Water Supply Enhancement Act of 2005, H.R. 177, 109th Cong. (1st Sess. 2005) (Exhibit 5).

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²⁰ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position to earmark funds to increase the value of his own properties and sponsoring legislation that benefited a municipality that had provided him with preferential treatment on a land deal, Rep. Calvert has violated 5 C.F.R. § 2635.702(a).

House Rule XXIII

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²¹ This ethics standard is considered to be “the most comprehensive provision of the code.”²² When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²³ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,²⁴ making false statements to the Committee,²⁵

²⁰ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions To Partisan or Political Considerations, Or Personal Gain, May 11, 1999.

²¹ Rule XXIII, cl. 1.

²² House Comm. on Standards of Official Conduct, House Ethics Manual.

²³ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

²⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d

criminal convictions for bribery,²⁶ or accepting illegal gratuities,²⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.²⁸

By using his position as a member of Congress to create earmarks that benefited his financial interests, Rep. Calvert engaged in conduct that does not reflect creditably on the House, in violation of Rule XXIII, clause 1. Similarly, by using his position to sponsor legislation that benefited Jurupa Community Services District – an apparent reward for the district’s preferential treatment in the sale of land to him – Rep. Calvert engaged in conduct that does not reflect creditably on the House.

Relationship to Copeland, Lowery, Jacquez, Denton & White

The lobbying firm formerly known as Copeland, Lowery, Jacquez, Denton and White (“Copeland Lowery”) is currently under investigation by a federal grand jury for its ties to Rep. Jerry Lewis (R-CA).²⁹ Rep. Lewis, as Chairman of the House Appropriations Committee, has approved hundreds of millions of dollars in federal projects for the firm’s clients, and specifically for interests represented by Bill Lowery.³⁰ In apparent return, Mr. Lowery, his partners and his firm’s clients have donated 37% of the \$1.3 million that Rep. Lewis’s political action committee has received over the past

Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

²⁹ Kevin Bogardus, Lobbying Firm Linked to Rep. Lewis Booms Despite Federal Investigation, *The Hill*, August 15, 2007 (Exhibit 6).

³⁰ Jerry Kammer, Close Ties Make Rep. Lewis, Lobbyist Lowery A Potent Pair, *Copley News Service*, December 23, 2005 (Exhibit 7).

six years.³¹ Indeed, an unnamed source on Capitol Hill stated “Word is getting around that if you want to be close to Jerry Lewis, it’s a good idea to be close to Bill Lowery.”³²

Rep. Calvert has ties to both Rep. Lewis and Lowery’s firm.³³ Rep. Lewis has been something of a benefactor to Rep. Calvert, and was the main proponent of Rep. Calvert’s candidacy for former Rep. Tom DeLay’s seat on the Appropriations Committee after the former majority leader resigned from Congress.³⁴ On May 23, 2006, the FBI obtained Rep. Calvert’s financial records at the same time that they pulled Rep. Lewis’s financial records.³⁵ According to Rep. Calvert no one has contacted his office and he maintains that he has not been accused of any wrongdoing.³⁶

After Rep. Lewis, Rep. Calvert is the inland California representative who has received the most amount of money from Copeland Lowery,³⁷ receiving \$25,803 from Copeland employees for both his campaign fund and his PAC since the 2000-2001 election cycle.³⁸ Notably, Copeland Lowery was also the single largest donor for Rep. Calvert in the 2003-2004 election cycle.³⁹

Records show that Rep. Calvert has helped pass through at least 13 earmarks sought by Copeland Lowery in fiscal year 2005, adding up to \$91,300,000.⁴⁰ Rep. Calvert has put 69 earmarks into spending bills during the 2005-2006 congressional

³¹ Id.

³² Id.

³³ Edward Barrera, FBI Reviews Calvert Links, *Inland Valley Daily Bulletin*, June 17, 2006 (Exhibit 8).

³⁴ Id.

³⁵ Claire Vitucci, Douglas Quan and Michelle Dearmond, Finances Of Lewis, Calvert Inspected, *Press Enterprise*, June 10, 2006 (Exhibit 9).

³⁶ Barrera, *Inland Valley Daily Bulletin*, June 17, 2006.

³⁷ Vitucci, Quan and Dearmond, *The Press Enterprise*, June 10, 2006.

³⁸ Id.

³⁹ Barrera, *Inland Valley Daily Bulletin*, June 17, 2006.

⁴⁰ United States Senate Office of Public Records, Lobby Filing Disclosure Forms; Rep. Calvert’s Office, Press Releases (Exhibit 10).

session, particularly high for someone who does not sit on either the Appropriations or Transportation Committee.⁴¹

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁴² It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴³ An investigation should be launched into whether Rep. Calvert violated 18 U.S.C. § 201(b)(2)(A) by taking money for his campaigns in exchange for earmarks to help the clients of Copeland Lowery.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁴⁴ By accepting campaign contributions in exchange for earmarks to help the clients of Copeland Lowery, Rep. Calvert may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁴⁵ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁶

⁴¹ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

⁴² 18 U.S.C. §201(b)(2)(A).

⁴³ *McCormick v. U.S.*, 500 U.S. 257 (1991); *United States v. Biaggi*, 909 F.2d 662, 665 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁴⁴ 18 U.S.C. §1341.

⁴⁵ 18 U.S.C. §201(c)(1)(B).

⁴⁶ *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

If a link is established between Rep. Calvert's actions to earmark funds for clients of Copeland Lowery and the campaign donations and donations to his PAC that Copeland Lowery, its employees and associates made, Rep. Calvert would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁴⁷

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁴⁸ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Calvert accepted campaign contributions from Copeland Lowery and its associates in return for legislative assistance by way of earmarking federal funds for the lobbying firm's clients, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 CFR § 2635.702(a)

By funneling federal funds to clients of Copeland Lowery, a lobbying firm that has provided him with generous campaign contributions, Rep. Calvert may have dispensed special favors and violated 5 CFR § 2635.702(a).

⁴⁷ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁴⁸ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

Houses Rule XXIII

Rep. Calvert apparently accepted campaign contributions in return for legislative favors that financially benefited the clients of Copeland Lowery. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

2007 Update

Rep. Calvert has come to the attention of federal investigators, who are examining his financial disclosure records for the years 2000-2005.⁴⁹ Rep. Calvert has also been linked to the FBI's probe of links between Rep. Jerry Lewis (R-CA) and the now-disbanded lobbying firm Copeland, Lowery, Jacquez, Denton & White.⁵⁰ Rep. Lewis, who is also under federal investigation, strongly supported Rep. Calvert's selection for a seat on the House Appropriations Committee to replace a vacancy left by Rep. John Doolittle, who gave up his seat as a result of an ongoing federal investigation into his activities.⁵¹

In addition to the federal investigation, a grand jury in Riverside County, California has examined the 2006 land sale by the Jurupa Community Services District to Rep. Calvert and his business partners.⁵² The district had acquired the land for flood control and a park that was never built and sold the land for \$1.2 million.⁵³ The grand jury concluded that the sale was illegal because the district failed to first offer the land to other public agencies.⁵⁴

In May 2007, the House Committee on Standards of Official Conduct concluded that a \$5.6 million earmark Rep. Calvert had requested for a transit center only one-tenth a mile away from one of his properties, less than a mile away from four other properties and less than two miles away from two additional properties he owns did not constitute a

⁴⁹ Susan Davis, Calvert Picked For Vacant Approps Seat, *Roll Call*, May 10, 2007 (Exhibit 11).

⁵⁰ Jeffrey H. Birnbaum, Lobby Firm Disbands Because of Investigations, *The Washington Post*, June 17, 2006 (Exhibit 12); Wendy Leung, Calvert's Appointment Creates Concern, *Inland Valley Daily Bulletin*, May 10, 2007 (Exhibit 13).

⁵¹ Davis, *Roll Call*, May 10, 2007.

⁵² David Danelsky, Report: Land Sold Too Cheaply, *The Press Enterprise*, April 12, 2007 (Exhibit 14).

⁵³ Id.

⁵⁴ Jesse B. Gill, Board Silent On Grand Jury Report, *Inland Valley Daily Bulletin*, July 11, 2007 (Exhibit 15).

conflict-of-interest.⁵⁵ According to the committee, because Rep. Calvert was not the sole beneficiary of the project and the increase in his property value was speculative, there was no bar to his pursuit of the earmark.⁵⁶ Rep. Calvert's 2006 financial disclosure form shows that in December 2006, he sold property near the proposed transit center for between \$100,000 and \$1 million that he had purchased in 2004 for between \$250,000 and \$500,000.⁵⁷

⁵⁵ Susan Crabtree, Ethics Panel Gives Green Light To Calvert Earmark, *The Hill*, May 18, 2007 (Exhibit 16).

⁵⁶ Id.

⁵⁷ Matthew Mosk, Lawmakers Cashing In On Real Estate, *The Washington Post*, June 15, 2007 (Exhibit 17); Rep. Kenneth Stanton Calvert, Personal Financial Disclosure Statement, 2005 (Exhibit 18).

REP. JOHN T. DOOLITTLE

Rep. John T. Doolittle (R-CA) is an ninth-term member of Congress representing California's 4th congressional district. Rep. Doolittle's ethics issues stem from his wife's relationship to his campaign and political action committees, as well as campaign contributions and personal financial benefits he accepted from those who sought his legislative assistance. Rep. Doolittle is currently the subject of a Department of Justice investigation and was included in CREW's 2006 report on congressional corruption.

Julie Doolittle

Rep. John Doolittle's wife, Julie, is the owner and president of Sierra Dominion Financial Solutions, a fundraising company retained by Rep. Doolittle's campaign committee and his Superior California Leadership PAC.¹ The company was launched by Ms. Doolittle in March 2001, two months after Rep. Doolittle was appointed to the House Committee on Appropriations.² Rep. Doolittle has confirmed that Ms. Doolittle's company receives a 15% commission on what she raises for his campaign, even when Rep. Doolittle is making the actual solicitation calls.³ In fact, since at least 2003, Ms. Doolittle has collected fees of 15% on all contributions to Rep. Doolittle's leadership PAC, and additional commissions on contributions to his campaign committee.⁴ From 2001 to April 2006, Ms. Doolittle received at least \$215,000 from Rep. Doolittle's campaign committees.⁵ During the 2006 election cycle Ms. Doolittle collected nearly \$224,000 in commissions.⁶

Notably, the Association of Fundraising Professionals sent a letter to Rep. Doolittle stating that its long-standing ethics code "explicitly prohibits percentage-based compensation" and urged the campaign to cease this practice with Sierra Dominion Financial Solutions.⁷

¹ Dean Calbreath, Congressman Doolittle, Wife Profited From Cunningham-Linked Contractor, *San Diego Union-Tribune*, March 19, 2006 (Exhibit 1).

² Id.

³ David Whitney, Fundraising Group Assails The Doolittles, *The Sacramento Bee*, April 20, 2006 (Exhibit 2).

⁴ Jonathan Weisman and Jeffrey H. Birnbaum, Lawmaker Criticized For PAC Fees Paid To Wife, *The Washington Post*, July 11, 2006 (Exhibit 3).

⁵ Editorial, The Doolittles' Rich Deal; How One Congressional Couple Collected Campaign Checks – And Put \$215,000 In Their Pocket, *The Washington Post*, April 21, 2006 (Exhibit 4).

⁶ David Whitney, Doolittle Campaign Says It Owes \$137,000 To His Wife, *The Sacramento Bee*, February 2, 2007 (Exhibit 5).

⁷ Whitney, *The Sacramento Bee*, Apr. 20, 2006.

In addition, between August 2002 and February 2005, Sierra Dominion received \$67,000 in payments from Greenberg Traurig and convicted lobbyist Jack Abramoff.⁸ Ms. Doolittle received a monthly retainer fee of \$5,000 from Greenberg Traurig, the “lion’s share” of which she received after a cancelled charity event that was the main justification for the retainer fee.⁹ According to Rep. Doolittle, Sierra Dominion was retained by Greenberg Traurig in connection with a charity event for Mr. Abramoff’s Capital Athletic Foundation.¹⁰ The event was cancelled and never re-scheduled, after only a few thousand dollars were raised.¹¹ At the time the retainer fee payments were stopped in January 2003, Ms. Doolittle had received about \$27,000. In July 2003, Greenberg Traurig resumed payment of Sierra Dominion’s \$5,000 monthly retainer fee.¹² From July 2003 through February 2004, Mr. Abramoff’s law firm paid Mrs. Doolittle’s company a total of \$40,000.¹³

Conversion of Campaign Fund to Personal Use

In July 2001, the Federal Election Commission (“FEC”) issued an Advisory Opinion regarding payments by campaign committees to family members.¹⁴ Rep. Jesse Jackson, Jr. (D-IL) sought an opinion as to whether his principal campaign committee could hire his wife as a consultant to provide fundraising and administrative support.¹⁵ Ms. Jackson had previously served as chief of staff for a congressman, press secretary for another congressman, and she had worked for national presidential campaigns in 1988 and 1996.¹⁶

The FEC noted that the Federal Election Campaign Act prohibits the conversion of campaign funds to personal use.¹⁷ Generally, personal use is “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal

⁸ Paul Kane, Doolittle Fees Raise Questions, *Roll Call*, July 3, 2006 (Exhibit 6).

⁹ Id.

¹⁰ Id.

¹¹ Kane, *Roll Call*, July 3, 2006.

¹² Id.

¹³ Id.

¹⁴ FEC, AO 2001-20, July 17, 2001.

¹⁵ Id.

¹⁶ Id.

¹⁷ 2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).

officeholder.”¹⁸ Certain uses of campaign funds will be considered per se personal use, including salary payments to family members, unless “they are fair market value payments for bona fide, campaign related services.”¹⁹ If a family member is providing bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.²⁰

In applying these provisions to Rep. Jackson’s request for an opinion, the FEC stated that the campaign committee could hire Ms. Jackson as long as she was paid no more than the fair market value of bona fide services, the contract contained terms customarily found in agreements entered into between paid campaign consultants and candidate committees, and the agreement conformed to the standard industry practice for this type of contract.²¹

House rules echo this prohibition. Clause 6(b) of Rule XXIII provides that a member “may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures.” According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, the Committee has taken the position that members “must observe these provisions strictly.”²² With respect to the purchase of campaign services from a relative of the member, the Campaign Booklet provides specifically:

Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services or space, and (2) the campaign does not pay more than fair market value in the transaction . . . If a Member’s campaign does enter into such a transaction with the Member or a member of his or her family, the campaign’s records must include information that establishes both the campaign’s need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.²³

Here, Ms. Doolittle does not appear to have previous relevant experience and the only political committee for which she has worked is that of her husband. Moreover, the payment by Rep. Doolittle’s campaign committee and leadership PAC of at least \$215,000 since 2001 in percentage-based commissions to his wife does not conform to the Code of Ethical Principles

¹⁸ 11 C.F.R. § 113.1(g).

¹⁹ 11 C.F.R. § 113.1(g)(1)(I).

²⁰ 11 C.F.R. § 113.1(g)(1)(i)(H).

²¹ FEC, AO 2001-10.

²² House Comm. on Standards of Official Conduct, Campaign Booklet at 39.

²³ Id. at 44.

and Standards of Professional Practice adopted by the American Association of Fundraising Professionals, which prohibits fundraising on a percentage basis. Nor does Ms. Doolittle's financial arrangement with Rep. Doolittle's leadership PAC, whereby since at least 2003 she has collected 15% on **all** contributions to the PAC (whether or not she performed any service that led to those contributions), conform to the Code of Ethical Principles and Standards. In addition, as discussed below, Ms. Doolittle received commissions on contributions of nearly \$50,000 even though the contributions flowed from a dinner, hosted by Brent Wilkes, that Ms. Doolittle did not plan, and were not the result of any solicitation on her part. Taken together, these facts suggest Rep. Doolittle is converting campaign funds to personal use in violation of the Federal Election Campaign Act and House Rule XXIII, clause 6.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.²⁴ By using his position as a member of Congress to financially benefit his wife, Rep. Doolittle may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

5 CFR § 2635.702(a)

Another "fundamental rule of ethics" for members of the House is that they are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."²⁵ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Rep. Doolittle has provided a financial benefit to his wife and family through the percentage-based compensation his campaign committee and PAC pay her, including payments based on fundraising performed directly by Rep. Doolittle. In this way, Rep. Doolittle has run

²⁴ 18 U.S.C. § 1341.

²⁵ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

afoul of 5 C.F.R. § 2635.702(a).

In a 1999 memorandum, the House Committee on Standards of Official Conduct quoted approvingly the Code of Ethics for Government Service, which provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.”²⁶ The Committee stated specifically that the provisions of the Code of Ethics for Government Service apply to House members, and that formal charges may be brought against a member for violating that code.²⁷

The Committee on Standards of Official Conduct should investigate whether Ms. Doolittle secured contracts with Greenberg Traurig because of her relationship with Rep. Doolittle and as part of an effort by Mr. Abramoff to reward Rep. Doolittle for his legislative assistance on behalf of Mr. Abramoff and his clients. By using the powers of his office to funnel funds to his wife’s fundraising company, Rep. Doolittle may have dispensed special favors in violation of House rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,³¹ making false

²⁶ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁷ Id.

²⁸ Rule XXIII, cl. 1.

²⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

³⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

statements to the Committee,³² criminal convictions for bribery,³³ or accepting illegal gratuities,³⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁵

The arrangement between a company owned by Rep. Doolittle's wife and his campaign committee and leadership PAC, whereby his wife receives a flat percentage of each campaign contribution raised for Rep. Doolittle, is contrary to the ethical standards of the fundraising profession and does not reflect creditably on the House. This is particularly the case given that the income Ms. Doolittle earns in this matter inures directly to the benefit of Rep. Doolittle and his family.

Ties to Brent Wilkes

Rep. Doolittle has acknowledged that he assisted the California company, PerfectWave Technologies LLC, to secure \$37 million in federal earmarks.³⁶ Brent Wilkes is the director of PerfectWave and was identified as "co-conspirator No. 1" in the federal investigation of former Congressman Randy "Duke" Cunningham.³⁷ Between 2002 and 2005, Mr. Wilkes and his associates gave \$118,000 to Rep. Doolittle's campaign committees, more than they gave to any

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

³⁶ Jonathan Weisman and Charles R. Babcock, K Street's New Ways Spawn More Pork: As Barriers With Lawmakers Fall, 'Earmarks' Grow, *The Washington Post*, January 27, 2006 (Exhibit 7).

³⁷ Id.

other politician including Rep. Cunningham.³⁸ Calculations based on federal and state records show that Ms. Doolittle received \$14,400 of that money in commissions.³⁹ Mr. Wilkes hosted a fundraising dinner in November of 2003, attended by 15 guests who were his employees and partners.⁴⁰ Over the next four months the attendees gave a total of \$50,000 to Rep. Doolittle's PAC.⁴¹ Ms. Doolittle claimed commissions on most of those contributions, although there is no evidence she planned the dinner or encouraged the donations.⁴²

Rep. Doolittle's last known meeting with Mr. Wilkes was in Las Vegas during a fundraiser for the Congressman's political action committee.⁴³ Ms. Doolittle took a 15% commission for donations made during the Las Vegas event.⁴⁴ Rep. Doolittle has refused to return or donate the contributions from Mr. Wilkes, claiming they were legal.⁴⁵

Ties to Jack Abramoff

The Commonwealth of Northern Mariana Islands (CNMI)

In 1999, Rep. Doolittle assisted Jack Abramoff in securing a lucrative lobbying contract with the Commonwealth of the Northern Mariana Islands, and directing federal funding to CNMI.⁴⁶ Mr. Abramoff had lost his contract with the Mariana Islands the previous year and, in his strategy to win it back, he supported the candidacy of former garment industry executive, Benigne Fitiafale, for the CNMI Legislature.⁴⁷ The garment industry in CNMI has been criticized for human rights abuses, and Mr. Abramoff had lobbied to stop Congress from passing a law enforcing immigration and wage laws in CNMI, a stance supported by Rep. Doolittle.⁴⁸

³⁸ Calbreath, *San Diego Union-Tribune*, Mar. 19, 2006.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Calbreath, *San Diego Union-Tribune*, Mar. 19, 2006.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ David Whitney, Lobbyist Donated Cash To Doolittle; Congressman Received \$14,000. Helped Abramoff Win Contract, *The Sacramento Bee*, August 5, 2006 (Exhibit 8).

⁴⁷ Id.

⁴⁸ Id.

On October 3, 1999, Rep. Doolittle received a \$1,000 contribution from Mr. Abramoff.⁴⁹ Three weeks later he wrote a letter in support of Mr. Fitial, which ran in the *Saipan Tribune* on November 2, 1999, days before the election.⁵⁰ After Mr. Fitial won his election, Mr. Abramoff dispatched former Rep. DeLay aides Ed Buckham and Michael Scanlon to persuade two legislators from Tinian and Rota Islands to switch their votes for speaker of the house to Mr. Fitial, in exchange for steering federal money to the islands.⁵¹ Mr. Fitial was elected speaker of the house and the government of the Mariana Islands hired Mr. Abramoff's firm on July 27, 2000.⁵² On October 30, 2000, Mr. Abramoff contributed \$10,000 to Rep. Doolittle's now-defunct Superior California State Leadership Fund.⁵³

In 2001, Mr. Abramoff hired one of Rep. Doolittle's former aides, Kevin Ring, to manage the CNMI account.⁵⁴ Over the next ten months, Mr. Ring met with or contacted Rep. Doolittle's office 19 times regarding CNMI.⁵⁵ According to billing records, on March 12, 2001, Mr. Ring worked with Rep. Doolittle's office regarding a letter on a new Occupational Health and Safety Administration report.⁵⁶ Ten days later, the *Saipan Tribune* reported on a letter Rep. Doolittle had written to House colleagues regarding the report, in which Rep. Doolittle concluded that there had been improvements in the garment industry in CNMI.⁵⁷ The letter also detailed port projects funded through the U.S. Army Corps of Engineers for the Rota and Tinian Islands for which Rep. Doolittle said he would continue to seek funding.⁵⁸

On May 17, 2001, Rep. Doolittle's re-election committee contributed \$1,000 to Mr. Fitial, and six days later Mr. Abramoff donated \$1,000 to Rep. Doolittle's campaign.⁵⁹ In total Rep. Doolittle received \$14,000 in campaign contributions directly from Mr. Abramoff.⁶⁰

⁴⁹ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁵⁸ *Id.*

⁵⁹ Whitney, *The Sacramento Bee*, Aug. 5, 2006.

⁶⁰ *Id.*

Mr. Abramoff's Tribal Clients

In June 2003, Mr. Ring visited Rep. Doolittle's office on behalf of one of Mr. Abramoff's tribal clients, the Sac & Fox tribe of Iowa.⁶¹ A few days later, Rep. Doolittle wrote a letter to then-Secretary of the Interior Gale Norton in support of the Sac & Fox tribe, asking Secretary Norton to allow the tribe to re-open a casino that had been shut down by the Bureau of Indian Affairs.⁶² Three weeks after Rep. Doolittle wrote the letter, in July 2003, Greenberg Traurig resumed paying Ms. Doolittle's company the \$5,000 retainer fee that the firm had begun paying in August 2002, but had stopped in January 2003.⁶³ Rep. Doolittle wrote a second letter to Secretary Norton on October 7, 2003, asking her to speed up the federal recognition process for another of Mr. Abramoff's clients, the Mashpee Wampanaog tribe of Massachusetts, which would have allowed the tribe to open its casino more quickly.⁶⁴ Even though Rep. Doolittle is an avowed anti-gambling Mormon,⁶⁵ he has received \$130,000 from Indian tribal casinos and other clients and associates of Mr. Abramoff's.⁶⁶

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁶⁷ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶⁸

If, as it appears, Rep. Doolittle accepted campaign donations in direct exchange for earmarking federal funds to Perfect Wave Technologies, he may have violated the bribery statute.

⁶¹ David Whitney, Doolittle Defends Helping Iowa Tribe, *The Sacramento Bee*, February 12, 2006 (Exhibit 9).

⁶² Kane, *Roll Call*, July 3, 2006.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ David Whitney, Doolittle Declines To Return \$4,000 In Abramoff Contributions; Aide To Republican Says He Accepted Cash 'Legally And Ethically, *Modesto Bee*, January 6, 2006 (Exhibit 10).

⁶⁷ 18 U.S.C. § 201(b)(2)(A).

⁶⁸ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If, as it appears, Rep. Doolittle assisted Mr. Abramoff in securing a lucrative lobbying contract with the Commonwealth of the Northern Mariana Islands in direct exchange for campaign contributions, he may have violated the bribery statute.

If, as it appears, Rep. Doolittle accepted campaign donations in direct exchange for writing letters to former Secretary Gale Norton urging her to take actions that would financially benefit Mr. Abramoff's tribal clients, he may have violated the bribery statute.

Honest Services Fraud

By using his position as a member of Congress to earmark funds for PerfectWave Technologies in exchange for campaign donations, Rep. Doolittle may have deprived his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

By using his position as a member of Congress to assist Mr. Abramoff in securing a lucrative lobbying contract in CNMI in exchange for campaign donations, Rep. Doolittle may have deprived his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

By using his position as a member of Congress to attempt to influence Secretary Norton to take actions that would benefit Mr. Abramoff's tribal clients in exchange for campaign donations, Rep. Doolittle may have deprived his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁶⁹ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁷⁰

If a link is established between Rep. Doolittle's actions to earmark funds for PerfectWave Technologies and the campaign donations and donations to his PAC that Brent Wilkes and his associates made, Rep. Doolittle might have accepted an illegal gratuity.

If a link is established between Rep. Doolittle's assistance in helping Mr. Abramoff secure a lobbying contract in the Mariana Islands and campaign donations Rep. Doolittle received from Mr. Abramoff, Rep. Doolittle might have accepted an illegal gratuity.

⁶⁹ 18 U.S.C. § 201(c)(1)(B).

⁷⁰ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

If a link is established between Rep. Doolittle's actions on behalf of Mr. Abramoff's tribal clients and the campaign donations he received from Mr. Abramoff and the tribes, Rep. Doolittle might have accepted an illegal gratuity.

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁷¹ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

By accepting campaign contributions from Mr. Wilkes and his associates in apparent exchange for earmarking funds for his companies, Rep. Doolittle likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting campaign contributions from Mr. Abramoff in apparent exchange for helping him secure a lucrative lobbying contract, Rep. Doolittle likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting campaign contributions from Mr. Abramoff and his tribal clients in apparent exchange for using his position to urge Secretary Norton to take action that would benefit the tribes, Rep. Doolittle likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁷² House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

⁷¹ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁷² House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁷³

If Rep. Doolittle accepted campaign contributions from Brent Wilkes, Mr. Abramoff and his tribal clients in return for legislative assistance by way of federal earmarks, using his position to urge former Secretary Norton to take actions that would benefit the financial interests of two of Mr. Abramoff’s tribal clients, and using his position to help Mr. Abramoff secure a lucrative lobbying contract in the Mariana Islands, Rep. Doolittle may have dispensed special favors and violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

Rep. Doolittle appears to have accepted campaign contributions in return for legislative favors that financially benefitted Brent Wilkes, Jack Abramoff, and Mr. Abramoff’s tribal clients. Accepting anything of value in exchange for official actions does not reflect creditably on the House and therefore violates House Rule XXIII, clause 1.

2007 Update

Conversion of Campaign Funds to Personal Use

After a close race in the fall of 2006 and severe criticism, Rep. Doolittle announced that his wife would no longer serve as a paid fundraiser for his 2008 reelection campaign.⁷⁴ Still maintaining that the percentage-based fee his wife earned was fair, Rep. Doolittle has said that Ms. Doolittle will continue to raise money for his Superior California Leadership PAC, but will be paid a flat salary rather than a commission.⁷⁵ In the second quarter of 2007, Rep. Doolittle’s campaign committee made \$50,000 in payments to Sierra Dominion Financial Services for commissions stemming from funds raised in the 2006 election cycle.⁷⁶ Rep. Doolittle still owes

⁷³ Id.

⁷⁴ Whitney, *The Sacramento Bee*, Feb. 2, 2007.

⁷⁵ Id.

⁷⁶ John T. Doolittle for Congress, FEC Form 3, July Quarterly Report 2007, July 15, 2007, p.46 (Exhibit 11).

his wife's company \$76,471.20 for fundraising services rendered during the 2006 election cycle.⁷⁷

Ties to Jack Abramoff

In April 2007, FBI agents searched the Doolittles' Virginia home.⁷⁸ Investigators sought the business records of Ms. Doolittle's firm, Sierra Dominion Financial Services, as part of an ongoing investigation into ties between Jack Abramoff and the Doolittles.⁷⁹ The Justice Department previously had subpoenaed Ms. Doolittle's files.⁸⁰ Federal investigators are also probing whether contributions made to Rep. Doolittle by now indicted defense contractor Brent Wilkes and his associates are linked to any official actions Rep. Doolittle took to help Mr. Wilkes' company obtain millions of dollars in earmarks.⁸¹ Following the search of his home, Rep. Doolittle stepped down from his post on the Appropriations Committee for the duration of the investigation.⁸² In May, Rep. Doolittle called the search politically motivated, and alleged that the search and the government's leak about it were an effort to draw attention away from the embattled attorney general.⁸³

After the search of his home, Rep. Doolittle said that he was establishing a legal defense fund so that he could solicit contributions to pay his legal bills, and that him and his wife would set up separate trusts.⁸⁴ Rep. Doolittle said that the Justice Department had urged he and his wife to hire separate lawyers because of potential conflicts of interest between them.⁸⁵ Nevertheless,

⁷⁷ John T. Doolittle for Congress, FEC Form 3, July Quarterly Report 2007, July 15, 2007, p.63 (Exhibit 12).

⁷⁸ Mike Soraghan and Susan Crabtree, FBI Raids Doolittle Home, *The Hill*, April 19, 2007 (Exhibit 13).

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Susan Davis, Under Pressure, Doolittle Leaves Approps Panel, *Roll Call*, April 19, 2007 (Exhibit 14).

⁸³ David Whitney, Doolittle Blames Democrats For Leaks, *The Sacramento Bee*, May 18, 2007 (Exhibit 15).

⁸⁴ David Whitney, Congressman In Abramoff Probe Says He Won't Resign, *McClatchy Newspapers*, May 4, 2007 (Exhibit 16).

⁸⁵ Id.

according to the legal expense trust documents filed on June 28, 2007 with the House Legislative Resource Center, the fund established by Rep. Doolittle benefits both of them.⁸⁶

Rep. Doolittle's campaign committee spent in excess of \$100,000 in legal fees in 2006 and has paid \$13,516.05 in legal fees through April 2007.⁸⁷ In the second quarter of 2007, Rep. Doolittle paid an additional \$50,000 in legal fees: \$20,583 to Wiley and Rein for FEC-related work, and \$30,000 to Williams and Mullins, a criminal defense firm.⁸⁸

At least three former Doolittle aides have been contacted by the Justice Department as part of the investigation into links between Rep. Doolittle, Ms. Doolittle and Mr. Abramoff. Rep. Doolittle's former legislative director, Peter Evich agreed to meet voluntarily with federal investigators, but another former aide, David Lopez, declined to speak with officials on the advice of his attorney, though he has provided campaign finance records to investigators pursuant to subpoena.⁸⁹ Both men are believed to have knowledge of Rep. Doolittle's contacts with Mr. Abramoff.⁹⁰ A third former Doolittle staffer who later worked for Mr. Abramoff, Kevin Ring, has been cooperating with federal investigators.⁹¹ Rep. Doolittle has publicly supported the efforts of the Justice Department to contact his former aides, claiming it will hasten the clearing of his name.⁹²

On September 4, 2007 it was reported that two of Rep. Doolittle's top aides, Chief of Staff Ron Rogers and Deputy Chief of Staff Dan Blackenburg, were subpoenaed to testify before a federal grand jury investigating the ties between Rep. Doolittle and his wife to Mr. Abramoff.⁹³

⁸⁶ The John T. Doolittle Legal Expense Trust, June 28, 2007, Filed July 6, 2007 (Exhibit 17).

⁸⁷ John T. Doolittle for Congress, FEC Form 3, April Quarterly Report 2007, April 15, 2007, pp.52, 57, 60, 65 (Exhibit 18); Doolittle Pays Thousands To Attorneys, *The Associated Press*, December 11, 2006 (Exhibit 19).

⁸⁸ John T. Doolittle for Congress, FEC Form 3, July Quarterly Report 2007, July 15, 2007 p.46, 50, 54, 58 (Exhibit 20).

⁸⁹ David Whitney, Probers Contact Former Aides; Prosecutors Ask About Doolittle's Links To Abramoff, *The Sacramento Bee*, June 28, 2007 (Exhibit 21).

⁹⁰ Id.

⁹¹ Id.

⁹² David Whitney, Doolittle Supports Query Of Ex-Aides, *The Sacramento Bee*, June 29, 2007 (Exhibit 22).

⁹³ Erica Werner, Doolittle Aides Subpoenaed in Probe, *The Washington Post*, September 4, 2007 (Exhibit 23).

Mr. Rogers and Mr. Blackenburg said they would consult with House counsel before responding.⁹⁴

⁹⁴ Id.

REP. TOM FEENEY

Rep. Tom Feeney (R-FL), the former Speaker of the Florida House of Representatives, is a third-term member of Congress, representing Florida's 24th congressional district. Rep. Feeney's ethics violations stem from his relationship with convicted lobbyist Jack Abramoff and three trips he took in apparent violation of House travel and gift rules. Rep. Feeney was included in CREW's 2006 congressional corruption report.

Improper Travel

Golf Trip to Scotland

Rep. Feeney traveled to Scotland -- apparently to play golf -- from August 9-14, 2003. Rep. Feeney initially claimed that the cost of the trip was paid for by the National Center for Public Policy Research,¹ but the Center said that it did not provide "a single dime" for Feeney's trip.² As a result, Rep. Feeney claimed to have discovered recently that the \$5,643 bill was actually paid by lobbyist Jack Abramoff.³ According to Rep. Feeney, he was "misled" and "lied to" about who actually paid for the trip.⁴

Rep. Feeney also claimed that both the trip to Scotland (and the trip to Korea discussed below) were approved verbally by the House Committee on Standards of Official Conduct. According to Rep. Feeney, "[g]iven everything we knew at the time, we didn't make any inappropriate or unethical decisions."⁵ Rep. Feeney acknowledged however, that he had no written proof that the ethics committee approved the trip.⁶

¹ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, December 29, 2003 (Exhibit 1). House rules also require that travel disclosure forms be filed within 30 days after the travel is completed. Rule XXVI, clause 5(b)(1)(A)(ii). Rep. Feeney failed to file the form associated with this trip until January 2004, 4 ½ months after the trip. In addition, whenever a form is filed after the deadline, the rules require that the filer also send a letter to the House Committee on Standards of Official Conduct explaining the reason for the failure to file in a timely manner. Rule XXVI, clause 5(b)(5). No such letter appears to have accompanied this form.

² Chuck Neubauer and Walter F. Roche, Jr., Golf And Playing By The Rules, *Los Angeles Times*, March 9, 2005 (Exhibit 2).

³ Tamara Lytle, Congressman Who Traveled to Scotland, Korea Broke Ethics Rules, *Orlando Sentinel*, March 10, 2005 (Exhibit 3).

⁴ Id.

⁵ Lytle, *Orlando Sentinel*, Mar. 10, 2005.

⁶ Id.

Trip to Korea

Rep. Feeney visited South Korea on a trip sponsored by the Korea-U.S. Exchange Council (KORUSEC), despite the fact that the organization is registered with the Department of Justice under the Foreign Agents Registration Act.⁷ House rules provide that a Member, officer, or employee may **not** accept travel expenses from “a registered lobbyist or agent of a foreign principal.”⁸ A spokesperson for Rep. Feeney told one reporter that the 2003 trip to Korea was “approved by the House ethics committee.”⁹ There is no evidence, however, that the ethics committee actually approved the trip. In addition, Mr. Feeney failed to report the trip on his financial disclosure forms.¹⁰

Trip to West Palm Beach

Rep. Feeney and his wife traveled from Orlando, Florida to West Palm Beach, Florida to speak at “Restoration Weekend” from November 13-16, 2003. According to the travel disclosure form Rep. Feeney originally submitted to the Clerk’s office, this trip, which cost \$1,430, was paid for by Rotterman and Associates.¹¹ Rotterman and Associates was a registered lobbying firm in 2002 and 2003.¹² House rules provide that a Member, officer or employee may **not** accept travel expenses from “a registered lobbyist or agent of a foreign principal.”¹³ Thus, Rep. Feeney appears to have violated the travel rules by allowing Rotterman and Associates to pay for his travel.

A year and a half later, when the scandal over Members’ travel broke and reporters began to question this trip, Rep. Feeney filed a new disclosure form indicating that the Center for the

⁷ John Bresnahan and Amy Keller, Korean Tycoon’s Big Plans, Network Wider Than DeLay, *Roll Call*, March 21, 2005 (Exhibit 4).

⁸ Rule XXVI, cl. 5(b)(1)(A).

⁹ Peter H. Stone, U.S.-Korea Council Payment For Trips Appears To Violate House, *Congress Daily*, March 10, 2005 (Exhibit 5).

¹⁰ The trip was listed neither on Rep. Feeney’s Personal Financial Disclosure Statement 2003, filed May 10, 2004 (Exhibit 6), nor on his amended Personal Financial Disclosure Statement 2003, filed July 13, 2004 (Exhibit 7).

¹¹ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, November 19, 2003 (Exhibit 8).

¹² See United States Senate, Office of Public Records, Lobbying Disclosure Records, <http://sopr.senate.gov/> (Exhibit 9).

¹³ Rule XXVI, cl. 5(b)(1)(A).

Study of Popular Culture paid for the trip.¹⁴ Rep. Feeney also indicated that the costs were much higher than he originally reported -- \$1,947 as opposed to \$1,430.¹⁵

Gift and Travel Rules Violations

Golf Trip to Scotland

The golf trip to Scotland also violates several provisions of the House gift and travel rules. House Rules note that among the gift items as to which Members and staff need to be especially careful are small group and one-on-one meals, tickets to (or free attendance at) sporting events and shows, and recreational activities, **such as a round of golf** [emphasis added].¹⁶ The Committee on Standards of Official Conduct posited the following example as a prohibited gift:

A Member has been invited to play golf by an acquaintance who belongs to a country club, and under the rules of the club, the guest of a club member plays without any fee. Nevertheless, the Member's use of the course would be deemed a gift to the Member from his host, having a value of the amount that the country club generally charges for a round of golf.¹⁷

Under this provision, the expenditures made for Rep. Feeney to play golf at St. Andrews appear to constitute a gift accepted by Rep. Feeney in violation of Rule XXVI.

In addition, according to the travel rules:

[L]ike any other gift, travel expenses are subject to the basic gift prohibitions . . . including the prohibition against soliciting a gift -- and they may be accepted only in accordance with the provisions of the gift rule. Indeed, travel may be among the most attractive and expensive gifts, and thus, before accepting travel, a Member, officer or employee should exercise special care to

¹⁴ Rep. Tom Feeney, Personal Financial Disclosure Statement 2003, page 8, filed May 10, 2004 (*see* Exhibit 6), as well as his amended Personal Financial Disclosure Statement 2003, page 8 (*see* Exhibit 7), filed July 13, 2003, both list the National Center for Public Policy Research as paying for his trip to West Palm Beach.

¹⁵ Member/Officer Travel Disclosure Form, filed by Rep. Tom Feeney, April 20, 2005 (Exhibit 10).

¹⁶ *Overview of the Gift Rule*, Rules of the U.S. House of Representatives on Gifts and Travel.

¹⁷ *What is a Gift?*, Rules of the U.S. House of Representatives on Gifts and Travel.

ensure compliance with the gift rule and other applicable law.¹⁸

Rule XXVI, clause 5(b)(1)(A) requires that all travel be related to official duties. Here, it appears that the primary, if not the only purpose of Rep. Feeney's trip was to play golf at St. Andrews. This is a clear violation of the rules which provide specifically that "[e]vents, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member."¹⁹

The way the trip was financed also implicates Rule XXVI. The Committee has long taken the position that a Member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.²⁰

The rule is concerned with the organization(s) or individual(s) that actually pay for travel. The rule provides:

... where a non-profit organization pays for travel with donations that were earmarked, either formally or informally, for the trip, each such donor is deemed a "private source" for the trip and (1) must be publicly disclosed as a trip sponsor on the applicable travel disclosure forms and (2) may itself be required to satisfy the above standards on proper sources of travel expenses. Accordingly, it is advisable for a Member or staff person who is invited on a trip to make inquiry on the source of the funds that will be used to pay for the trip. In addition, the concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.²¹

Here, it is unclear who really financed Rep. Feeney's trip. Rep. Feeney's travel disclosure form lists the National Center for Public Policy as the funder, though the Center has emphatically denied paying for the trip. Moreover, Rep. Feeney failed to adequately describe the trip's purpose, explaining only that the purpose was a "Congressional Informative Tour."²²

¹⁸ *Travel, Rules of the U.S. House of Representatives on Gifts and Travel*.

¹⁹ Rule XXVI, cl. 5(b)(1)(B).

²⁰ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

²¹ *Proper Sources of Expenses for Officially Connected Travel, Rules of the House of Representatives on Gifts and Travel*.

²² *Member/Officer Travel Disclosure Form*, Dec. 29, 2003. (See Exhibit 1).

A full airing of this matter requires the Committee to consider: 1) who paid for Rep. Feeney's trip to Scotland; 2) what activities Rep. Feeney engaged in while on the trip, other than golf; 3) what was the direct and immediate relationship between the sponsoring organization and the trip; 4) who were the actual sources of funding for the trip; 5) why were these private sources not disclosed as required by House Rules; and 6) did these private sources have a direct and immediate relationship with a golf trip to Scotland.

Next, even if the Committee finds that the sources that funded the trip somehow had a direct and immediate relationship with some aspect of Mr. Feeney's trip, under the travel provisions of the gift rule, one may accept reasonable expenses for transportation, lodging and meals from the private sponsor of an officially connected trip, but may **not** accept recreational activities or entertainment.²³ Thus, the Committee also must ask who paid for Mr. Feeney to play golf at St. Andrews and, given that the green fees were valued at over \$50, the Committee must find him in violation of the gift rule.

Korea Trip

Notably, House rules preclude the ethics committee from "approving" any travel. According to the Committee's travel booklet, this is because the rule places on individual Members and officers -- and not on the Committee -- the burden of making the determination that a particular trip is in connection with official duties and would not create the appearance of using public office for private gain. Thus, contrary to Rep. Feeney's assertions, the ethics committee could not have "approved" his trip.

In addition, House rules provide that a member, officer or employee may not accept travel expenses from "a registered lobbyist or agent of a foreign principal."²⁴ The prohibition against accepting travel expenses from a registered lobbyist, an agent of a foreign principal, or a lobbying firm applies even where the lobbyist, agent, or firm will later be reimbursed for those expenses by a non-lobbyist client.²⁵ Thus, by accepting payment for his trip to Scotland from Mr. Abramoff, a then- registered lobbyist,²⁶ Rep. Feeney appears to have violated Rule XXVI, clause 5(b)(1)(A) of the House.

²³ Rule XXVI, cl. 5(b)(4)(C); *Acceptable Travel Expenses*, Rules of the U.S. House of Representatives on Gifts and Travel.

²⁴ Rule XXVI, cl. 5(b)(1)(A).

²⁵ House Comm. on Standards of Official Conduct, Travel Booklet.

²⁶ See e.g. United States Senate, Office of Public Records, Lobbying Disclosure Records, <http://sopr.senate.gov/> (Exhibit 11).

West Palm Beach Trip

The trip to Palm Beach apparently lasted four days, which is the longest period for which a Member may accept payment for domestic travel. The gift rule further restricts trip length stating that only “necessary transportation, lodging and related expenses for travel” may be accepted.²⁷ The Travel Booklet provides that a Member “may accept only such expenses as are reasonably necessary to accomplish the purpose of the trip, and thus it may not always be proper to accept expenses for the full four- or seven-day period. This is particularly so where the sole purpose of an individual’s travel to an event is to give a speech.”²⁸ The booklet then provides the following example:

Example 3. A trade association invites a Member to give a speech at its annual meeting in Chicago. The annual meeting is scheduled for December 1 through 4, and the Member’s speech is scheduled for December 3. The Member may travel from Washington to Chicago at the association’s expense on December 2, and after he has completed the speech, he should return to Washington or his district as soon as it is practical to do so.²⁹

Thus, it appears that Rep. Feeney may have violated the rules by accepting expenses for longer than necessary to accomplish the purpose of the trip.

Finally, the Committee on Standards of Official Conduct has long taken the position that a Member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.³⁰ This presents the question of what relationship, if any, either Rotterman and Associates or the Center for the Study of Popular Culture had with Restoration Weekend that allowed Rep. Feeney to accept travel expenses from either organization.

Thus, with regard to Rep. Feeney’s trip to West Palm Beach, the Committee on Standards of Official Conduct should investigate: 1) who actually sponsored the trip; 2) what evidence demonstrates that the trip was paid for by a non-profit and not by a lobbyist; 3) what direct and immediate relationship the Center for the Study of Popular Culture had with Restoration Weekend; 4) whether Rep. Feeney stayed in West Palm Beach longer than necessary to give a speech; and 5) why the cost of the trip changed so dramatically between the two filings.

²⁷ Rule XXVI, cl. 5(b)(1)(A); House Comm. on Standards of Official Conduct, Travel Booklet.

²⁸ Id.

²⁹ Id.

³⁰ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

Personal Financial Disclosure Forms

In May 2006, Rep. Feeney reported on his personal financial disclosure form that he was the joint owner of a condominium at the Royal Mansions resort in Cape Canaveral, Florida.³¹ The congressman listed the purchase date as January 2005.³² In fact, records from the Brevard County Appraiser's office show that unit was sold in late 2003 to James A. Fowler, Rep. Feeney's former law partner.³³ Mr. Fowler claims that he and Rep. Feeney jointly bought the property at a total cost of \$175,000.³⁴ Two identically sized units in the development sold for \$450,000 and \$420,000 in 2006.³⁵

Financial Disclosure Form Violations

The Ethics in Government Act of 1967³⁶ requires all members of Congress to file financial disclosure reports. Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.³⁷ The same reporting requirements attach to any candidate for the office of president, who is required to file the report within 30 days of becoming a candidate.³⁸

In addition, 18 U.S.C. § 1001 prohibits Members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"³⁹ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁴⁰

³¹ Ken Silverstein, Congressman Tom Feeney: An Appreciation, *Harper's Magazine*, July 12, 2006 (Exhibit 12).

³² Id.

³³ Id.

³⁴ Id.

³⁵ Silverstein, *Harper's Magazine*, July 12, 2006.

³⁶ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

³⁷ 5 U.S.C. app. 4, § 104.

³⁸ 5 U.S.C. app. § 101(c).

³⁹ 18 U.S.C. § 1001(a)(2).

⁴⁰ Id. at § 1001(c)(2).

Moreover, pursuant to 5 U.S.C. app. 4 § 101(a)(1)(B), members of Congress must disclose all rental property. The instruction booklet accompanying the House financial disclosure forms explains that the rules require disclosure of “unearned” income, which “consists of rents, royalties, dividends, interest, capital gains, and similar amounts received as a return on investment.” The instructions continue, filers “must disclose . . . real and personal property held for investment or production of income and valued at more than \$1,000 at the close of the reporting period.”⁴¹

Rep. Feeney has claimed that he did not report the purchase of the condominium initially because his name was not on the deed.⁴² He has not explained, however, why, given that he was a full co-owner, he was not on the deed.⁴³ Nevertheless, the standard for disclosure is whether or not the filer received rent on the property, not whether he or she was on the deed for the property. According to Mr. Fowler, he and Rep. Feeney co-own the condominium, rent it, and receive income from it. As a result, Rep. Feeney’s failure to include the property on his financial disclosure forms in 2003 and 2004 may violate federal law and clearly violates of House rules.

2007 Update

On January 3, 2007, the Committee on Standards of Official Conduct found that Rep. Feeney had inappropriately accepted the privately funded golf trip to Scotland, which had no official connection to congressional duties.⁴⁴ Rep. Feeney was directed to pay the general Treasury the \$5,643 he had reported the trip cost.⁴⁵

Documents disclosed by the Senate Indian Affairs Committee in April 2007, however, revealed that the trip was paid for by Capital Athletic Foundation, a charity established by Mr. Abramoff.⁴⁶ Additional records released by the Department of Justice further revealed that the actual cost of the trip was \$160,000, putting the individual cost for each of the eight individuals

⁴¹ House Comm. On Standards of Official Conduct, “Assets and Unearned Income,” Financial Disclosure Instruction Booklet.

⁴² Silverstein, *Harper’s Magazine*, July 12, 2006.

⁴³ Id.

⁴⁴ Paul Kane, Ethics Panel Fines Weldon, Feeney For Trips, *Roll Call*, January 3, 2007 (Exhibit 13); Statement of Chairman Doc Hastings and Ranking Minority Member Howard L. Berman Regarding Representative Tom Feeney, January 3, 2007 (Exhibit 14).

⁴⁵ Id.

⁴⁶ Tamara Lytle and Mark K. Matthews, Feeney Trip Tied To Abramoff ‘Slush Fund,’ *Orlando Sentinel*, April 27, 2007 (Exhibit 15).

who attended at significantly more than the \$5,643 Rep. Feeney had reported.⁴⁷

The FBI is now looking into Rep. Feeney's relationship with Mr. Abramoff and into the golf trip.⁴⁸ Federal agents have asked Rep. Feeney for information and have contacted at least three Florida newspapers,⁴⁹ asking the papers for emails sent by Rep. Feeney's office describing the 2003 golfing trip.⁵⁰ Although Rep. Feeney has denied assisting Mr. Abramoff, he was one of several lawmakers who wrote to the Department of Energy in 2003 -- five months before his luxury golf trip to Scotland -- opposing changes to a federal program that were also opposed by one of Mr. Abramoff's clients.⁵¹

In June 2007, Rep. Feeney created a legal defense fund to defray his legal costs⁵² and disclosed that in the first quarter of 2007, he had paid \$23,122 in legal fees to the Washington law firm Patton Boggs, LLP.⁵³

⁴⁷ Id.

⁴⁸ Id.; Anita Kumar, FBI Asking Tom Feeney About Trip With Abramoff, *St. Petersburg Times*, April 24, 2007 (Exhibit 16).

⁴⁹ Lytle and Matthews, *Orlando Sentinel*, Apr. 27, 2007.

⁵⁰ Kumar, *St. Petersburg Times*, Apr. 24, 2007.

⁵¹ Anita Kumar, Rep. Feeney Sought Rule Change Tied To Abramoff, *St. Petersburg Times*, April 28, 2007 (Exhibit 17).

⁵² The Tom Feeney Legal Expense Trust, ¶ A (Exhibit 18).

⁵³ Tom Feeney for Congress Committee, FEC Form 3, April Quarterly Report 2007, April 10, 2007, p. 46 (Exhibit 19).

REP. DOC HASTINGS

Rep. Doc Hastings (R-WA) is a seventh-term member of Congress, representing the 4th district of Washington. His ethics issues stem from his improper contact with a Washington U.S. attorney.

Contacting U.S. Attorney

The former U.S. Attorney in Seattle, Washington, John McKay, testified before the United States Senate that, in 2004, during a series of vote recounts in which a Democrat was narrowly elected governor of Washington, Rep. Hastings' then-Chief of Staff Ed Cassidy called, informing him that "the purpose of the call was to inquire on behalf of Congressman Hastings" about the status of any ongoing investigation into voter fraud.¹ Mr. McKay was "concerned and dismayed by the call," believing the conversation might constitute obstruction of justice.²

Rep. Hastings has claimed that Mr. Cassidy's call to Mr. McKay was "entirely appropriate," and that the call was "a simple inquiry and nothing more."³ Mr. Cassidy claimed that his conversation with Mr. McKay "was a routine effort to determine whether allegations of voter fraud in the 2004 gubernatorial election were, or were not, being investigated by federal authorities."⁴

House Rules

Although House ethics rules do not specifically discuss the issue of a member contacting a sitting U.S. Attorney, the rules do anticipate members contacting agency officials and judges. Chapter 7 of the House ethics manual prohibits ex parte communications, directed to executive or independent agency officials, on the merits of matters under their formal consideration. The ethics committee has also stated that such contacts should not be based on political considerations and that the direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is an unwarranted abuse of a member's role.⁵

¹ David Bowermaster and Alicia Mundy, At Senate Hearing, McKay Vigorously Defends His Work, *The Seattle Times*, March 7, 2007 (Exhibit 1).

² Richard A. Serrano, Fired U.S. Attorneys Testify Before Congress, *Los Angeles Times*, March 7, 2007 (Exhibit 2).

³ Bowermaster and Mundy, *The Seattle Times*, Mar. 7, 2007.

⁴ Id.

⁵ House Ethics Manual, ch. 7.

Similarly, the ethics committee has stated that when a member believes it necessary to attempt to affect the outcome in a pending case, he or she has several options:

A Member who has relevant information could provide it to a party's counsel, who could then file it with the court and notify all parties. Alternatively, the Member could seek to file an amicus curiae, or friend of the court brief. Yet another option, in an appropriate case, might be to seek to intervene as a formal party to the proceeding. A Member could also make a speech on the House floor or place a statement in the Congressional Record as to the legislative intent behind the law. A Member should refrain, however, from making an off-the-record communication to the presiding judge, as it could cause the judge to recuse him- or herself from further consideration of the case.⁶

The claim that a member was merely requesting “background information” or a “status report” is not a defense to a violation of the prohibition on ex parte communications. The House has recognized “the possibility that a request for background information or a status report ‘may in effect be an indirect or subtle effort to influence the substantive outcome of the proceedings.’”⁷ To protect the decision-making process, the House has prohibited such ex parte communications.

By having a staff member contact Mr. McKay to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Hastings appears to have violated House Rules.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found

⁶ Id.

⁷ Id.

⁸ Rule XXIII, clause 1.

⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

¹⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

unethical conduct including: the failure to report campaign contributions,¹¹ making false statements to the Committee,¹² criminal convictions for bribery,¹³ or accepting illegal gratuities,¹⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁵

By having a staff member contact Mr. McKay to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Hastings engaged in conduct that does not reflect creditably on the House.

In addition, the House has held that the Code of Ethics for Government Service applies to members of the House, requiring members, like all others in government service, to “uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.”¹⁶ The House Committee on Standards of Official Conduct has held that this provision:

may be implicated if a House Member were to request that an executive branch employee engage in an activity having an impermissible political purpose . . . Such conduct by a Member may also implicate the fundamental requirement of the House Code of Official Conduct that a Member, officer, or employee ‘shall

¹¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

¹³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

¹⁶ Code of Ethics for Government Service, ¶ 2.

conduct himself at all times in a manner that shall reflect creditably on the House.’¹⁷

¹⁷ Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108th Cong. Oct. 7, 2004); House Rule 23, cl. 1.

REP. DUNCAN HUNTER

Rep. Duncan Hunter (R-CA) is a 14th-term member of Congress, representing California's 52nd congressional district. Rep. Hunter is the ranking member¹ and former chair² of the House Committee on Armed Services, positions that have afforded him a significant degree of power over the Department of Defense's budget.³ Rep. Hunter's ethical issues stem from his connection to a number of people at the center of the largest military corruption scandal of the decade -- connections that have been investigated by the FBI⁴ -- and his earmarks for projects that benefit his defense industry political donors, but that the military does not want. In addition to ethical issues surrounding his official work, Rep. Hunter purchased his home in a questionable land deal, escaped paying full property taxes for many years on the home and gave conflicting reports of the property's true value. Rep. Hunter also used the power of his office to financially benefit his brother and his presidential campaign has violated federal election law.

Relationship With Randy "Duke" Cunningham

On November 28, 2005, Rep. Randy "Duke" Cunningham pleaded guilty to federal charges of conspiracy to commit bribery in connection to defense contracts, mail fraud, wire fraud and tax evasion.⁵ After resigning his congressional seat,⁶ Rep. Cunningham began serving a sentence of more than eight years in federal prison for taking more than \$2.4 million in bribes from defense contractors.⁷

¹ House Armed Services Committee Website, U.S. House of Representatives, <http://armedservices.house.gov/> and http://armedservices.house.gov/oversight_plan.shtml (Exhibit 1).

² Almanac of American Politics, *National Journal*, 2006 (Exhibit 2).

³ Tom Hamburger, Walter F. Rourke Jr. and Richard Simon, The Nation: California's 'Big 6': Masters of the New Lobbying Game, *Los Angeles Times*, August 5, 2006 (Exhibit 3).

⁴ Hark Hosenball, Jamie Reno and Evan Thomas, D.C. Fraud Probe Heats Up, *Newsweek*, June 5, 2006 (Exhibit 4).

⁵ Cunningham Pleads Guilty, Resigns From Congress, *San Diego Union Tribune*, November 28, 2005 (Exhibit 5).

⁶ Id.

⁷ John Marelius, GOP's Hunter Will Run for Presidency in 2008, *San Diego Union-Tribune*, October 31, 2006 (Exhibit 6).

Rep. Hunter was a close friend and political ally of Rep. Cunningham.⁸ The two spent 15 years working closely together as members of the House Armed Services Committee and House Defense Appropriations Subcommittee.⁹ Upon revelations of Rep. Cunningham's illegal actions, Rep. Hunter launched a limited investigation into the 2005 files of the House Armed Services Committee related to certain defense contracts.¹⁰ Although several defense projects requested by Rep. Cunningham found their way into drafts of several defense authorization bills,¹¹ the committee records evidenced no wrongdoing.¹² Rep. Hunter subsequently agreed to expand the committee's internal investigation,¹³ but nearly five months after the U.S. Attorney pursuing the bribery case requested documents, Rep. Hunter's committee had still not released the records.¹⁴ The FBI is investigating Rep. Hunter's connections to Rep. Cunningham as well as other actors in the scandal.¹⁵

Relationship With Brent Wilkes

Brent Wilkes has been identified as a co-conspirator in the Rep. Cunningham scandal. As of July 18, 2007, Mr. Wilkes faced 30 counts in two separate indictments, including charges that he bribed Rep. Cunningham with \$600,000 in gifts and cash in exchange for more than \$80 million in defense contracts.¹⁶

⁸ Roxana Tiron, Hunter is 'Duke's' Friend 'Till the End, *The Hill*, March 7, 2006 (Exhibit 7).

⁹ Id.

¹⁰ Otto Kreisher, Rep. Hunter's Committee to Expand Search For Fishy Cunningham Deals, *Copley News Service*, April 15, 2006 (Exhibit 8).

¹¹ Initial Probe Finds No Improper Dealings With Cunningham, *National Journal's Congress Daily*, April 27, 2006 (Exhibit 9).

¹² Kreisher, *Copley News Service*, Apr. 15, 2006.

¹³ Id.

¹⁴ John Bresnahan, No Document Yet For DOJ, *Roll Call*, July 26, 2006 (Exhibit 10).

¹⁵ Hosenball, *Newsweek*, June 5, 2006.

¹⁶ George E. Condon Jr. And Marcus Stern, Imprisoned 'Duke' Tells of Scope of Corruption, *Copley News Service*, July 18, 2007 (Exhibit 11).

Central to the criminal investigation were earmarks for companies associated with Brent Wilkes: Audre, Inc. and ADCS.¹⁷ These companies created “automated document conversion” software that the Pentagon neither wanted nor needed.¹⁸

Rep. Hunter, a “prominent backer” of these systems, teamed with Rep. Cunningham and other lawmakers to allocate \$190 million for automated data conversion projects from 1993 to 2001.¹⁹ Rep. Hunter also sought out tens of millions of dollars in earmarks for Audre and ADCS, and pushed the Pentagon to purchase their products.²⁰ In addition, shortly after Rep. Hunter was named chair of the Armed Services Committee, he lent Audre his congressional office for two weeks so the company could showcase its products to Pentagon officials.²¹ Two weeks after the demonstrations ended, Audre sold \$1.2 million of the software to the Department of Defense for testing.²²

Between 1993 and 2001, Audre obtained more than \$12.5 million worth of contracts for document conversion largely through earmarks.²³ The earmarks were included in the Defense Department’s budget even though the Pentagon had never asked for funds for automated document conversion.²⁴ From 1997 to 2002, Congress budgeted \$60 million in contracts for ADCS.²⁵

For his part, Mr. Wilkes has steered at least \$39,200 in campaign contributions to Rep. Hunter.²⁶ As *USA Today* noted, however, “Wilkes’ ties to Hunter and Cunningham go beyond

¹⁷ Dean Calbreath and Jerry Kammer, Contractor ‘Knew How To Grease The Wheels’: ADCS Founder Spent Years Cultivating Political Contacts, *Copley News Service*, December 4, 2005 (Exhibit 12).

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Calbreath and Kammer, *Copley News Service*, Dec. 4, 2005.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Dean Calbreath, The Power Of Persuasion, *San Diego Union-Tribune*, February 5, 2006 (Exhibit 13).

²⁶ Id. *USA Today* has put the amount of campaign contributions flowing from Mr. Wilkes at \$40,700: Matt Kelley and Jim Drinkard, Contractor Spends Big on Key Lawmakers, *USA Today*, November 29, 2005 (Exhibit 14).

campaign contributions.”²⁷ In 2003, Mr. Wilkes’ foundation not only honored Rep. Hunter with a “Salute to Heroes” gala, but also contributed \$1,000 to a charity run by two of Rep. Hunter’s staffers.²⁸ In December 2006, Rep. Hunter directed that Mr. Wilkes’ contributions be given to the Injured Marine Semper Fi Fund.²⁹

Relationship With Letitia White

Letitia White is a former partner in the lobbying firm Copeland Lowery Jacquez Denton & White.³⁰ Before joining the firm in 2003, she worked for former Appropriations Chairman Jerry Lewis (R-CA) for 21 years.³¹

At Copeland Lowery, Ms. White became known as “K Street’s Queen of Earmarks.”³² She quickly built a client list of two dozen defense firms that were seeking earmarks.³³ Within a year, she was earning over \$1 million a year at the firm, her clients were paying almost \$1.5 million in lobbying fees and they received at least \$22 million in earmarks in the 2004 defense appropriations bill.³⁴ For fiscal year 2006, an analysis by the nonprofit Taxpayers for Common Sense revealed that at least two-thirds of Ms. White’s 53 clients received earmarks.³⁵

Thomas Casey of Audre, Inc., alleged that in 1993, while Ms. White was employed by Rep. Lewis and working on a provision of a defense spending bill, he and Brent Wilkes met with

²⁷ Kelley and Drinkard, *USA Today*, Nov. 29, 2005.

²⁸ *Id.*

²⁹ Tiron, *The Hill*, Mar. 7, 2006.

³⁰ Copeland Lowery & Jacquez, ADCS, Inc., Lobbying Registration, Secretary of Senate, Office of Public Records, 2002 ; Copeland Lowery Jacquez Denton & White, ADCS, Inc., Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2002 (Exhibit 15).

³¹ Zachary Coile, New Move to Trim Political Pork, *San Francisco Chronicle*, February 15, 2006 (Exhibit 16).

³² David D. Kirkpatrick, Rise of Capitol Lobbyist Shines a Light On House Connections, *The New York Times*, June 3, 2006 (Exhibit 17).

³³ Jerry Kammer, A Steady Flow of Influence, *Copley News Service*, December 23, 2005 (Exhibit 18).

³⁴ Paul Kane, Pay Cut Let Lewis Aide Dodge Ban, *Roll Call*, July 27, 2006 (Exhibit 19).

³⁵ Kirkpatrick, *The New York Times*, June 3, 2006.

Ms. White to help secure funding for Audre.³⁶ Mr. Casey was escorted by the top appropriations aide to a basement room in the Capitol where the committee staffers drafted legislation.³⁷ There, Mr. Casey typed a paragraph designed to be so specific that it would limit competition.³⁸

The final legislation included much of the language that Mr. Casey had written, including \$14 million in funding to “acquire and test an automated document conversion system for the purpose of converting archival drawings and specifications of systems.”³⁹ Under the 1994 earmark, Audre initially received \$4 million in Pentagon contracts.⁴⁰ According to a 1994 article in *Federal Computer Week*, one week before the bill’s final passage, Ms. White bought stock in Audre.⁴¹ Upon leaving the Hill, she became partner of the lobbying firm that represented ADCS.⁴²

Rep. Hunter’s connections to Ms. White do not end with her involvement with Brent Wilkes. Ms. White lobbies on behalf of some of Rep. Hunter’s biggest campaign contributors.⁴³ Since Ms. White became a lobbyist, Rep. Hunter has received \$133,000 in campaign contributions from Ms. White⁴⁴ and the political action committees of her clients.⁴⁵

³⁶ Peter Pae, Tom Hamburger and Richard Simon, Powerful Lawmaker’s Relative Linked Financially to Contractor, *Los Angeles Times*, June 23, 2006 (Exhibit 20).

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Pae, Hamburger and Simon, *Los Angeles Times*, June 23, 2006.

⁴¹ Id.

⁴² Copeland Lowery & Jacquez, ADCS, Inc., Lobbying Registration, 2002; Copeland Lowery Jacquez Denton & White, ADCS, Inc., Lobbying Report, Midyear 2002 (*see* Exhibit 15).

⁴³ The Center for Responsive Politics, www.opensecrets.org, Duncan Hunter: Career Profile (Since 1989), Top Contributors (Exhibit 21).

⁴⁴ Committee to Re-Elect Congressman Hunter, FEC Form 3 April Quarterly Report 2003, April 14, 2003, p. 77 (Exhibit 22); Committee to Re-Elect Congressman Hunter, FEC Form 3 April Quarterly Report 2006, April 14, 2006, p.62 (Exhibit 23).

⁴⁵ *See* The Boeing Company Political Action Committee, FEC Form 3X Schedule B Reports, 2003-2006, pages listing contributions attached (Exhibit 24); Copeland Lowery Jacquez Benton & Shockey, The Boeing Company, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 25); Copeland Lowery Jacquez Denton & White, The Boeing Company, Termination Report, Secretary of Senate, Office of Public Records, Midyear 2006 (Exhibit 26); *see* General Atomics Political Action Committee, FEC Form 3X Schedule B

Earmarks For L-3 Titan

Rep. Hunter has sought tens of millions of dollars in earmarks for projects that would benefit the defense contractor L-3 Titan, a company formed in 2005 with the merger of L-3 communications and Titan corporation.⁴⁶ For the last two fiscal years, the earmarks have included roughly \$30 million for what is coined an “Affordable Weapon System” and about \$22 million for the “Sea Fighter” project.⁴⁷ In 2003, L-3 Titan received a \$59.9 million contract from the Navy to develop and build the Sea Fighter catamaran,⁴⁸ despite the Navy’s misgivings about

Reports, 2003-2006, pages listing contributions attached (Exhibit 27); Copeland Lowery Jacquez Denton & Shockey, General Atomics, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 28); Innovative Federal Strategies, General Atomics, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 29); *see* General Dynamics Voluntary Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2006, pages listing contributions attached (Exhibit 30); Copeland Lowery Jacquez Denton & Shockey, General Dynamics, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2004 (Exhibit 31); Innovative Federal Strategies, General Dynamics, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 32); *see* Titan Corporation Political Action, FEC Form 3X Schedule B Reports, 2003-2005, pages listing contributions attached (Exhibit 33); L-3 Communications Political Action Committee, FEC Form 3X, Schedule B, 2004-2006 pages listing contributions attached (Exhibit 34); Copeland Lowery Jacquez Denton & Shockey, Titan, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 35); Innovative Federal Strategies, L-3 Communications, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 36); *see* EDS Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2005 pages listing contributions attached, (Exhibit 37); Copeland Lowery Jacquez Denton & Shockey, EDS Global Government Affairs, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2004 (Exhibit 38); Innovative Federal Strategies, Electronic Data Systems Corporation, Lobbying Report, Secretary of Senate, Office of Public Records, Midyear 2007 (Exhibit 39); *see* United Technologies Corporation Political Action Committee, FEC Form 3X Schedule B Reports, 2004-2006 pages listing contributions attached, (Exhibit 40); Copeland Lowery Jacquez Denton & Shockey, United Technologies, Lobbying Registration, Secretary of the Senate, Office of Public Records, 2003 (Exhibit 41); Innovative Federal Strategies, United Technologies, Lobbying Report, Secretary of Senate, Office of Public Records, Year End 2006 (Exhibit 42).

⁴⁶ Press Release, Rep. Duncan Hunter, Hunter Announces FY2008 Funding Initiatives June 18, 2007 (Exhibit 43); Roxana Tiron and Ilan Wurman, \$8 B of Pork: Dems Take 60 Percent, *The Hill*, May 21, 2007 (Exhibit 44); California Congressman Opens Up About Earmarks, *The Washington Post*, June 19, 2006 (Exhibit 45).

⁴⁷ Id.

⁴⁸ Hunter Adds Language Pressuring Navy to Give Mission to Unwanted, *National Journal’s Congress Daily*, June 15, 2007 (Exhibit 46).

the project. As Rep. Hunter once noted of the Navy, “They hated the idea.”⁴⁹ Nevertheless, the 2008 defense authorization bill included money for both projects.⁵⁰

From 2003 through 2006, Ms. White was listed as a lobbyist for either Titan Corporation or L-3 Communications.⁵¹ The San Diego firm also employed lobbyist Frank C. Collins III, a former aide to Rep. Hunter and one-time chief of staff to Rep. Randy “Duke” Cunningham.⁵²

Since 2001, interests in L-3 Communications and Titan Corporation (including the company’s PAC, company employees and their spouses) have contributed \$65,000 to Rep. Hunter, ranking them among his top contributors.⁵³ In 2005, Titan Corp. pleaded guilty to bribery charges, falsifying company books and records and preparing a false tax return.⁵⁴

Earmarks For Boeing

Andrew K. Ellis, former staff director of the Committee on Armed Services and former legislative assistant for Rep. Hunter, joined Boeing as a vice president in the company’s government relations office in February 2000.⁵⁵ Two months later, Boeing paid \$448 for Rep. Hunter’s meal expenses and one night’s lodging for a “briefing” in Seal Beach, California,⁵⁶

⁴⁹ Id.

⁵⁰ Tiron and Wurman, *The Hill*, May 21, 2007.

⁵¹ Copeland Lowery Jacquez Denton & Shockey, Titan, Lobbying Registration, 2003 (*see* Exhibit 35); Innovative Federal Strategies, L-3 Communications, Lobbying Report, Midyear 2007 (*see* Exhibit 36).

⁵² Center for Responsive Politics, Lobbying Database, Frank C. Collins III, Career Client List, (Exhibit 47); Center for Responsive Politics, Revolving Door Database, Frank C. Collins III, (Exhibit 48).

⁵³ *See* Titan Corporation Political Action, FEC Form 3X Schedule B Reports, 2003-2005, pages listing contributions attached (Exhibit 49); *see* L-3 Communications Political Action Committee, FEC Form 3X, Schedule B, 2001-2005 pages listing contributions attached (Exhibit 50); The Center for Responsive Politics, www.opensecrets.org, Duncan Hunter: Career Profile (Since 1989), Top Contributors (*see* Exhibit 21).

⁵⁴ Roseanne Gerin, Titan Pleads Guilty to Bribery Charges, *Washington Technology*, March 2, 2005 (Exhibit 51).

⁵⁵ Press Release, The Boeing Company, Andrew K. Ellis Joins The Boeing Company In Washington, D.C., (Feb. 2, 2000) (Exhibit 52).

⁵⁶ Rep. Duncan Hunter, Member/Officer Travel Disclosure Form, filed April 17, 2004 (Exhibit 53).

approximately 1.5 hours from Rep. Hunter's home town of San Diego.⁵⁷ In February 2003, Letitia White became a lobbyist for the defense contractor.⁵⁸

From fiscal year 2000 through fiscal year 2003, Boeing was awarded \$59.2 billion in federal contracts.⁵⁹ From 2001 through 2005, Rep. Hunter took in \$32,800 from Boeing interests.⁶⁰

Earmarks For DuPont Aerospace

Congress has spent more than \$63 million over a 19-year period on an experimental jet, the DP-2, that has not flown and has been rejected repeatedly by military analysts.⁶¹ In 1986, two years before the DP-2 plane received its first earmark, the Navy concluded that the contractor's concept should be "dropped as a solution,"⁶² and since that time the jet has been consistently judged as technically flawed.⁶³ John Eney, the former head of the aircraft conceptual design group at the Naval Air Development Center and Naval Air Systems Command, claimed, "To continue to fund [the program] would be an insult to the aerospace industry at large and to the taxpayers."⁶⁴

Despite the Pentagon's misgivings, Rep. Hunter has been a consistent supporter of the project⁶⁵ and introduced the project's first funding bill in 1988.⁶⁶ The congressman has defended

⁵⁷ Yahoo Driving Directions, August 24, 2007 (Exhibit 54).

⁵⁸ Copeland Lowery Jacquez Benton & Shockey, The Boeing Company, Lobbying Registration, 2003 (*see* Exhibit 25).

⁵⁹ The Center for Public Integrity, www.publicintegrity.org, Outsourcing the Pentagon, Search Companies, Boeing (Exhibit 55).

⁶⁰ *See* The Center for Responsive Politics, www.opensecrets.org, Duncan Hunter: Top Contributors 1999-2006 (Exhibit 56).

⁶¹ Brian Ross and Rhonda Schwartz, The Aircraft That Can't Fly; Congress' \$63 Million Boondoggle, *ABC News*, June 11, 2007 (Exhibit 57).

⁶² Hunter Backs 19-Year Aircraft Project That Has Yet To Fly, *National Journal's Congress Daily*, June 12, 2007 (Exhibit 58).

⁶³ Ross and Schwartz, *ABC News*, June 11, 2007.

⁶⁴ Erica Werner, Lawmakers Argue Over Spending on Aircraft that Has Yet to Fly, *Associated Press*, June 12, 2007 (Exhibit 59).

⁶⁵ Ross and Schwartz, *ABC News*, June 11, 2007.

⁶⁶ Dean Calbreath, Cunningham Helped Hunter Push for Locally Made Jet; Congress Reviewing Funding for Plane Pentagon Rejected, *San Diego Union-Tribune*, June 15, 2007

his role in helping steer tens of millions of dollars to the program,⁶⁷ listing \$6 million in funding among his fiscal year 2008 priorities.⁶⁸ “The point is the Pentagon doesn’t come up with every great idea,” he claimed.⁶⁹

Since 1998, related interests of the aircraft’s contractor, DuPont Aerospace, have given \$36,000 in campaign contributions to Rep. Hunter.⁷⁰

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁷¹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁷²

If, as it appears, Rep. Hunter accepted donations to his campaign and political action committees from Mr. Wilkes in direct exchange for earmarking federal funds to companies associated with Mr. Wilkes, Ms. White, Audre and ADCS, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for defense contractor L-3 Titan, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for Boeing, he may have violated the bribery statute.

If, as it appears, Rep. Hunter accepted campaign donations in direct exchange for earmarking federal funds for DuPont Aerospace, he may have violated the bribery statute.

Honest Services Fraud

(Exhibit 60).

⁶⁷ Jerry Kammer and Paul M. Krawzak, Hunter Defends Aircraft Project in Face of Criticism, *Copley News Service*, June 12, 2007 (Exhibit 61).

⁶⁸ Press Release, Rep. Duncan Hunter, June 18, 2005.

⁶⁹ *National Journal’s Congress Daily*, June 12, 2007.

⁷⁰ Ross and Schwartz, *ABC News*, June 11, 2007.

⁷¹ 18 U.S.C. § 201(b)(2)(A).

⁷² McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁷³ By using his position as a member of Congress to financially benefit clients of Mr. Wilkes and defense contractors, Rep. Hunter may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁷⁴ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁷⁵

If a link is established between Rep. Hunter's earmarking funds for Audre and ADCS, companies associated with Mr. Wilkes and Ms. White, and campaign contributions Mr. Wilkes' and Ms. White's clients have made to him, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter received from L-3 Titan interests and the funds he earmarked for two projects for the defense contractor, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter received from Boeing interests and the funds Rep. Hunter earmarked for federal contracts with Boeing, Rep. Hunter would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Hunter has received from DuPont Aerospace and the millions of dollars Rep. Hunter has steered to the company for the discredited DP-2 plane, Rep. Hunter would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁷⁶

⁷³ 18 U.S.C. § 1341.

⁷⁴ 18 U.S.C. § 201(c)(1)(B).

⁷⁵ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁷⁶ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”⁷⁷ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Hunter accepted campaign contributions from Mr. Wilkes, Ms. White and her clients in return for legislative assistance by way of earmarking federal funds for their clients and companies associated with them, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from L-3 Titan interests in apparent exchange for earmarking money for two projects L-3 Titan was pushing, despite the Navy’s misgivings about the projects, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from Boeing interests in apparent exchange for earmarks for federal contracts for Boeing, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from DuPont Aerospace interests in apparent exchange for earmarking millions of dollars for the DP-2 plane, Rep. Hunter likely violated 5 U.S.C. § 7353 and House Rule XXIII.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁷⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”⁷⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law

⁷⁷ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁷⁸ Rule XXIII, cl. 1.

⁷⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁸⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁸¹ making false statements to the Committee,⁸² criminal convictions for bribery,⁸³ or accepting illegal gratuities,⁸⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁸⁵

Rep. Hunter’s apparent acceptance of campaign contributions in return for legislative favors does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Violation of Gift Rules

House gift rules restrict travel expenses that may be accepted to only “necessary transportation, lodging and related expenses for travel.”⁸⁶ The Travel Booklet provides that a

⁸⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁸¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁸² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁸³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁸⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁸⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁸⁶ Rule XXVI, cl. 5(b)(1)(A); House Comm. on Standards of Official Conduct, Travel Booklet.

Member “may accept only such expenses as are reasonably necessary to accomplish the purpose of the trip.” The booklet then provides the following example:

Example 3. A trade association invites a Member to give a speech at its annual meeting in Chicago. The annual meeting is scheduled for December 1 through 4, and the Member’s speech is scheduled for December 3. The Member may travel from Washington to Chicago at the association’s expense on December 2, and after he has completed the speech, he should return to Washington or his district as soon as it is practical to do so.⁸⁷

It appears that Rep. Hunter may have violated the rules by accepting a night’s lodging from Boeing to attend a briefing at a location less than two hours from his home town of San Diego.

Relationship With Pete Geren

In 1996, Rep. Hunter built a cabin in the Blue Ridge Mountains with former Congressman Pete Geren and Al Tierney.⁸⁸ Rep. Geren had served with Rep. Hunter on the Armed Services Committee before his retirement in 1997.⁸⁹

In September 2001, Rep. Geren joined the Department of Defense as a special assistant to Secretary Rumsfeld with responsibility for legislative affairs⁹⁰ and treatment of military detainees.⁹¹

In January 2003, Rep. Hunter became the chair of the House Armed Services Committee with oversight responsibilities over the Pentagon that included compelling senior Pentagon officials to testify before the committee.⁹²

⁸⁷ Id.

⁸⁸ Rep. Duncan Hunter, U.S. House of Representatives, Financial Disclosure Statement for Calendar Year 1996, Form A, May 15, 1997 (Exhibit 62).

⁸⁹ Bio of Pete Geren, Secretary of the Army; Pete Geren, Former Under Secretaries of the Army, Senior Army Leadership (Exhibit 63).

⁹⁰ Id.

⁹¹ George Cahlink, Former Texas Congressman Pete Geren Named Acting Air Force Secretary, *Defense Daily*, August 1, 2005 (Exhibit 64).

⁹² Otto Kreisher, Hunter Assumed Armed Services Chair; Sets Bold Agenda, *Copley New Service*, January 9, 2003. (Exhibit 65). Rules of the House of Representatives, Rule X(1)(c), Rule X(2), 108th Congress (2003) (Exhibit 66).

In July 2005, Rep. Geren was appointed acting Secretary of the Air Force.⁹³ On August 1, 2005, Rep. Hunter spoke with *Defense Daily* about Rep. Geren's appointment, telling the publication he "could not think of a better-qualified person to lead the Air Force during this time."⁹⁴ Roughly seven months later, in February 2006, Rep. Geren began working as under secretary of the Army, where he advised the secretary of defense on the Army's capabilities and was responsible for justifying policies, plans, programs and the budget to the secretary, the executive branch and Congress.⁹⁵ Before Rep. Geren was confirmed to the Army's No. 2 civilian post, Rep. Hunter sent out a press release in his official capacity as chair of the House Armed Services Committee praising Rep. Geren and expressing his "full confidence in Pete's ability to faithfully serve the men and women of the U.S. Army."⁹⁶ Rep. Hunter did not disclose his personal or financial relationship with Rep. Geren.⁹⁷ After Rep. Geren was appointed to be secretary of the Army, Rep. Hunter again issued a press release on behalf of the House Armed Services Committee, stating "Pete's experience in Congress and within the Defense Department will facilitate the House Armed Services Committee's ongoing efforts to support the Department of the Army. We look forward to working with him in his new role."⁹⁸ Once again, Rep. Hunter failed to mention his financial and personal connection to Rep. Geren. In July 2007, Rep. Geren was confirmed by the Senate as the 20th secretary of the Army.⁹⁹

Rep. Hunter claimed that he sold the Blue Ridge Mountain cabin that he co-owned with Rep. Geren in April 2007.¹⁰⁰ He did not, however, report the amount of the sale on the disclosure report he is required to file as a presidential candidate.¹⁰¹

Conduct Not Reflecting Creditably on the House

⁹³ Bio of Pete Geren, Secretary of the Army.

⁹⁴ Kreisher, *Defense Daily*, August 1, 2005.

⁹⁵ Bio of Pete Geren, Secretary of the Army.

⁹⁶ Press Release, Rep. Duncan Hunter, House Armed Services Committee Chairman Hunter Issues Statement on Nomination of Pete Geren for Undersecretary of Army, January 20, 2007 (Exhibit 67).

⁹⁷ Id.

⁹⁸ Press Release, Rep. Duncan Hunter, Rep. Hunter Issues Statement on Senate Confirmation of Pete Geren as Army Secretary, July 13, 2007 (Exhibit 68).

⁹⁹ Bio of Pete Geren, Secretary of the Army.

¹⁰⁰ Rep. Duncan Hunter, U.S. Office of Government Ethics, Executive Branch Personal Public Financial Disclosure Report, OMB No. 3209-0001, May 11, 2007 (Exhibit 69).

¹⁰¹ Id.

Rep. Duncan's use of his position as chair of the House Armed Services Committee on two separate occasions to promote Rep. Geren's selection, first for the Army's No. 2 civilian post and then as secretary of the Army, without revealing that he had both a personal and financial connection to Rep. Geren does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Real Estate Taxes

In 1993, a 6,200-square-foot, six-bedroom, 2 ½-bath home sitting on 2.7 acres of land on Vista Viejas Road in Alpine, California went into foreclosure.¹⁰² The Resolution Trust Corporation ("RTC"), the government entity created in the wake of the 1980s savings and loan crisis,¹⁰³ bought the property for \$175,000.¹⁰⁴ While county records indicate the RTC sold the land to State Street Bank, a global financial-services provider for institutional investors, a spokesperson for the company claimed it never owned the property and was merely acting as trustee for the RTC.¹⁰⁵

Despite federal regulations preventing what was described as "key federal employees" from purchasing properties from the RTC to avoid conflicts of interest, less than two months later, in February 1994, Rep. Hunter and his wife Helynn, purchased the Alpine home for \$175,000 -- the same amount the State Street Bank had reportedly paid for the property.¹⁰⁶

While the home had fallen into disrepair, similar sized properties were selling for more than double the amount the Hunters paid.¹⁰⁷ The same month that they bought their house, a five-bedroom, five-bath home on 2.9 acres was listed for \$495,000 and a four-bedroom home on 1.2 acres was selling for \$359,000.¹⁰⁸ The listing agent for the Hunters' property, Ron Hart, claimed there was nothing unusual about the transaction, but also acknowledged that most buyers would

¹⁰² Jeff McDonald, Hunter Got Break on Taxes for Home, *San Diego Union-Tribune*, October 8, 2006 (Exhibit 70).

¹⁰³ Bert Ely. "The Resolution Trust Corporation in Historical Perspective." *Housing Policy Debate* 1, no. 1 (1990): 53,53 (Exhibit 71).

¹⁰⁴ McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

be fortunate to get Rep. Hunter's deal.¹⁰⁹ "The man had his ducks in a row," Mr. Hart said.¹¹⁰ "He had all his financing."¹¹¹

According to Rep. Hunter, a county official reassessed his home after the purchase.¹¹² Property records, however, had incorrectly listed the home as having only two bedrooms and 2 ½ bathrooms, less than half its actual size of almost 6,200 square feet.¹¹³ The estate, reappraised at \$249,000, was above the sales price but still well below its market value. As a result, Rep. Hunter paid less in taxes than other owners of similar-sized properties.¹¹⁴

In 2005, Rep. Hunter applied for a permit to rebuild the house, which had been destroyed in the worst forest fire in California history.¹¹⁵ He provided a letter from his insurance carrier stating that the original main house was 6,200 square feet and a guest house was over 2,000 square feet.¹¹⁶ When county officials discovered the discrepancy between the property's appraised value and its actual value, they demanded almost \$5,000 in back taxes and reassessed the property at \$315,000.¹¹⁷ Rep. Hunter agreed to pay only \$667 in back taxes and an \$85 late fee and appealed the revaluation of his home, claiming he had never noticed the discrepancy.¹¹⁸ On September 7, 2007, it was reported that Rep. Hunter had withdrawn his appeal of the assessment not because he was conceding its correctness, but rather because of "other priorities and overwhelming time constraints."¹¹⁹

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Jeff McDonald, Reassessed House Keeps Hunter in Tax Struggle, *San Diego Union-Tribune*, July 24, 2007 (Exhibit 72).

¹¹⁶ McDonald, *San Diego Union-Tribune*, Oct. 8, 2006.

¹¹⁷ McDonald, *San Diego Union-Tribune*, July 24, 2007.

¹¹⁸ Id.

¹¹⁹ Jeff McDonald, Appeal Dropped on Assessment of House Burned in Cedar Fire, *San Diego Union-Tribune*, September 7, 2007 (Exhibit 73).

Notwithstanding his challenge to the reappraisal of his pre-fire home based on its actual size, Rep. Hunter listed the property's value as being between \$500,000 and \$1,000,000 on his most recent financial disclosure form filed with the House of Representatives.¹²⁰

The remodeled 5,265-square-foot home, which will include five bedrooms, six ½ baths, an interior courtyard, a swimming pool, tennis court and a two-bedroom guest house on top of a 1,600 square-foot garage and workshop, has a newly assessed value of \$401,583, but is scheduled to climb to between \$550,000 and \$600,000 later in 2007.¹²¹ Even with an assessed value of \$600,000, the Hunters will pay lower taxes than new buyers of like-sized homes in Alpine as Proposition 13 protects them from steep increases.¹²² Other than the Hunter residence the least expensive home in Alpine County with at least 5,200 square feet is listed for \$1.55 million.¹²³

Financial Disclosure Requirements

The Ethics in Government Act of 1967¹²⁴ requires all members of Congress to file financial disclosure reports. Under the statute, the attorney general may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.¹²⁵ The same reporting requirements attach to any candidate for the office of president, who is required to file the report within 30 days of becoming a candidate.¹²⁶

In addition, 18 U.S.C. § 1001 prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”¹²⁷ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”¹²⁸

The discrepancy between the value Rep. Hunter assigned to his home for purposes of his financial disclosure forms and the value he claimed the property was worth in response to an

¹²⁰ Rep. Duncan Hunter, U.S. House of Representatives, 2007 Financial Disclosure Statement, Form A, May 11, 2007, p. 5 (Exhibit 74).

¹²¹ McDonald, *San Diego Union-Tribune*, July 24, 2007.

¹²² Id.

¹²³ McDonald, *San Diego Union-Tribune*, July, 24, 2007.

¹²⁴ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

¹²⁵ 5 U.S.C. app. 4, § 104.

¹²⁶ 5 U.S.C. app. § 101(c).

¹²⁷ 18 U.S.C. § 1001(a)(2).

¹²⁸ Id. at § 1001(c)(2).

increased assessment by San Diego County suggests, at the very least, that Rep. Hunter may have misrepresented the true value of his home on his financial disclosure forms, which would be a violation of 18 U.S.C. § 1001.

Moreover, the financial disclosure report that Rep. Hunter filed as a presidential candidate on May 11, 2007, does not include the value of his home.¹²⁹ His failure to attribute a value to this property at a time when he was contesting its value with the County of San Diego suggests that he may have violated the Ethics in Government Act.

Liberty Station Development Project

Rep. Hunter assisted his brother's employer in obtaining a contract for a land development project in San Diego, California. Rep. Hunter's brother, Jim Hunter, is Vice President of Acquisitions for The Corky McMillin Cos., a land developer.¹³⁰ Rep. Hunter helped draft a bill that allowed over 235 acres of a former Navy boot camp to be given away free to the City of San Diego.¹³¹ Rep. Hunter then co-authored a letter to San Diego city council members urging them to consider McMillin to redevelop the property into a new community called Liberty Station.¹³² McMillin won the contract, but has not followed through on an agreement to share profits with the City of San Diego.¹³³ Jim Hunter was one of the first to buy a home in Liberty Station.¹³⁴ He took out a \$150,000 mortgage from McMillin Real Estate & Mortgage Co. on the \$715,500 property, the least expensive property in Liberty Station.¹³⁵

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."¹³⁶ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

¹²⁹ See Exhibit 69.

¹³⁰ Brooke Williams, Boom for McMillin, Bust For the City, *San Diego Union-Tribune* March 3, 2007 (Exhibit 75).

¹³¹ Id.

¹³² Id.

¹³³ Williams, *The San Diego Union-Tribune*, Mar. 3, 2007.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”¹³⁷

By directly assisting the employer of his brother to obtain a contract for a land development project, Rep. Hunter may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

House Rule XXVI

House rules provide that members, officers and employees may accept opportunities and benefits that are “in the form of loans from banks and other financial institutions on terms generally available to the public.”¹³⁸ In addition, the Committee on Standards of Official Conduct has determined that members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.¹³⁹ That determination was based on a separate provision of the gift rule, clause 5(a)(3)(A), which allows the acceptance of “[a]nything for which the Member . . . officer, or employee pays the market value.”¹⁴⁰

The Committee has further stated

Whether a loan from a person other than a financial institution is on terms that are “commercially reasonable,” and hence acceptable under the Committee’s determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.¹⁴¹

¹³⁷ Id.

¹³⁸ House Rule XXVI, cl. 5(a)(3)(R)(v).

¹³⁹ House Comm. on Standards of Official Conduct, Gift and Travel Booklet.

¹⁴⁰ Id.

¹⁴¹ Id.

Given that McMillin Real Estate & Mortgage Co., the company that gave Rep. Hunter a mortgage, appears to be associated with The Corky McMillin Cos. -- the developer of the housing community in which he purchased a home, the employer of his brother and on whose behalf he provided extensive assistance in securing the property for development -- the ethics committee should investigate whether, by accepting a loan from McMillin Real Estate & Mortgage Co., Rep. Hunter violated House Rule XXVI.

Presidential PAC Advertising

Beginning in October 2006, Rep. Hunter publicly announced his interest in running for president of the United States.¹⁴² Between October 2006 and January 2007, Rep. Hunter traveled to the early primary states of New Hampshire, Iowa and South Carolina on behalf of PTS PAC.¹⁴³ For the period from November 28, 2006 through December 31, 2006, PTS PAC reported receiving contributions from 11 individuals in excess of \$2,300.¹⁴⁴ PTS PAC produced a television advertisement featuring Rep. Hunter that supports the construction of a fence along the United States-Mexico border.¹⁴⁵ PTS PAC's website, www.peacethroughstrengthpac.com, is prominently displayed at the beginning and end of the advertisement.¹⁴⁶

On December 14, 2006, PTS PAC paid the Rapid City, South Dakota television station KEVN \$1,000 for advertisement airtime.¹⁴⁷ On December 14, 2006, PTS PAC paid the Spartanburg, South Carolina television station WSPA \$4,998 for advertisement airtime.¹⁴⁸ On December 14, 2006, December 19, 2006 and December 24, 2006, PTS PAC paid the Greenville, South Carolina television station WHNS a total of \$19,900 for advertisement airtime.¹⁴⁹ On December 19, 2006, PTS PAC paid the Columbia, South Carolina television station WACH \$5,000 for advertisement airtime.¹⁵⁰ On December 19, 2006, PTS PAC paid the Charleston,

¹⁴² Jim Davenport, Hunter Makes Presidential Bid Official, *Associated Press*, January 25, 2007 (Exhibit 76).

¹⁴³ James W. Pindell, Hunter to visit N.H. for First Time Since Announcing Presidential Ambitions, *The Boston Globe*, January 5, 2007 (Exhibit 77).

¹⁴⁴ PTS PAC, FEC Form 3x, January 17, 2007, pp. 8-12 (Exhibit 78).

¹⁴⁵ Duncan Hunter on the Border Fence (January 4, 2007), <http://www.youtube.com/watch?v=hNGCZ2LoYhU> ("the border fence advertisement").

¹⁴⁶ Id.

¹⁴⁷ PTS PAC, FEC Form 3x, p. 16.

¹⁴⁸ Id. at p. 19.

¹⁴⁹ Id. at pp. 18-19.

¹⁵⁰ Id. at p. 19.

South Carolina television station WTAT \$5,005 for advertisement airtime.¹⁵¹ PTS PAC reported disbursements, however, only to television stations in South Carolina and South Dakota.¹⁵²

According to media reports, the border fence advertisement began airing in Iowa, New Hampshire and South Carolina on December 19, 2006.¹⁵³ A second advertisement focusing on Rep. Hunter's stance on trade policies with China began airing on an unknown date in South Carolina, North Carolina and South Dakota.¹⁵⁴

On January 8, 2007, Rep. Hunter established the Hunter for President Exploratory Committee.¹⁵⁵ On January 25, 2007, Rep. Hunter registered Hunter for President as his principal campaign committee.¹⁵⁶ In his announcement speech, Rep. Hunter stated that he would lead with a policy of "peace through strength," the same phrase that serves as PTS PAC's name.¹⁵⁷ Following the formation of Hunter for President, PTS PAC paid the Manchester, New Hampshire television station WMUR a total of \$17,575 to broadcast the border fence advertisement.¹⁵⁸ At the time WMUR aired the border fence advertisement in February 2007, PTS PAC's website directed readers to "please visit Duncan Hunter for President 2008," and provided a direct hyperlink to Hunter for President's website, www.gohunter08.com.¹⁵⁹ PTS PAC has since removed the message and hyperlink from its website.¹⁶⁰ PTS PAC reportedly paid for additional television advertisements during the week of February 11, 2007 in South Carolina, North Carolina and South Dakota.¹⁶¹ On March 1, 2007, the FEC approved PTS PAC's request to

¹⁵¹ PTS PAC, Form 3x, p. 20.

¹⁵² *See id.*

¹⁵³ Jessica Holzer, The 2008 Ad Blitz Begins, *The Hill*, February 9, 2007 (Exhibit 79).

¹⁵⁴ Dana Wilkie, Hunting for Votes in S.C., *The San Diego Union-Tribune*, February 26, 2007 (Exhibit 80).

¹⁵⁵ Hunter for President Exploratory Committee, FEC Form 1, January 8, 2007 (Exhibit 81).

¹⁵⁶ Hunter for President, FEC Form 1, January 25, 2007 (Exhibit 82).

¹⁵⁷ Davenport, *Associated Press*, Jan. 25, 2007.

¹⁵⁸ *See* James W. Pindell, Candidate used PAC funds for N.H. ads, *The Boston Globe*, February 27, 2007 (Exhibit 83).

¹⁵⁹ Id.

¹⁶⁰ PTS PAC, Home (March 12, 2007), <http://www.peacethroughstrengthpac.com/Home.spx>

¹⁶¹ William Macklin, Romney Touts Business Savvy in New Presidential Ads, *All Headline News*, February 20, 2007 (Exhibit 84).

change its receipts and disbursements report filing frequency from monthly to quarterly.¹⁶² Because quarterly filers report semi-annually in off-election years, PTS PAC's next filing due date for receipts and disbursements is not until July 31, 2007.¹⁶³

Election Law Violations

An individual who is determining whether to run for federal office must comply with Federal Election Campaign Act (FECA) contribution limits for money received during the time the individual is “testing the waters.”¹⁶⁴ “Testing the waters” activities include, but are not limited to, “conducting a poll, telephone calls, and travel” for the purpose of determining whether to become a candidate. 11 C.F.R. §§ 100.72 and 100.131. Rep. Hunter traveled extensively to early presidential primary states beginning in October 2006, using PTS PAC to “test the waters” for his presidential candidacy within the meaning of 11 C.F.R. § 100.72. An individual “testing the waters” in the 2007-2008 election cycle may not receive a contribution from any individual in excess of \$2,300.¹⁶⁵ While supporting Rep. Hunter’s “testing the waters” efforts, PTS PAC received 11 individual contributions totaling \$52,650 that exceeded FECA’s \$2,300 individual contribution limit. Because PTS PAC knowingly accepted \$27,350 in excessive contributions, PTS PAC violated 2 U.S.C. § 441a(f).

When an individual begins to campaign or otherwise decides to become a candidate, the individual must register a candidate committee with the FEC.¹⁶⁶ An individual is no longer “testing the waters,” and must, therefore, register a candidate committee with the FEC if the individual expends \$5,000 or more to purchase general public political advertising to publicize his or her intention to campaign for federal office.¹⁶⁷ Because PTS PAC expended over \$5,000 on advertisements that were designed to publicize Rep. Hunter’s intention to campaign for federal office by introducing him to early primary voters, PTS PAC was required to register with the FEC as the principal campaign committee for Rep. Hunter.¹⁶⁸ By failing to register as a candidate committee, PTS PAC violated 2 U.S.C. § 433(a).

¹⁶² Letter from Patricia Carmona, Chief, Compliance Branch Reports Analysis Division, FEC to Meredith G. Kelley, Treasurer, PTS PAC, March 1, 2007 (Exhibit 85).

¹⁶³ Id.

¹⁶⁴ 11 C.F.R. §§ 100.72 and 100.131. See also FEC, Campaign Guide for Congressional Candidates and Committees (May 2004) at 5 (“Funds raised to test the waters are subject to the Act’s contribution limits.”).

¹⁶⁵ 11 C.F.R. § 110.1(b)(1).

¹⁶⁶ 11 C.F.R. § 100.72.

¹⁶⁷ 11 C.F.R. § 100.72(b)(1).

¹⁶⁸ 11 C.F.R. § 100.72(b)(1).

Advertisements that promote a candidate are considered in-kind contributions to the candidate's principal campaign committee and are subject to FECA contribution limits.¹⁶⁹ The maximum legal contribution from a federally registered political committee to a candidate committee is \$5,000 per election.¹⁷⁰ A contribution to a political committee that exceeds \$5,000 in a calendar year constitutes an illegal contribution.¹⁷¹ PTS PAC's alleged \$17,575 aggregate payment to WMUR to air the border fence advertisement constitutes an in-kind contribution to Hunter for President.¹⁷² Any payments PTS PAC may have made to air advertisements in South Carolina, North Carolina and South Dakota during the week of February 11, 2007 constitute in-kind contributions of an unknown amount. PTS PAC's \$17,575 in-kind contribution to Hunter for President constitutes a \$12,275 excessive contribution in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1). PTS PAC's in-kind contributions to air advertisements in South Carolina, North Carolina and South Dakota are excessive contributions of an unknown amount in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).

Political committees are required to report to the FEC the name and address of each person to whom it makes disbursements over \$200.¹⁷³ To the extent PTS PAC failed to report disbursements for television advertisements aired in Iowa and New Hampshire in December 2006, PTS PAC violated 11 C.F.R. §§ 104.3(b) and 104.9(a).

¹⁶⁹ See 11 C.F.R. § 100.52(d)(1).

¹⁷⁰ 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

¹⁷¹ 2 U.S.C. § 441a(f).

¹⁷² 11 C.F.R. § 100.52(d)(1).

¹⁷³ 11 C.F.R. §§ 104.3(b) and 104.9(a).

REP. WILLIAM J. JEFFERSON

Rep. William J. Jefferson (D-LA) is a ninth-term member of Congress, representing Louisiana's 2nd congressional district. Rep. Jefferson's ethics issues, for which he has now been indicted, stem from his business dealings and his misuse of federal resources. Rep. Jefferson was included in CREW's 2006 report on congressional corruption.

Federal Indictment

On June 4, 2007, Rep. Jefferson was indicted on 16 criminal counts that include two counts of conspiracy to solicit bribes, two counts of solicitation of bribes by a public official, six counts of honest services fraud by wire, one count of violating the Foreign Corrupt Practices Act, three counts of money laundering, one count of obstruction of justice and one count of racketeering.¹ The indictment stems from multiple instances in which Rep. Jefferson agreed to perform official acts for 11 different companies in return for bribes payable to him and his family members. The indictment was the culmination of a criminal investigation that began in approximately March 2005.²

Rep. Jefferson is alleged to have sought fees or retainers, percentage shares of revenues and profits, money and stock ownership in return for which Rep. Jefferson used his staff to arrange foreign travel and obtain visas for foreign visitors, conducted official travel to foreign countries to meet with foreign officials for the purpose of influencing them, contacted U.S. and foreign embassies for foreign travelers, used official congressional letterhead for correspondence to foreign officials and scheduled and participated in meetings with U.S. agencies to secure potential financing for business ventures.³ While offering this assistance, Rep. Jefferson failed to disclose his and his family's financial interests in the business ventures he was promoting.⁴

The 94-page indictment outlines in considerable detail multiple bribery schemes in which Rep. Jefferson participated. These include bribes that Rep. Jefferson sought, in the form of cash payments, stock, and a percentage of revenues from iGate, Incorporated, a telecommunications firm in Louisville, Kentucky, that were paid to ANJ, a Jefferson family-controlled company.⁵ In exchange, Rep. Jefferson introduced iGate's president to members of Congress, officials in the

¹ United States of America v. William J. Jefferson, Criminal No. 1:07CR209 (E.D. Va.), Indictment (hereinafter "Indictment") (Exhibit 1).

² In the Matter of the Search of: Rayburn House Office Bldg. Room Number 2113, Case No. 06-231-M-01 (May 30, 2006); Indictment.

³ *See generally* Indictment.

⁴ Id.

⁵ Id., ¶¶ 9, 25, 53. Six Jefferson family members are listed as members of ANJ, and Rep. Jefferson's accountant and campaign treasurer is listed as the company's registered agent. Id., ¶ 17.

Export-Import Bank, government officials from Nigeria, Cameroon and other African nations, and a Virginia businessman whom Rep. Jefferson solicited to provide financing for an African venture involving iGate products and services. In addition, Rep. Jefferson used his congressional staff to plan trips to Africa for the purpose of promoting iGate's business ventures and used congressional letterhead for similar purposes.⁶

The indictment details Rep. Jefferson's solicitation of bribes from an unnamed Nigerian company in return for assistance in a telecommunications venture, as well as his solicitation of bribes from a newly-formed Nigerian company to be paid to his family members in exchange for Rep. Jefferson's assistance with a Nigerian joint venture.⁷

Rep. Jefferson also used his congressional staff to plan his travel to Ghana for the purpose of influencing Ghanaian officials to support a telecommunications venture and to discuss with them bribing Nigerian officials. In exchange for his assistance, cash was paid to his family-controlled business, ANJ.⁸

In addition, Rep. Jefferson offered a bribe to a Nigerian official in Potomac, Maryland, in exchange for using his position to benefit a Nigerian joint venture. In return for these services, ANJ and another Jefferson-family controlled company, Global Energy and Environmental Services LLC, were given a substantial amount of stock.⁹ Rep. Jefferson placed \$90,000 of the \$100,000 intended as the front-end bribe to the Nigerian official in the freezer of his Washington, D.C. home, separated into \$10,000 increments.¹⁰ This money was later recovered by FBI agents during a raid of Rep. Jefferson's residence.¹¹

Other bribery schemes in which Rep. Jefferson participated include solicitation of bribes related to the development of a sugar factory, food processing facilities and marginal oil fields in Nigeria. In return, Rep. Jefferson requested payments to an unidentified family member, who was also given an interest in proposed Nigerian projects. In addition, Providence Lake -- a company for which Rep. Jefferson's accountant and campaign treasurer is the registered agent -- was paid a commission.¹²

⁶ Indictment.

⁷ *Id.*, ¶¶ 93-103.

⁸ *Id.*, ¶¶ 104-121.

⁹ *Id.*, ¶¶ 122-139.

¹⁰ Indictment, ¶ 138.

¹¹ Allan Lengel, FBI Sting Targeted Louisiana Lawmaker, *The Washington Post*, August 13, 2005 (Exhibit 2).

¹² Indictment, ¶¶ 152-187.

Rep. Jefferson also solicited bribes in return for his assistance regarding disputed oil exploration rights off the coast of Sao Tome and Principe. In return for his services, Rep. Jefferson requested that compensation be paid to an unidentified family member.¹³

According to the indictment, Rep. Jefferson also solicited bribes in connection with the sale of waste recycling systems in Africa. Once again, Rep. Jefferson requested that in return for his services, payments be made to an unidentified family member.¹⁴

Rep. Jefferson's racketeering activities include his promotion of the following:

- telecommunications deals in Nigeria, Ghana and elsewhere;
- oil concessions in Equatorial Guinea;
- satellite transmission contracts in Botswana, Equatorial Guinea and the Republic of Congo;
- deep water offshore oil reserves in Sao Tome and Principe;
- waste recycling systems in Nigeria and Equatorial Guinea;
- development of different plants and facilities in Nigeria; and
- marginal oil fields in Nigeria.¹⁵

Rep. Jefferson has been charged with obstruction of justice based on his attempt to conceal a facsimile cover sheet and attached documents during a court-approved search of his New Orleans residence in August 2005. These documents were related to the purchase of telecommunications parts for use in various African ventures.¹⁶

In January 2006, one of Rep. Jefferson's former aides, Brett M. Pfeffer, pleaded guilty to charges of conspiracy to commit bribery of a public official and aiding and abetting the bribery of a public official.¹⁷ Mr. Pfeffer's relationship with Rep. Jefferson began in 1995, when he joined Rep. Jefferson's congressional office as a legislative assistant.¹⁸ In 1998, Mr. Pfeffer left Rep. Jefferson's office, but maintained a professional and social relationship with the congressman.¹⁹ By 2004, Mr. Pfeffer was president of an investment company owned by Lori

¹³ Id., ¶¶ 188-193.

¹⁴ Id., ¶¶ 194-205.

¹⁵ Id., ¶¶ 219-270.

¹⁶ Indictment, ¶ 218.

¹⁷ United States of America v. Brett M. Pfeffer, Crim. No. 1:06cr10, Plea Agreement (Jan. 11, 2006) (Exhibit 3).

¹⁸ Id.

¹⁹ Id.

Mody, now a cooperating witness for the government.²⁰ On May 25, 2006, Mr. Pfeffer was sentenced to eight years of imprisonment and, as part of his deal with the government, agreed to cooperate with the ongoing federal investigation and provide testimony against Rep. Jefferson.²¹

In May 2006, Vernon L. Jackson, the CEO of iGate, pleaded guilty to paying more than \$400,000 in bribes to the family of Rep. Jefferson.²² Mr. Jackson entered his guilty plea in U.S. District Court in Alexandria, Virginia.²³ According to the plea agreement, Rep. Jefferson helped arrange U.S. government contracts and set up an Internet service venture in Nigeria in exchange for which Mr. Jackson agreed to pay Rep. Jefferson's wife and daughters \$7,500 per month and 5% of his company's sales over \$5 million.²⁴

The indictment of Rep. Jefferson was preceded by a court-approved search warrant that the U.S. Department of Justice executed on Rep. Jefferson's congressional office. After the government seized paper records and hard drives from Rep. Jefferson's office, he filed a motion to return the seized materials on the basis that the search of his office violated the Speech or Debate Clause of the Constitution. On August 3, 2007, the U.S. Court of Appeals for the D.C. Circuit ruled that the search of Rep. Jefferson's office violated the Speech or Debate Clause, but required the government only to return any privileged material removed during the search.²⁵ The court also stated that Rep. Jefferson will have the opportunity to argue for the suppression of all evidence removed from his office in his criminal trial.²⁶

Following the FBI's search of his house and the discovery of the \$90,000 in his freezer, Rep. Jefferson was removed from his seat on the House Ways and Means Committee in June 2006, after the Democratic Caucus voted 99-58 for his removal.²⁷

²⁰ Id.

²¹ In the Matter of the Search of: Rayburn House Office Bldg Room Number 2113, Case No. 06-231-M-01, pp. 19, 21 (May 30, 2006).

²² Ralph Vartabedian, Executive Pleads Guilty To Bribing Congressman's Family, *Los Angeles Times*, May 4, 2006 (Exhibit 4).

²³ Id.

²⁴ Id.

²⁵ U.S. v. Rayburn House Office Building, No. 06-3105 (D.C. Cir. Aug. 3, 2007).

²⁶ Id. at 22.

²⁷ David Espo, House Dems Strip Jefferson Of Panel Seat, *Associated Press*, June 16, 2006 (Exhibit 5).

When the House of Representatives reorganized following the 2006 elections, Rep. Jefferson was appointed to the House Small Business Committee.²⁸ Rep. Jefferson announced he would leave this position on June 5, 2007, until his legal issues are resolved.²⁹ Although Rep. Jefferson was selected to be on the House Homeland Security Committee, that appointment never reached a floor vote.³⁰

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.³¹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³²

As the 16-count indictment against Rep. Jefferson details, he has solicited and accepted multiple bribes payable in cash and other forms of compensation to him and his family members over a period of years in exchange for using his influence as a member of Congress to promote various business ventures in Nigeria, Cameroon and other African countries.

Honest Services Fraud

Federal law prohibits a Member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³³ By using his position as a member of Congress to financially benefit iGate and other companies, Rep. Jefferson may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Foreign Corrupt Practices Act

²⁸ Congressman William Jefferson Press Release, January 31, 2007 (Exhibit 6).

²⁹ Congressman William Jefferson Press Release, June 5, 2007 (Exhibit 7).

³⁰ Paul Kane, Opportunity In Lawmakers Fall, *The Washington Post*, June 7, 2007 (Exhibit 8).

³¹ 18 U.S.C. § 201(b)(2)(A).

³² McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d. Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

³³ 18 U.S.C. § 1341.

Federal law prohibits any agent of domestic concerns from corruptly promising to give or authorizing the payment of anything of value for the purpose of influencing acts and decisions of a foreign official, inducing a foreign official to do and omit to do acts in violation of his lawful duty, securing any improper advantage and inducing a foreign official to use his influence with a foreign government to affect and influence any act of that government. By preparing to deliver cash to a Nigerian official in order to benefit the Nigerian Joint Venture, Rep. Jefferson appears to have violated the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(a).

Money Laundering

Federal law prohibits anyone from knowingly engaging in a monetary transaction involving criminally derived property valued at over \$10,000. By knowingly transferring funds derived from bribery on three separate occasions, Rep. Jefferson appears to have laundered money in violation of 18 U.S.C. § 1957.

Obstruction of Justice

Federal law prohibits anyone from altering, destroying or concealing a record with the intent to impede an official proceeding or otherwise obstructing an official proceeding. By attempting to conceal from federal law enforcement agents, during a court-approved search of his Louisiana residence, a facsimile cover sheet and attached documents addressed to Rep. Jefferson and seeking his input regarding the purchase of telecommunication parts for use in telecommunications ventures in Nigeria, Ghana and elsewhere, Rep. Jefferson appears to have attempted to obstruct justice in violation of 18 U.S.C. § 1512(c)(1) and (2).

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”³⁴ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Jefferson advanced his personal business interests in Africa through the authority of his congressional position, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

³⁴ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 C.F.R. § 2635.702(a) and Conflict-of-Interest Rules

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁵ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.³⁶ To do so “would raise the appearance of undue influence or breach of the public trust.”³⁷

By using his position as a member of Congress to influence and support business ventures benefitting him and his family members, Rep. Jefferson appears to have violated 5 C.F.R. § 2635.702(a) and the House conflict-of-interest rules.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”³⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law

³⁵ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

³⁶ H. Con. Res. 175, 85th Cong., 2d Sess, 72 Stat., pt 2, B12, para. 5 (1958).

³⁷ Id.

³⁸ Rule 23, clause 1.

³⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁴⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁴¹ making false statements to the committee,⁴² criminal convictions for bribery,⁴³ or accepting illegal gratuities,⁴⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁵

Rep. Jefferson’s conduct, which includes using his position as a member of Congress to solicit bribes and commit fraud, clearly does not reflect creditably on the House.

Use of the National Guard to Visit Home and Retrieve Property

Five days after Hurricane Katrina hit the Gulf Coast, on September 2, 2005, Rep. Jefferson allegedly used National Guard troops to check in on his home and collect a few belongings – a laptop computer, three suitcases, and a large box.⁴⁶ Military sources told ABC

⁴⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁴⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴⁶ Jake Tapper, Amid Katrina Chaos, Congressman Used National Guard To Visit Home, ABC News, September 14, 2005 (Exhibit 9).

News that Rep. Jefferson asked the National Guard to take him on a tour of the flooded portion of his congressional district.⁴⁷ Lt. Col. Pete Schneider of the Louisiana National Guard said that during the course of the tour, Rep. Jefferson asked that the truck stop at the Congressman's home.⁴⁸ The Congressman entered his house and collected his belongings, returning to the truck, which was now stuck in the mud.⁴⁹ The National Guard ultimately sent a second truck to rescue the first truck and Rep. Jefferson and his belongings were returned to the Superdome.⁵⁰

Rep. Jefferson explained that he had not sought military assistance in touring the city, but because of the gunfire, "[t]hey thought I should be escorted by some military guards."⁵¹ Rep. Jefferson claimed that he was curious about the condition of his house and that he would have been happy to go by himself.⁵²

5 C.F.R. § 2635.702(a)

By using the National Guard to visit his home and retrieve property -- at a time when the citizens of New Orleans had no such similar opportunities -- Rep. Jefferson appears to have violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

At a time when the nation was facing its worst natural disaster in recent history, and when New Orleans lacked the requisite federal resources to rescue all of its citizens in a timely manner, Rep. Jefferson's use of the National Guard to check on his house and retrieve belongings does not reflect creditably on the House.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Tapper, *ABC News*, Sept. 14, 2005.

⁵¹ Id.

⁵² David Pace, La. Congressman Had Guard Escort To Home, *Associated Press*, September 14, 2005 (Exhibit 10).

REP. JERRY LEWIS

Rep. Jerry Lewis (R-CA) is a 15th-term member of Congress, representing California's 41st congressional district. Rep. Lewis has been a member of the House Appropriations Committee since 1980, where he served as chairman of the full committee from 2005 to 2006, and currently serves as ranking member. Rep. Lewis also served as chairman of the Defense Appropriations Subcommittee from 1999 to 2005. Rep. Lewis was included in CREW's 2006 report on congressional corruption.

Rep. Lewis' ethics issues stem primarily from misuse of his position on the powerful Appropriations Committee to steer hundreds of millions of dollars in earmarks to family, friends, former employees and corporations in exchange for contributions to his campaign committee and political action committee, Future Leaders PAC. Rep. Lewis is currently under federal investigation by the Department of Justice.

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

Rep. Lewis has a close personal and business relationship with lobbyist and former Congressman Bill Lowery, and his lobbying firm, the now-defunct Copeland Lowery Jacquez Denton & White (Copeland Lowery).¹ The two served on the Appropriations Committee together from 1985 until 1993, when Mr. Lowery left Congress and opened his own lobbying firm.² According to press reports, as chairman of the House Appropriations Committee Rep. Lewis has approved hundreds of millions of dollars in federal projects for Mr. Lowery's clients.³ As a result of those generous earmarks, Copeland Lowery's income more than tripled from 1998 to 2004, and its client size grew from 28 to 101.⁴ In turn, Mr. Lowery, his partners and their spouses contributed \$480,000 to Rep. Lewis' campaign committee and Future Leaders PAC between 2000 and 2005, often giving the maximum contribution allowed under law.⁵

Copeland Lowery's staff included Letitia White, who joined the firm in 2003, after working in Rep. Lewis' office for 22 years, most recently as a staffer to the Appropriations

¹ Jerry Kammer, Close Ties Make Rep. Lewis, lobbyist Lowry a Potent Pair, *Copley News Service* appearing in *San Diego Union-Tribune*, December 23, 2005 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Kammer, *Copley News Service*, Dec. 23, 2005.

Committee.⁶ In the year before Ms. White left Rep. Lewis' employ, her salary was cut from the equivalent of \$125,000 per year to about \$113,000.⁷ In this way, Ms. White was able to evade federal conflict-of-interest laws that impose a one-year lobbying ban on any congressional staffer who earns a salary equal to or above 75% of a member's salary.⁸

At Copeland Lowery Ms. White became known as "K Street's Queen of Earmarks."⁹ She quickly built a client list of two dozen defense firms that were seeking earmarks.¹⁰ Within a year, she was earning over \$1 million a year at the firm, her clients were paying almost \$1.5 million in lobbying fees, and they received at least \$22 million in earmarks in the 2004 defense appropriations bill.¹¹ For fiscal year 2006, an analysis by the nonprofit Taxpayers for Common Sense revealed that at least two-thirds of Ms. White's 53 clients received earmarks.¹²

⁶ A one-time San Diego defense contractor, Thomas Casey of Audre Recognition Systems Inc., has alleged that in 1993, while Ms. White was on Rep. Lewis' staff and working on a provision in a spending bill that would have steered \$20 million to Audre, she met with Mr. Casey and another defense contractor, Brent Wilkes. The purpose of the meeting was to draft language for a defense bill that would have secured funding for Audre and limited its competition. The final bill included much of the language that Mr. Casey wrote, although the funding was reduced to \$14 million. One week prior to final passage of the bill, Ms. White bought stock in Audre, according to a November 1994 article in the trade journal *Federal Computer Week*. Under the 1994 earmark, Mr. Casey initially received \$4 million in Pentagon contracts and no further awards. Audre filed for Chapter 11 bankruptcy in 1995. Peter Pae, Tom Hamburger and Richard Simon, Powerful Lawmaker's Relative Linked Financially to Contractor, *Los Angeles Times*, June 23, 2006 (Exhibit 2); Mr. Casey – who also alleged on *NBC News* that Rep. Lewis asked him to provide stock options to the Congressman's friends, including Mr. Lowery – and his associates gave \$9,253 in political contributions to Rep. Lewis in 1993 alone. Dean Calbreath, Ex-contractor Says Lewis Asked Him for Favors, *San Diego Union-Tribune*, June 8, 2006 (Exhibit 3).

⁷ Paul Kane, Pay Cut Let Lewis Aide Dodge Ban, *Roll Call*, July 27, 2006 (Exhibit 4).

⁸ Id.

⁹ David D. Kirkpatrick, Rise of Capitol Lobbyist Shines a Light On House Connections, *The New York Times*, June 3, 2006 (Exhibit 5).

¹⁰ Kammer, *Copley News Service*, Dec. 23, 2005.

¹¹ Kane, *Roll Call*, July 27, 2006.

¹² Kirkpatrick, *The New York Times*, June 3, 2006.

One of Ms. White's first major clients was General Atomics and one of its aeronautics subsidiaries.¹³ The companies received several multimillion-dollar earmarks in the defense spending bill for fiscal year 2004, including \$3 million for General Atomics and \$15.3 million for the aeronautics division.¹⁴ During the 2004 election cycle, General Atomics executives were the second-highest donors to Rep. Lewis' campaign committee, giving \$18,000.¹⁵

When Rep. Lewis took charge of the defense appropriations subcommittee, Richard White, Ms. White's husband and a former tobacco industry lobbyist, switched to defense lobbying.¹⁶ Mr. White secured a \$4.5 million earmark for a project for Tessera Technologies, and in return received \$180,000 in payments from the company in 2003 and 2004.¹⁷ Tessera's partner in the project was Isothermal Systems Research, for which Ms. White was a lobbyist. She charged the company \$120,000 for lobbying services in 2003 and 2004.¹⁸

From 2003 through 2005, the Whites contributed \$30,000 to Rep. Lewis' campaign committee and PAC.¹⁹

Jeffrey Shockey, another staffer for Rep. Lewis until 1999, also left to join Copeland Lowery.²⁰ Mr. Shockey stayed with the firm for six years before returning to Capitol Hill in January 2005, for a second stint with Rep. Lewis as deputy staff director of the Appropriations Committee, at a salary of approximately \$170,000.²¹ To compensate for Mr. Shockey's drop in income, Copeland Lowery paid him nearly \$2 million in departure payments²² and hired his wife, Alexandra Shockey, as a subcontractor.²³ His wife is also a former employee of Rep. Lewis and

¹³ Erica Werner, Receptionist-Turned-Lobbyist Gets Attention of Federal Investigators, *Associated Press*, August 24, 2006 (Exhibit 6).

¹⁴ Id.

¹⁵ Id.

¹⁶ Kammer, *Copley News Service*, Dec. 23, 2005.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Kammer, *Copley News Service*, Dec. 23, 2005.

²¹ Tom Hamburger, Lewis Aide Got \$2-Million Buyout From Lobby Shop; The Firm Paid Jeffrey Shockey as he Returned to Capitol Hill as an Appropriations Staffer, *Los Angeles Times*, June 10, 2006 (Exhibit 7).

²² Id.

²³ Kammer, *Copley News Service*, Dec. 23, 2005.

has her own lobbying firm, Hillscape Associates, with an address identical to that of Copeland Lowery.²⁴ Ms. Shockey has admitted that her client roster includes some of her husband's former clients.²⁵

While Mr. Shockey was with Copeland Lowery he handled the account for Environmental Systems Research Institute Inc. (ESRI).²⁶ ESRI hired Copeland Lowery in June 2000, and paid the firm between \$40,000 and \$80,000 annually.²⁷ ESRI received at least \$55.4 million in earmarks in 2004 and 2005.²⁸ The co-founders and heads of ESRI, Jack and Laura Dagermond, donated over \$23,000 to Rep. Lewis and his PAC in the 2002, 2004 and 2006 election cycles.²⁹

From 1999 through 2006, the Shockeys contributed \$40,000 to Rep. Lewis' campaign committee and PAC.³⁰

Federal officials currently are investigating the cozy relationship between Rep. Lewis and Copeland Lowery and the activities of Ms. White and Mr. Shockey are part of that probe.³¹ The investigators have issued at least 10 subpoenas seeking details on why counties, towns and businesses in Rep. Lewis' Southern California district chose to hire Mr. Lowery's lobbying firm, how much they paid, and the nature of the communications between Copeland Lowery and Rep. Lewis.³²

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Jeremiah Marquez, Defense Contractor Targeted in Lewis Probe, *Associated Press*, June 29, 2006 (Exhibit 8).

²⁸ Id.

²⁹ Id.

³⁰ Kammer, *Copley News Service*, Dec. 23, 2005.

³¹ Werner, *Associated Press*, Aug. 24, 2006; Jerry Kammer, Contractor Adds Layer to Rep. Lewis' Sphere, *Copley News Service*, June 24, 2006 (Exhibit 9).

³² Werner, *Associated Press*, Aug. 24, 2006.

Cerberus Capital Management

Cerberus Capital Management, a New York investment company, is another defense contractor that has benefitted from Rep. Lewis' earmarks.³³ On July 7, 2003, Cerberus hosted a fundraiser for Rep. Lewis, raising \$110,000 for the congressman's Future Leaders PAC.³⁴ The next day, the House passed a defense spending bill, sponsored by Rep. Lewis, that secured \$160 million for a Navy project critical to Cerberus.³⁵ A few weeks after the vote, Cerberus, former Vice President Dan Quayle and others associated with Cerberus donated to Rep. Lewis' Future Leaders PAC, bringing the monthly contribution total to \$133,000.³⁶ Future Leaders PAC collected a total of \$522,725 in 2003, one-fourth of which was connected to Cerberus.³⁷

According to a *USA Today* analysis, none of the people associated with Cerberus had ever given money to Rep. Lewis or his PAC prior to the fundraiser or the vote on the defense spending bill.³⁸

Relationship to Brent Wilkes and Rep. Duke Cunningham

Rep. Lewis is also under investigation because of his ties to the same contractors who had ties to former Rep. Randy "Duke" Cunningham (R-CA).³⁹ Rep. Cunningham pleaded guilty to taking bribes from contractor Brent Wilkes, who has been identified as a co-conspirator in Rep. Cunningham's plea agreement.⁴⁰ After Rep. Cunningham pleaded guilty, Rep. Lewis resisted an independent investigation of Rep. Cunningham's activities on the Appropriations Committee, stating that his own personal informal review of Rep. Cunningham's earmarks was satisfactory and that the earmarks Rep. Cunningham doled out were legitimate.⁴¹

³³ Matt Kelley, The Congressman & the Hedge Fund, *USA Today*, January 19, 2006 (Exhibit 10).

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Kelley, *USA Today*, Jan. 19, 2006.

³⁸ Id.

³⁹ Jerry Kammer and Dean Calbreath, Lewis Subject of 'Earmarks' Investigation, Source Says, *Copley News Service*, May 12, 2006 (Exhibit 11).

⁴⁰ Id.

⁴¹ Id.

Rep. Lewis worked with Rep. Cunningham to help secure contracts for Mr. Wilkes' companies, ADCS, Inc. and Perfect Wave Technologies.⁴² In April 1999, three months after becoming chairman of the Defense Appropriations Subcommittee, Rep. Lewis received \$17,000 in campaign contributions from Mr. Wilkes and his associates.⁴³ At the time of these contributions, Mr. Wilkes was seeking a contract to digitize documents for the Pentagon, which did not want to give ADCS, Inc. as much money as Mr. Wilkes was seeking.⁴⁴ In a July 1999 memo to Rep. Cunningham, Mr. Wilkes wrote, "We need \$10 m[illion] more immediately . . . This is very important and if you cannot resolve this others will be calling also."⁴⁵ Following Mr. Wilkes' memo, in a closed-door Appropriations meeting, Reps. Lewis and Cunningham cut funding for the Pentagon's prized F-22 fighter jet. Soon after, the Pentagon found the \$10 million for ADCS' document conversion contract.⁴⁶

Rep. Lewis received \$88,252 from Mr. Wilkes and his associates, making him the third-highest recipient of campaign contributions from Mr. Wilkes, after Reps. Cunningham and John Doolittle (R-CA).⁴⁷

Assistance to Stepdaughter

Rep. Lewis' stepdaughter, Julia Willis-Leon (the daughter of Arlene Lewis, Rep. Lewis' wife and chief of staff), has also benefitted from her relationship with Rep. Lewis. Federal investigators are looking into Rep. Lewis' role in urging defense industry lobbyists to contribute money to a PAC Ms. Willis-Leon runs.⁴⁸

Ms. Willis-Leon has received thousands of dollars in fundraising fees from Small Biz Tech PAC, a political committee headed by defense contractor Nicholas Karangelen.⁴⁹ Mr. Karangelen is the president of Trident Systems, a company that has received earmarks from the House Appropriations Committee and lobbies Rep. Lewis.⁵⁰ Records show that Trident, one of

⁴² Id.

⁴³ Kammer and Calbreath, *Copley News Service*, May 12, 2006.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Kammer and Calbreath, *Copley News Service*, May 12, 2006.

⁴⁸ Editorial, Earmarker in Chief, *The Wall Street Journal*, June 15, 2006 (Exhibit 12).

⁴⁹ Pae, Hamburger and Simon, *The Los Angeles Times*, June 23, 2006.

⁵⁰ Jerry Kammer and Marcus Stern, Political Money From Lobbyist Flows to Lewis' Stepdaughter, *Copley News Service*, June 8, 2006 (Exhibit 13).

Ms. White's lobbying clients, has received at least \$23.6 million in earmarked funds since Rep. Lewis has served on the Appropriations Committee.⁵¹ In 2005 alone, Trident received five contracts and at least one \$9.62 million contract in 2006.⁵² In the three years Ms. White represented Trident, her firm billed the company \$340,000.⁵³

Small Biz Tech PAC was formed one month after Rep. Lewis became chairman of the Appropriations Committee.⁵⁴ Nearly all the money it has raised has come from lobbyists and defense contractors who have business before the Appropriations Committee, and of that total, more than one-third has gone to pay Ms. Willis-Leon's salary and expenses.⁵⁵ The PAC has paid Ms. Willis-Leon \$37,420 in fundraising services, while paying less than half that amount – \$15,600 – to political candidates.⁵⁶ Although Small Biz PAC is run from Ms. Willis-Leon's home in Las Vegas, Nevada, its website lists its street address as a million-dollar Capitol Hill townhouse co-owned by Ms. White and Mr. Karangelen.⁵⁷

In total, Small Biz Tech PAC has raised \$113,700. Of that, \$46,000 came from Ms. White, her husband, and small defense contractors represented by Copeland Lowery.⁵⁸

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶⁰

⁵¹ Kammer, *Copley News Service*, June 24, 2006.

⁵² Pae, Hamburger and Simon, *The Los Angeles Times*, June 23, 2006.

⁵³ Kammer and Stern, *Copley News Service*, June 8, 2006.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Kammer and Stern, *Copley News Service*, June 8, 2006.

⁵⁸ Id.

⁵⁹ 18 U.S.C. § 201(b)(2)(A).

⁶⁰ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If, as it appears, Rep. Lewis accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to clients of Copeland Lowery, he may have violated the bribery statute.

If, as it appears, Rep. Lewis accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to Cerberus, he may have violated the bribery statute.

If, as it appears, Rep. Lewis accepted campaign donations in direct exchange for earmarking federal funds for an ADCS, Inc. contract, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁶¹ By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his close friend and staffed by his former associates, Rep. Lewis may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁶² In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁶³

If a link is established between Rep. Lewis' earmarking funds for clients of Copeland Lowery and contributions made to his campaign committee and PAC by Copeland Lowery, its employees and associates, Rep. Lewis would be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Lewis received from Cerberus and its associates and the funds he earmarked for a Navy project critical to the firm, Rep. Lewis would be in violation of the illegal gratuity statute.

⁶¹ 18 U.S.C. § 1341.

⁶² 18 U.S.C. § 201(c)(1)(B).

⁶³ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

If a link is established between the campaign donations Rep. Lewis received from Mr. Wilkes and his associates and the funds Rep. Lewis earmarked for Mr. Wilkes' company, ADCS, Inc., Rep. Lewis would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁶⁴

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁶⁵ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Lewis accepted campaign contributions from Copeland Lowery and its associates in return for legislative assistance by way of earmarking federal funds for the lobbying firm's clients, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting hundreds of thousands of dollars in campaign contributions from Cerberus and its associates in apparent exchange for earmarking \$160 million for a Navy project critical to Cerberus, Rep. Lewis likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting thousands of dollars in campaign contributions from Mr. Wilkes and his associates in apparent exchange for earmarks for ADCS, Inc. and affiliated companies, Rep. Lewis likely violated 5 U.S.C. § 7353 and House Rule XXIII.

⁶⁴ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁶⁵ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁶⁶ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁶⁷

By funneling federal funds to clients of Copeland Lowery, the lobbying firm of his close friend and business associate Bill Lowery, Rep. Lewis may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

By funneling federal funds to Cerberus, a company that has provided him with very generous campaign contributions, Rep. Lewis may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

By funneling federal funds to ADCS, Inc., a company that has provided him with very generous campaign contributions, Rep. Lewis may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁶⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”⁶⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law

⁶⁶ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁶⁷ Id.

⁶⁸ Rule XXIII, cl. 1.

⁶⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁷⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁷¹ making false statements to the Committee,⁷² criminal convictions for bribery,⁷³ or accepting illegal gratuities,⁷⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁵

Rep. Lewis apparently accepted campaign contributions in return for legislative favors that financially benefited personal friends and former staff. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Similarly, Rep. Lewis’ use of his legislative position to ultimately benefit his stepdaughter does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

⁷⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁷¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁷² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁷³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁷⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁷⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Deferral to Department of Justice

The fact that the Department of Justice is currently conducting a criminal investigation of Rep. Lewis and his relationship with Copeland Lowery should not be a basis for the Committee to defer any investigation into, or action on, Rep. Lewis' ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer action on a complaint against a Member" if: 1) "the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or 2) "the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."⁷⁶

A 1975 Committee report explained the Committee's approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁷⁷

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁷⁸

⁷⁶ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); *see also* Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

⁷⁷ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (*quoting* House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁷⁸ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

Rep. Lewis' conduct unquestionably is related to the discharge of his official duties as a member of the House, as it raises the issues of whether he received financial assistance, a bribe, or illegal gratuity as a *quid pro quo* for exercising his congressional powers to benefit the clients of Copeland Lowery and Brent Wilkes. As a result, given the Committee's precedents, a Committee investigation into Rep. Lewis' activities is appropriate.

Security Bank of California

In 2005, shortly after becoming chairman of the Appropriations Committee, Rep. Lewis was asked to buy into an initial public offering of a fledgling bank, Security Bank of California, headed by his close friend James Robinson.⁷⁹ Rep. Lewis' initial investment of \$22,000 for 2,200 stocks in Security Bank was worth nearly \$60,000, in 2006 an increase of almost 300%.⁸⁰

The stock was recommended to Rep. Lewis by Mr. Robinson's wife, a former chair and board member of the Loma Linda University Children's Hospital Foundation, a branch of Loma Linda University Medical Center.⁸¹ Rep. Lewis has helped direct more than \$200 million in federal dollars to the medical center, which has facilities named in his honor.⁸² In June 2006, Rep. Lewis acknowledged that the medical center had benefitted from \$40 million in earmarks.⁸³

Many of Security Bank's board members have also contributed to Rep. Lewis' campaign and are linked to businesses that received federal earmarks.⁸⁴ They include Zareh Sarrafian, an executive with Loma Linda Medical Center and president of the Hospital Foundation's board, and Bruce Varner, a friend of Rep. Lewis' who serves on the board of the National Orange Show Events Center in San Bernardino.⁸⁵ The center has received more than \$800,000 in federal funds.⁸⁶

The Ethics Committee should investigate whether Rep. Lewis received preferential treatment in being offered participation in the initial public offering of Security Bank, given that the offer coincided with his assuming chairmanship of the Appropriations Committee.

⁷⁹ Michael R. Blood, Calif. Congressman Saw Profit From Bank, *Associated Press*, July 19, 2006 (Exhibit 14).

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Blood, *Associated Press*, July 19, 2006.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

In addition, if Rep. Lewis repaid the opportunity to personally acquire stock that subsequently proved to be worth considerably more than its initial asking price through earmarking funds for entities associated with Security Bank and its board members, he may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Use of Detailee

Marine Lt. Col. Carl Kime is a military officer in the Department of Defense (DOD), who formerly tracked defense appropriations as a staff member for Rep. Lewis.⁸⁷ Lt. Col. Kime's business cards indicated that he worked on appropriations in Rep. Lewis' capitol hill office with primary oversight for earmark requests in the defense appropriations bill.⁸⁸ He remained on the Pentagon's payroll while working in Rep. Lewis' office and did not receive a congressional salary.⁸⁹

According to *The Hill*, its review of House disbursement records dating back to 2001 do not indicate that Lt. Col. Kime served on Rep. Lewis' staff.⁹⁰ Old House phone directories show that Lt. Col. Kime has worked in Rep. Lewis' office since at least spring 2001.⁹¹ From the time of his arrival until the summer 2002, Lt. Col. Kime's title was listed in the directory as military fellow. By the spring of 2003, his title had been changed in the directory to appropriations associate.⁹²

In July 2004, during House consideration of the 2005 fiscal year defense appropriations bill, Rep. Lewis – who was then chairman of the Defense Subcommittee – thanked Lt. Col. Kime for his work on the appropriations process. As reflected in the Congressional Record, Rep. Lewis said, “I must thank Carl Kime, of my personal office, who watches this bill for me and does an outstanding job for me.”⁹³

Following *The Hill's* reports on the matter, nearly five years after he joined Rep. Lewis's

⁸⁷ Alexander Bolton, Lewis's Use of Military Aide May Break the Rules, *The Hill*, February 2, 2006 (Exhibit 15).

⁸⁸ Id.

⁸⁹ Alexander Bolton, Pentagon Recalled Lewis's Approps Staffer, *The Hill*, February 22, 2006 (Exhibit 16).

⁹⁰ Bolton, *The Hill*, Feb. 2, 2006.

⁹¹ Id.

⁹² Id.

⁹³ Id.

office, the Pentagon recalled Lt. Col. Kime in February 2006.⁹⁴

2 U.S.C. § 72a(f)

Under federal law, congressional committees are permitted to detail or assign staff from other government departments or agencies, but only with the written permission of the Committee on House Administration (formerly the Committee on House Oversight). 2 U.S.C. § 72a(f). Rules published by the Administration Committee governing expenditures from committee funds interpret this statute to require “*prior* written authorization” of all detailing agreements.⁹⁵ The Committee’s rules specify further that “[d]etailing agreements may not exceed a 12-month period or the end of a Congress, whichever occurs first.”⁹⁶

Department of Defense (DOD) regulations mirror these restrictions. Department directive 1000.17, issued on February 24, 1997, provides that DOD personnel serving in the legislative branch “shall be limited to performing duties for a specific duration, in a specific project and as a member of a staff or a committee of the Congress.”

Rep. Lewis’ use of a detailee from the U.S. Department of Defense for a five-year period appears to violate the 12-month limitation imposed by the Committee on House Administration which implements 2 U.S.C. § 72a(f), and DOD regulations. Moreover, to the extent Rep. Lewis’ use of this detailee was not pursuant to prior written authorization by the Committee on House Administration, he also violated the Committee’s rules.

House Administration Committee Rules also provide that “[d]etailees may not be assigned to a Member office.”⁹⁷ If, as it appears, Rep. Lewis actually assigned Lt. Col. Kime to his office, Rep. Lewis would be in violation of Committee rules, 2 U.S.C. § 72a(f), and DOD regulations.

⁹⁴ Bolton, *The Hill*, Feb. 22, 2006.

⁹⁵ Committee on House Administration, Committees’ Congressional Handbook, Detailees (*emphasis added*).

⁹⁶ Committee on House Administration, Committees’ Congressional Handbook, Committee Staff, Consultants, and Detailees, Detailees Guideline 2.

⁹⁷ Committee on House Administration, Committees’ Congressional Handbook, Detailees.

2007 Update

The Department of Justice continues to investigate Rep. Lewis' relationship with the lobbying firm Copeland Lowery, which has reorganized after losing two partners and is now called Innovative Federal Strategies (IFS).⁹⁸ In the Fiscal Year 2008 Defense Appropriations bill, Rep. Lewis sponsored or co-sponsored earmarks totaling \$55 million for clients of IFS.⁹⁹ Letitia White, former appropriations aide to Rep Lewis, and former Rep. Bill Lowery are now employed by IFS.¹⁰⁰

In 2006, Environmental Systems Research Institute Inc. (ESRI) a former client of Rep. Lewis' deputy staff director Jeffrey Shockey, was awarded \$26 million in federal contracts in the congressman's district.¹⁰¹ ESRI's co-founders, Jack and Laura Dangermond, donated \$4,000 to Rep. Lewis' campaign committee in 2006.¹⁰² So far in 2007, Ms. Dangermond has donated \$2,000 to Rep. Lewis' campaign committee.¹⁰³

Rep. Lewis has received a subpoena requesting documents relating to the investigation of former Rep. Randy "Duke" Cunningham and contractor Brent Wilkes.¹⁰⁴ Despite the ongoing investigations, Rep. Lewis has managed to maintain his position as the ranking member on the House Appropriations Committee.¹⁰⁵

In 2006, Rep. Lewis' congressional committee, Lewis For Congress Committee, spent \$881,145.83 on legal fees.¹⁰⁶ The campaign committee's quarterly reports filed in April and July

⁹⁸ Kevin Bogardus, Lobbying Firm Linked to Rep. Lewis Booms Despite Federal Investigation, *The Hill*, August 15, 2007 (Exhibit 17).

⁹⁹ Id.

¹⁰⁰ Lewis For Congress Committee, FEC Form April Quarterly Report, April 15, 2007, p. 14 (Exhibit 18).

¹⁰¹ www.fedspending.org , August 16, 2007 (Exhibit 19).

¹⁰² Lewis For Congress Committee, FEC Form April Quarterly Report 2006, April 13, 2006, p. 5 (Exhibit 20).

¹⁰³ Lewis For Congress Committee, FEC Form April Quarterly Report 2007, April 15, 2007, p. 5 (Exhibit 21).

¹⁰⁴ Susan Crabtree, Lewis Holds Fast to Approps Seat, *The Hill*, April 25, 2007 (Exhibit 22).

¹⁰⁵ Id.

¹⁰⁶ Lewis For Congress Committee, FEC Form 3, Pre-Primary Report 2006, July, 15, 2006, p. 63 (Exhibit 23); Lewis For Congress Committee, FEC Form 3, July Quarterly Report

2007 indicate that the committee has spent \$66,561.61 so far this year.¹⁰⁷

2006, July 15, 2006, p. 23 (Exhibit 24); Lewis For Congress Committee, FEC Form 3, October Quarterly Report 2006, October 31, 2006, pp. 60, 68, 69 (Exhibit 25); Lewis For Congress Committee, FEC Form 3, Pre-General Report 2006, February 27, 2006, p. 21 (Exhibit 26); Lewis for Congress Committee FEC Form 3, Post General Report 2006, April 15, 2006, p. 38 (Exhibit 27); Lewis for Congress Committee FEC Form 3, Year End Report 2006, April 15, 2006, p. 8 (Exhibit 28).

¹⁰⁷ Lewis For Congress Committee, FEC Form 3, April Quarterly Report 2007, July 15, 2007, pp. 30, 35 (Exhibit 29); Lewis For Congress Committee, FEC Form 3, July Quarterly Report 2007, July 15, 2007, pp. 30, 31, 36 (Exhibit 30).

REP. GARY G. MILLER

Rep. Gary G. Miller (R-CA) is a fifth-term member of Congress, representing California's 42nd congressional district. Rep. Miller's ethics issues stem from apparent tax evasion relating to California land deals, his relationship with Lewis Operating Corporation and earmarks by which he has profited personally. Rep. Miller is currently the target of a Department of Justice investigation and was included in CREW's 2006 report.

California Land Deals

Rep. Miller has invoked Internal Revenue Code ("IRC") § 1033 on three separate real estate sales to the cities of Monrovia, California and Fontana, California since 2002.¹ In this way, he was able to avoid capital gains taxes from the proceeds of the sales. In 2002, Rep. Miller sold 165 acres to the city of Monrovia, making a profit of approximately \$10 million.² In 2004, Rep. Miller reinvested the proceeds of the sale in land and building purchases in Fontana, California, and Rancho Cucamonga, California.³ Rep. Miller again claimed IRC § 1033 exemption when he sold some of his Fontana land and building acquisitions in April and June of 2005.⁴ He used proceeds from this sale to purchase additional land in Fontana, which he subsequently sold to the city in 2006 for \$50,000 more than his original purchase price.⁵

Despite Rep. Miller's claims of eminent domain, his sale of land in 2002 to the city of Monrovia was not an involuntary conversion within the meaning of IRC § 1033. Rep. Miller had taken an aggressive, public campaign to sell his property to the city for several years prior to the sale. He was videotaped at a February 2000 City Council meeting repeatedly asking the city to purchase his property.⁶ Monrovia purchased Rep. Miller's property in 2002 pursuant to a state statute that prohibited the use of eminent domain proceedings, according to Glen Owens, a member of Monrovia's planning commission and Scott Ochoa, then assistant city manager.⁷ A May 2002 letter from the

¹ William Heisel, Official's Tax Break: On Firm Ground?, *Los Angeles Times*, August 13, 2006 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Martin Wisckol and Norberto Santana Jr., Miller's Land Deals Ethically Questionable, *The Orange County Register*, August 10, 2006 (Exhibit 2).

⁶ Heisel, *Los Angeles Times*, Aug. 13, 2006.

⁷ Id.

Monrovia City Manager confirmed that all property owners were “willing sellers.”⁸ On Aug. 1, 2002, in an amendment to his escrow instructions for the transaction Rep. Miller confirmed that the Monrovia sale was not a forced condemnation.⁹

Rep. Miller’s sales of land and buildings to the city of Fontana in April and June of 2005 also were not involuntary conversions within the meaning of IRC § 1033. A March 22, 2005 letter from City Manager Kenneth Hunt stated that the “redevelopment plan for this project area does not currently authorize the use of eminent domain.”¹⁰ In addition, both Clark Alsop, the attorney representing Fontana in the transaction, and Ray Bragg, the Fontana redevelopment director, have stated publicly that the city did not even threaten the use of eminent domain in the land acquisition.¹¹

Internal Revenue Code Violations

Federal tax law protects property owners from facing unexpected capital gains taxes due to involuntary conversion by government entities through eminent domain proceedings.¹² The law allows a taxpayer, at his or her option, up to two years to reinvest any capital gains realized from a forced sale in replacement property that is similar or related to the converted property.¹³ A taxpayer who voluntarily sells his property to a government entity does not qualify for the non-recognition of capital gains pursuant to the Code.¹⁴ The taxpayer would then be subject to taxation on those capital gains.¹⁵ A taxpayer who fails to report these capital gains on a federal income tax return is in violation of IRC § 6011(a), and is subject to civil and criminal penalties for tax evasion pursuant to IRC § 7201.

It appears that Rep. Miller has engaged in three counts of tax evasion in violation of IRC § 7201 by improperly claiming IRC § 1033 exemptions on capital gains from the sale of real estate that was not due to involuntary conversion through eminent domain proceedings. The IRS should conduct a full-scale investigation to determine whether Rep. Miller’s 2002 and 2005 real estate transactions qualified for non-recognition of capital gains pursuant to IRC § 1033.

⁸ Id.

⁹ Id.

¹⁰ Heisel, *Los Angeles Times*, Aug. 13, 2006.

¹¹ Id.

¹² IRC § 1033.

¹³ IRC § 1033(a)(2)(B)(i).

¹⁴ *See* IRC § 1033(a).

¹⁵ IRC § 1(h)(1).

House Rule XXIII

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁶ This ethics standard is considered to be “the most comprehensive provision of the code.”¹⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹⁸ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹⁹ making false statements to the Committee,²⁰ criminal convictions for bribery,²¹ or accepting illegal gratuities,²² and accepting gifts from persons with interest in legislation in violation of the gift rule.²³

¹⁶ Rule XXIII, cl. 1.

¹⁷ House Comm. on Standards of Official Conduct, House Ethics Manual.

¹⁸ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d

The House Committee on Standards of Official Conduct should investigate Rep. Miller's land transactions as tax evasion does not reflect creditably on the House.

Relationship with Lewis Operating Corp.

Before entering Congress, Rep. Miller had a lucrative career as a developer of planned communities. After launching G. Miller Development Co. in his twenties, Rep. Miller found himself in competition with Richard Lewis, the owner of Lewis Operating Corp.²⁴ The two men have had a relationship for over 30 years.²⁵

Lewis Operating, Mr. Lewis and several of his family members have been Rep. Miller's top campaign donors since he was elected to Congress in 1998.²⁶ Since that time, Lewis Operating employees have donated \$19,300 to Rep. Miller's campaign committees.²⁷ The National Association of Home Builders, of which Mr. Lewis is a member, has also donated \$44,000 to Rep. Miller.²⁸ In addition, Rep. Miller has been involved in a number of land transactions with Lewis Operating.²⁹ In 2005 alone, Rep. Miller made between \$1.1 and \$6 million off of land deals with Lewis Operating.³⁰

In 2004, Rep. Miller took out three separate promissory notes from the Lewis Operating group of companies: \$4.75 million from Lewis Investment Co.; \$1.26 million from Fontana Library Co.; and \$1.45 million from Church Haven Co.³¹ All three companies share Lewis Operating Company's southern California office address.³² Using the money obtained through these loans, Rep. Miller bought land from Lewis

Sess. 4-5 (1980); *see* 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

²⁴ Susan Crabtree, Miller Helped Free Land For A Business Partner, *The Hill*, March 30, 2006 (Exhibit 3).

²⁵ Id.

²⁶ Id.

²⁷ Susan Crabtree, Miller May Have Violated House Ethics Rules By Borrowing \$7.5M, *The Hill*, August 9, 2006 (Exhibit 4).

²⁸ Susan Crabtree, *The Hill*, Mar. 30, 2006.

²⁹ Id.

³⁰ Id.

³¹ Susan Crabtree, Miller Borrowed \$7.5M To Buy Contributor's Land, *The Hill*, July 13, 2006 (Exhibit 5).

³² Id.

Investment in “seller-financed” deals, which often result in better deals for the person buying the land.³³

House Rule XXVI

House rules provide that members, officers and employees may accept opportunities and benefits that are "in the form of loans from banks and other financial institutions on terms generally available to the public."³⁴ In addition, the Committee on Standards of Official Conduct has determined that members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.³⁵ That determination was based on a separate provision of the gift rule, clause 5(a)(3)(A), which allows the acceptance of "[a]nything for which the Member . . . officer, or employee pays the market value."³⁶

The Committee has further stated

Whether a loan from a person other than a financial institution is on terms that are “commercially reasonable,” and hence acceptable under the Committee’s determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.³⁷

Rep. Miller’s office has refused to state whether the loans he received from Lewis Operating were reviewed by the ethics committee,³⁸ suggesting that they were not. Given the extensive business relationship between Rep. Miller and Lewis Operating, the significant financial benefits both have realized from that relationship and Rep. Miller’s refusal to verify whether the ethics committee has reviewed these substantial loans, the ethics committee should investigate whether, by accepting loans from Lewis Operating, Rep. Miller violated House Rule XXVI.

³³ Crabtree, *The Hill*, Aug. 9, 2006.

³⁴ House Rule XXVI, cl. 5(a)(3)(R)(v).

³⁵ House Comm. on Standards of Official Conduct, Gift and Travel Booklet.

³⁶ Id.

³⁷ Id.

³⁸ Id.

Diamond Bar Village and Rialto Airport

In a 2005 highway bill, Rep. Miller earmarked \$1.28 million for street improvements near Diamond Bar Village, a planned residential and commercial development in Diamond Bar, California, that Rep. Miller co-owns with Lewis Operating.³⁹ The proposed development will include a Target, 70 single-family homes, 110 condos and two restaurants.⁴⁰ The earmarks will likely improve the value of the land.

In 2005, Rep. Miller, as a member of the House Committee on Transportation and Infrastructure, pushed for a provision in a highway bill that allowed the city of Rialto to close down its airport. This is the first time the legislative process has been used to allow a city to close its airport; normally the Federal Aviation Administration (FAA) has sole authority to close airports.⁴¹ The FAA opposed the closing. Rialto has borrowed \$15 million in federal government loans since 1984 to improve the airport.⁴² Closing the airport allowed Lewis Operating to win a contract from the city of Rialto to develop the airport land and build a planned community consisting of 2,500 homes, parks and 80 acres of retail space on the former airport and adjacent land.⁴³

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁴⁴ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his
Government position or title or any authority associated
with his public office in a manner that is intended to
coerce or induce another person . . . to provide any

³⁹ Jonathan Weisman, Lawmakers’ Profits Are Scrutinized, *The Washington Post*, June 22, 2006 (Exhibit 6).

⁴⁰ Congressman Gary Miller’s Business Dealings Scrutinized, *Associated Press*, January 10, 2006 (Exhibit 7).

⁴¹ Crabtree, *The Hill*, Mar. 30, 2006.

⁴² Id.

⁴³ Id.

⁴⁴ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position to earmark funds to increase the value of his own property and by using his position to close an airport for the benefit of Lewis Operating, Rep. Miller likely violated 5 C.F.R. § 2635.702(a).

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.⁴⁵ To do so “would raise the appearance of undue influence or breach of the public trust.” Rep. Miller’s use of his position to benefit himself and Lewis Operating violates this prohibition.⁴⁶

In addition, Rep. Miller’s record of assistance to Lewis Operating, which in turn has generously donated to his campaigns and has cut him in on lucrative land deals, does not reflect creditably on the House.

2007 Update

The FBI has opened an investigation into Rep. Miller’s California land deals involving the cities of Fontana and Monrovia.⁴⁷ As part of that probe, investigators have obtained a video recording of the February 29, 2000 Monrovia City Council meeting during which Rep. Miller asked the city to purchase his property.⁴⁸ The FBI has also interviewed a number of current and former city officials in Fontana and Monrovia.⁴⁹

In addition, former aides of Rep. Miller have accused him of other abuses of power, such as requesting his staff to perform personal errands for him, his family and

⁴⁵ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

⁴⁶ House Comm. on Standards of Official Conduct, In the Matter of Representative Mario Biaggi, H.Rep.No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); House Comm. on Standards of Official Conduct, In the Matter of Representative Charles H. Wilson (of California), H.Rep.No. 969-930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴⁷ Fred Ortega and Gary Scott, FBI Looks At Video In Miller Probe, *San Gabriel Valley Tribune*, January 31, 2007 (Exhibit 8).

⁴⁸ Id.

⁴⁹ Id.

friends and having them help his children with their schoolwork.⁵⁰ He also enlisted staff assistance in connection with the sale of his property in 2002 to Monrovia, having staffers write letters and help prepare documentation for Rep. Miller's meetings with city officials regarding the land sale.⁵¹

In an effort to push through the sale of his 165 acres of land to Monrovia, Rep. Miller asked one staff member to find a way to place one of the Monrovia City Council members, Robert Hammond, on the National Park System Advisory Board, though the councilman was a pawnshop owner with no parks experience.⁵² Ultimately, Mr. Hammond was not nominated for the position because there were no openings and he lost interest; nevertheless, he voted in favor of purchasing Rep. Miller's land for approximately \$12 million.⁵³

Pursuant to 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made." Corresponding regulations of the Committee on House Administration provide that "[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else." Committee on House Administration, Staff.

House ethics rules also make clear that "[e]mployees of the House are paid from funds of the United States Treasury to perform public duties" that expressly "do not include performing nonofficial, personal, or campaign duties."⁵⁴ In addition, Rule XXIII, Clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

By using staff to perform personal errands on official time and with the use of official resources, Rep. Miller may have violated 31 U.S.C. § 3102(a), House ethics rules and the regulations of the Committee on House Administration.

⁵⁰ William Heisel, Ex-Aides Allege Abuse Of Power, *Los Angeles Times*, December 12, 2006 (Exhibit 9).

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Ethics Manual, Chapter 5, Staff Rights and Duties, citing United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

REP. ALAN B. MOLLOHAN

Rep. Alan B. Mollohan (D-WV) is a 13th-term member of Congress, representing West Virginia's 1st congressional district. He is a member of the House Appropriations Committee, sitting as the Chair of the Subcommittee on Science, State, Justice, Commerce and Related Agencies and a member of both the Subcommittee on Interior, Environment and Related Agencies and the Subcommittee on Military Construction, Veterans Administration and Related Agencies.

Rep. Mollohan's ethics issues stem primarily from misuse of his position on the powerful Appropriations Committee to steer hundreds of millions of dollars in earmarks to family, friends, former employees and corporations in exchange for contributions to his campaign committee and political action committee. In addition, Rep. Mollohan misreported his personal assets on his financial disclosure forms. He is currently the subject of a U.S. Department of Justice investigation and was included in CREW's 2006 report on congressional corruption.

Earmarking of Funds for His Personal Benefit

Over the last decade, Rep. Mollohan has earmarked \$369 million in federal grants to his district for 254 separate projects and programs.¹ Between 1997 and 2006, \$173 million of that total was directed to five nonprofit organizations that Rep. Mollohan created, that are staffed by close associates and that are the recipients of the largest earmarks from Rep. Mollohan.²

The nonprofits include: the Institute for Scientific Research, the West Virginia High Technology Consortium Foundation, the Canaan Valley Institute, the Vandalia Heritage Foundation and MountainMade Foundation. All of the organizations are run by friends of Rep. Mollohan who contribute regularly to his campaign, his political action committee, Summit PAC, and his family foundation, the Robert H. Mollohan Family Charitable Foundation.³

Between 1997 and 2006, top-paid employees, board members and contractors of these five nonprofit organizations gave at least \$397,122 to Rep. Mollohan's campaign and political action committees.⁴ Thirty-eight individuals with leadership roles gave the maximum amount allowed, and workers at companies that receive subcontracts through these nonprofits, such as

¹ Eric Bowen, Five Nonprofits Reap Big Mollohan Earmarks: Congressman's Creations Net 46% of All his Funding, *The Dominion Post*, May 28, 2006 (Exhibit 1).

² Id; but see Judi Rudoren, David Johnston and Aron Pilhofer, Special Projects by Congressman Draw Complaints, *The New York Times*, April 8, 2006 (Exhibit 2), which reports that Rep. Mollohan funneled \$250 million into the five nonprofits.

³ John R. Wilke, Appropriations, Local Ties and Now a Probe of a Legislator, *The Wall Street Journal*, April 7, 2006 (Exhibit 3).

⁴ Rudoren, Johnston and Pilhofer, *The New York Times*, April 8, 2006.

TMC Technologies and Electronic Warfare Associates, are among Rep. Mollohan's leading contributors.⁵

Institute for Scientific Research

Launched by Rep. Mollohan in 1990, the Institute for Scientific Research (ISR) conducts scientific and software projects for federal agencies.⁶ Due to Rep. Mollohan's efforts, ISR has won \$108 million in earmarks since 1995.⁷ A majority of ISR's earmarked funds are being used to construct the organization's new headquarters which is likely to sit empty because ISR is in disarray.⁸ The chief executive of ISR resigned after a controversy erupted over his \$500,000 annual compensation paid with earmarked federal money.⁹

West Virginia High Technology Consortium Foundation

The second highest beneficiary of Rep. Mollohan-backed earmarks is the West Virginia High Technology Consortium Foundation (WVHTCF),¹⁰ which is headquartered in the Alan B. Mollohan Innovation Center.¹¹ Started in 1990, WVHTCF is the largest nonprofit set up by Rep. Mollohan. It has received approximately \$35 million in earmarks for education programs, economic development and construction of its headquarters.¹² The organization is absorbing the troubled ISR.¹³

WVHTCF is run by a network of Rep. Mollohan's friends. Jack Carpenter is the foundation's vice president as well as chairman of another Mollohan-created foundation, MountainMade. Raymond Oliverio is the foundation's executive vice president and also the treasurer of the Alan H. Mollohan Innovation Center. Rep. Mollohan's wife Barbara was once on WVHTCF's board of directors.¹⁴

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

⁹ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

¹⁰ Bowen, *The Dominion Post*, May 28, 2006.

¹¹ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹² Bowen, *The Dominion Post*, May 28, 2006.

¹³ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹⁴ Id.

Canaan Valley Institute

The Canaan Valley Institute (CVI), also launched by Rep. Mollohan, works on stream restoration and wastewater treatment.¹⁵ Currently, it is building a \$33 million headquarters, on 3,028 acres that it bought with earmarks secured by Rep. Mollohan.¹⁶ Having received \$28 million in federal funds since 1995,¹⁷ CVI relies on federal earmarks for 97% of its funding.¹⁸

CVI is housed in the office building of a fourth Mollohan-created nonprofit, Vandalia Heritage Foundation. CVI's \$5,100 monthly rent, paid to Vandalia, is covered by earmarks from the Environmental Protection Agency and the National Oceanic Atmospheric Administration.¹⁹

Vandalia Heritage Foundation

Founded in 1998, Vandalia Heritage Foundation restores historic buildings and invests in devalued property.²⁰ Relying on earmarks for 92% of its funding, it has received \$31.5 million in federal grants since 1999.²¹ Vandalia is coordinating construction of ISR's new building. Its funds have decreased since Rep. Mollohan left the subcommittee that appropriates Housing and Urban Development money.²²

Since 2000, Vandalia Heritage Foundation has been run by Laura Kurtz Kuhns. A former appropriations staffer in Rep. Mollohan's office, Ms. Kuhns is a key player in Rep. Mollohan's effort to earmark funds for West Virginia and is also the Congressman's investment partner.²³

In addition to Vandalia, Ms. Kuhns serves on the board of three other nonprofits funded via earmarks. These include a fifth Mollohan-created foundation, MountainMade, ISR and the

¹⁵ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹⁶ Id.

¹⁷ Bowen, *The Dominion Post*, May 28, 2006.

¹⁸ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

¹⁹ Id.

²⁰ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

²¹ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

²² Wilke, *The Wall Street Journal*, Apr. 7, 2006.

²³ Id.

National Housing Development Corporation (NHDC), the only out-of-state nonprofit supported by Rep. Mollohan.²⁴ NHDC has received \$31 million in earmarks over the last five years.²⁵

MountainMade Foundation

Created in 2000, MountainMade Foundation is a federally funded nonprofit dedicated to promoting West Virginia crafts.²⁶ The smallest of the nonprofits funded by Rep. Mollohan, MountainMade has received \$3.3 million in earmarks since 1995.²⁷

MountainMade is housed on the first floor of the Vandalia Heritage Foundation's building and uses earmarks from the Small Business Administration to pay Vandalia its monthly rent of over \$5,166.67.²⁸

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.²⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁰

If Rep. Mollohan accepted campaign donations as well as donations to his family foundation in direct exchange for earmarking federal funds to the nonprofits run by these donors, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a Member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict

²⁴ Id.

²⁵ Id.

²⁶ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

²⁷ Bowen, *The Dominion Post*, May 28, 2006.

²⁸ Rudoren, Johnston, and Pilhofer, *The New York Times*, Apr. 8, 2006.

²⁹ 18 U.S.C. § 201(b)(2)(A).

³⁰ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³¹ By using his position as a member of Congress to financially benefit nonprofit organizations that he created, staffed by his friends, Rep. Mollohan may be depriving his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.³² In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.³³

If a link is established between Rep. Mollohan's actions to earmark funds for five nonprofits run by friends and the campaign donations and donations to his family foundation that those friends and their nonprofit organizations made, Rep. Mollohan would be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.³⁴

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."³⁵ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee
of the House may not receive compensation and may not permit

³¹ 18 U.S.C. § 1341.

³² 18 U.S.C. § 201(c)(1)(B).

³³ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

³⁴ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the Member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

³⁵ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Mollohan accepted campaign contributions in return for legislative assistance by way of earmarking federal funds, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”³⁶ House Members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”³⁷

By funneling federal funds to nonprofits that he established and that help finance his family foundation, Rep. Mollohan may have violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁸ This ethics standard is considered to be “the most comprehensive provision of the code.”³⁹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law

³⁶ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

³⁷ Id.

³⁸ Rule XXIII, cl. 1.

³⁹ House Comm. on Standards of Official Conduct, House Ethics Manual.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁴⁰ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁴¹ making false statements to the Committee,⁴² criminal convictions for bribery,⁴³ or accepting illegal gratuities,⁴⁴ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁵

Rep. Mollohan apparently accepted campaign contributions in return for legislative favors that financially benefited campaign contributors and nonprofits that he established. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Trip to Bilbao, Spain

In June 2004, Rep. Mollohan, his wife, and two top aides took a five-day trip to Bilbao, Spain. The trip, arranged by the West Virginia High Technology Consortium and costing over \$36,000, was paid for by a group of government contractors to whom Rep. Mollohan funneled

⁴⁰ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁴² House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁴³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁴⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁴⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

more than \$250 million in earmarked funds.⁴⁶ Disclosure forms list the sponsor of the Spain trip as the “West Virginia (WV)-01 Trade Delegation”⁴⁷ which, according to Rep. Mollohan’s office, is an ad hoc group of 19 government contractors and West Virginia nonprofits.⁴⁸ Officials with the nonprofit groups then, in turn, donated nearly \$400,000 to Rep. Mollohan’s re-election campaigns from 1997 through 2006.⁴⁹

Representatives from TMC Technologies, a West Virginia high-tech firm, also accompanied Rep. Mollohan on his trip to Spain.⁵⁰ According to a press release TMC issued on July 28, 2004, the company “was invited by Congressman Alan B. Mollohan to participate in a trade mission to the Biscay region of Spain.”⁵¹ In 2004, TMC gave \$5,000 to Rep. Mollohan’s foundation.⁵² Since 2001, TMC’s President, Wade Linger, and his wife have given at least \$54,450 to Rep. Mollohan’s PAC, and his company and employees have given another \$20,095.⁵³ A month before the trip, TMC received a \$5 million contract from the National Oceanic & Atmospheric Administration as a result of an earmark from Rep. Mollohan.⁵⁴ Since 2001, TMC has secured at least \$10 million in federal contracts and company officials have openly thanked Rep. Mollohan for adding the earmarks into spending bills.⁵⁵

A representative from FMW Composite Systems also accompanied Rep. Mollohan on the Spain trip.⁵⁶ FMW’s Chief Executive Officer, Dale McBride, is a life-long friend of Rep.

⁴⁶ John Bresnahan, W. Va. Firms Footed Mollohan Trip, *Roll Call*, May 8, 2006 (Exhibit 4).

⁴⁷ Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed July 23, 2004 (Exhibit 5).

⁴⁸ Bresnahan, *Roll Call*, May 8, 2006.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Michael Forsythe, Mollohan Helped Steer U.S. Contracts to Family-Charity Donors, *Bloomberg*, June 22, 2006 (Exhibit 6).

⁵³ Id.

⁵⁴ Bresnahan, *Roll Call*, May 8, 2006.

⁵⁵ John Bresnahan, Mollohan Got \$23K From MZM, *Roll Call*, December 8, 2005 (Exhibit 7).

⁵⁶ Bresnahan, *Roll Call*, May 8, 2006.

Mollohan and in May 2005, the two purchased a 300-acre farm together in West Virginia.⁵⁷ In December 2005, FMW won a \$2.1 million NASA contract from a program funded through a Rep. Mollohan earmark.⁵⁸

Azimuth, Inc., another West Virginia company that provides electronic and software engineering support services, also helped underwrite the Spain trip.⁵⁹ Azimuth won a \$20 million contract from the Department of Homeland Security in 2006⁶⁰ and its employees gave \$12,600 to Rep. Mollohan during the 2006 election cycle and \$16,000 in the 2004 cycle.⁶¹

Illegal Gratuity

If Rep. Mollohan solicited funding for his trip to Spain from TMC Technologies one month after TMC received a \$5 million contract as a result of an earmark from him, he would be in violation of 18 U.S.C. § 201(c)(1)(B). Similarly, the funding of the trip by FMW Composite Systems and Azimuth, Inc., two companies that received government contracts and earmarks from Rep. Mollohan, appears to represent an illegal gratuity.

Solicitation of Gifts

Rep. Mollohan's conduct also may have violated federal law prohibiting Members from soliciting a gift from any person who has interests before the House.⁶² This provision limits not only what government officials may **accept**, but also that for which they may **ask**. The statute provides:

(a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall **solicit** or accept anything of value from a person –

(1) seeking official action from, doing business with, or . . . conducting activities regulated by, the individuals employing agency; or

(2) whose interests may be substantially affected by the perfor-

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Bresnahan, *Roll Call*, May 8, 2006.

⁶¹ www.opensecrets.org (Exhibit 8).

⁶² 5 U.S.C. § 7353.

mance or nonperformance of the individual's official duties.⁶³

The prohibition against solicitation applies to the solicitation not only of money, but “anything of value.” In addition, the prohibition covers solicitations of things for the personal benefit of the member, officer or employee, as well as things that would involve no personal benefit.

House Rule XXIII, clause 3 similarly prohibits members from receiving compensation or asking for anything of value in exchange for exercising influence they enjoy as Members of Congress.

Rep. Mollohan's “invitation” to TMC Technologies to participate in the trip to Spain appears to constitute a solicitation for Rep. Mollohan's personal benefit in violation of 5 U.S.C. § 7353. By accepting more than \$74,000 in campaign contributions from TMC Technologies, its President and employees and funding for the trip to Spain in apparent exchange for helping TMC secure more than \$10 million in federal contracts since 2001, Rep. Mollohan also likely violated clause 3 of Rule XXIII.

The financing for the trip may also implicate House Rule XXVI. The Committee on Standards of Official Conduct has long taken the position that a member, officer or employee may accept expenses for officially connected travel only from a private source that has a direct and immediate relationship with the event or location being visited.⁶⁴

The rule is concerned with the organization(s) or individual(s) that actually pay for travel. “[T]he concept of the rule is that a private entity that pays for officially connected travel will both organize and conduct the trip, rather than merely pay for a trip that is in fact organized and conducted by someone else.”⁶⁵

Here the exact role of those financing Rep. Mollohan's trip to Spain is not entirely clear. Rep. Mollohan's travel disclosure forms list the trip sponsor as the West Virginia (WV)-01 Trade Delegation, a collection of 19 government contractors and West Virginia-based entities while the trip was arranged by the West Virginia High Technology Consortium Foundation. It is not known whether any of the West Virginia companies and nonprofit entities created by Rep. Mollohan that sponsored the trip have any connection to Bilbao, Spain, much less a direct and immediate relationship with the trip. These issues warrant further consideration to determine if Rep. Mollohan's trip violated House rules.

⁶³ *Id.*, (emphasis added).

⁶⁴ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H. Rep. No. 100-46, 100th Cong., 1st Sess. 5-6 (1987).

⁶⁵ *Proper Sources of Expenses for Officially Connected Travel*, Rules of the House of Representatives on Gifts and Travel.

The Robert H. Mollohan Family Charitable Foundation

In addition to Rep. Mollohan's campaign and political action committees, the Robert H. Mollohan Family Charitable Foundation, for which Rep. Mollohan has served as secretary for the past six years, functions as a third conduit for donations from government contractors and executives of nonprofit organizations to which Rep. Mollohan has steered federal funds.⁶⁶ The foundation holds an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, West Virginia – a top-100 course according to *Golf Magazine*.⁶⁷ The tournament received \$455,000 in contributions in 2003, and its donors included at least two of Rep. Mollohan's federally funded nonprofits, ISR and Vandalia.⁶⁸ Additionally, the West Virginia High Technology Consortium Foundation provides staff and office services to the foundation.⁶⁹

Among those who have profited from making contributions to the foundation is D.N. American Inc., an information technology company with headquarters in the Alan B. Mollohan Innovation Center.⁷⁰ D.N. American gave \$20,000 to the Mollohan Foundation in 2004, and according to a press release from Rep. Mollohan's office, the company received part of a \$3 million government contract.⁷¹

The foundation has a total donor list of 43 companies, including nine of the top 10 contributors to Rep. Mollohan's reelection campaign in 2004.⁷²

Acceptance of a Bribe

The substantial contributions that Rep. Mollohan's private foundation has received from companies that benefited from federal contracts earmarked by Rep. Mollohan raise a serious question as to whether this was a *quid pro quo* in violation of the bribery statute.

Honest Services Fraud

⁶⁶ Wilke, *The Wall Street Journal*, Apr. 7, 2006.

⁶⁷ Gary Gaylean, Golf Magazine's Ranking of the Top Courses in the U.S. For 2003, *Golf Magazine*, August 11, 2003 (Exhibit 9).

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Forsythe, *Bloomberg*, June 22, 2006.

⁷¹ Id.

⁷² Id.

By using his position as a Member of Congress to financially benefit his private foundation Rep. Mollohan may be depriving his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

To the extent Rep. Mollohan has accepted donations to his family charity in exchange for earmarking federal funds to government contractors making those donations, he may have violated the illegal gratuity statute.

5 U.S.C. § 7353 and House Rules

If Rep. Mollohan accepted donations to his private family charity in exchange for earmarking federal funds to government contractors making those donations, he may have violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

By funneling federal funds to companies that help finance his family foundation, Rep. Mollohan may also have violated 5 C.F.R. § 2635.702(a) which, as discussed above, prohibits members from taking actions for the prospect of personal gain for themselves or others.

Personal Finances/Real Estate Investments

Between 2000 and 2004, Rep. Mollohan saw a spike in his personal assets and income from the rental properties he owns.⁷³ According to the nonprofit National Legal and Policy Center (NLPC), between 1996 and 2004, Rep. Mollohan filed financial disclosure forms that showed 260 instances of omitted or undervalued assets in an effort to disguise the dramatic increase in Rep. Mollohan's personal wealth.⁷⁴ Those forms show a jump in Rep. Mollohan's portfolio from less than \$500,000 in assets generating less than \$80,000 in income in 2000, to at least \$6.3 million in assets earning \$200,000 to \$1.2 million in 2004.⁷⁵ As of 2005, Rep. Mollohan's reported personal assets were worth at least \$8 million and his liabilities were in excess of \$3.43 million.⁷⁶ Rep. Mollohan credits part of this increase in assets to a sizeable inheritance from his father's estate.⁷⁷

⁷³ Rudoren, Johnston and Pilhofer, *The New York Times*, Apr. 8, 2006.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ John Bresnahan, Mollohan Made \$1M-Plus in Real Estate in 2005, *Roll Call*, June 14, 2006 (Exhibit 10).

⁷⁷ Id.

Rep. Mollohan's real estate holdings include 17 units in The Remington, a Washington, D.C. condominium complex that he purchased in 1996 along with his wife Barbara, his third cousin, Joseph L. Jarvis, and Mr. Jarvis' wife.⁷⁸ Within the next seven years, they added 10 units,⁷⁹ and between 1999 and 2003, The Remington increased in value by more than 9,000% .⁸⁰ The condos are now valued at \$8 million.⁸¹

In 2002, Rep. Mollohan and his wife invested in a North Carolina beachfront property with Rep. Mollohan's former staffer Laura Kurtz Kuhns and her husband Donald.⁸² The two families owned five properties jointly in Baldhead Island, North Carolina, listed in local real estate records as having a total value of \$2 million.⁸³

Finally, in May 2005, Rep. Mollohan and Dale McBride, whom Rep. Mollohan has described as a life-long friend and who is the CEO of FMW, purchased a 300-acre farm together in West Virginia.⁸⁴ All of these real estate deals are currently under scrutiny by the U.S. Department of Justice.⁸⁵

In June 2006, in reaction to NLPC's complaint, Rep. Mollohan filed two dozen corrections to his past six financial disclosure forms.⁸⁶

18 U.S.C. § 1001

⁷⁸ Eric Bowen, Mollohan Relative Has Past in Government Contracting; 2 Jarvis Companies Brought in \$86M in Fed Contracts, *The Dominion Post*, June 25, 2006 (Exhibit 11).

⁷⁹ Id.

⁸⁰ Bresnahan, *Roll Call*, June 14, 2006.

⁸¹ Jodi Rudoren and Aron Pilhofer, Congressman's Condo Deal Is Examined, *The New York Times*, May 17, 2006 (Exhibit 12).

⁸² Wilke, *The Wall Street Journal*, Apr. 7, 2006.

⁸³ Id.

⁸⁴ Id.; Bresnahan, *Roll Call*, May 8, 2006.

⁸⁵ Rudoren and Pilhofer, *The New York Times*, May 17, 2006.

⁸⁶ Eric Bowen, Mollohan Fixes Finance Reports: Amendments Correct 'Handful of Mistakes', *The Dominion Post*, June 14, 2006 (Exhibit 13); *see also* Letter from Rep. Alan Mollohan to Clerk of the House, June 13, 2006 (Exhibit 14).

Federal law prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”⁸⁷ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁸⁸

If Rep. Mollohan failed to disclose or misrepresented the true value of his personal assets on his financial disclosure forms to disguise the dramatic increase in his personal wealth during the past several years, he would appear to be in violation of 18 U.S.C. § 1001.

House Rules

Rep. Mollohan’s failure to include property on his financial disclosure forms is a violation of House rules. Pursuant to 5 U.S.C. app. 4 § 101(a)(1)(B), Members of Congress must disclose all rental property. The instruction booklet accompanying the House financial disclosure forms requires disclosure of “unearned” income, which “consists of rents, royalties, dividends, interest, capital gains, and similar amounts received as a return on investment.” The instructions continue, filers “must disclose . . . real and personal property held for investment or production of income and valued at more than \$1,000 at the close of the reporting period.”⁸⁹

Rep. Mollohan’s failure to include all of his assets on his financial disclosure forms violates House rules.

Deferral to Department of Justice

The fact that the Department of Justice is currently conducting a criminal investigation of Rep. Mollohan’s activities should not be a basis for the ethics committee to defer any investigation into, or action on, Rep. Mollohan’s ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee “may defer action on a complaint against a Member” if: 1) “the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities,” or 2) “the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities.”⁹⁰

A 1975 Committee report explained the Committee’s approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

⁸⁷ 18 U.S.C. § 1001(a)(2).

⁸⁸ *Id.* at § 1001(c)(2).

⁸⁹ House Comm. On Standards of Official Conduct, “Assets and Unearned Income,” Financial Disclosure Instruction Booklet.

⁹⁰ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); *see also* Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁹¹

Under Rule 15(f),

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁹²

Rep. Mollohan's conduct unquestionably is related to the discharge of his official duties as a member of the House, as it raises the issues of whether he received financial assistance, a bribe, or illegal gratuity as a *quid pro quo* for exercising his congressional powers. As a result, given the Committee's precedents, a Committee investigation into Rep. Mollohan's activities is appropriate.

2007 Update

Because of the pending Department of Justice criminal investigation, in January 2007, when Rep. Mollohan was named as the chair of the Appropriations Subcommittee on Commerce, Justice, State and Related Agencies, he recused himself from working on matters related to the Department of Justice's budget.⁹³

⁹¹ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (quoting House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁹² House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

⁹³ Andrew Taylor, Congressman Recuses Himself, *Associated Press*, January 10, 2007 (Exhibit 15).

The FBI has subpoenaed financial records from the non-profit organizations that have benefitted from federal funding steered to them by Rep. Mollohan.⁹⁴ In addition, at least one witness has been subpoenaed to testify about Rep. Mollohan's finances before a grand jury.⁹⁵

Despite all of the legal questions surrounding some of Rep. Mollohan's previous earmarks, Rep. Mollohan requested a \$1 million earmark to allow the Department of the Interior to expand a wilderness area abutting property owned by the congressman.⁹⁶ The Nature Conservancy and the Conservation Fund both urged the congressman to request the earmark, which was also listed as a priority by the U.S. Fish and Wildlife Service.⁹⁷ As required by House rules, Rep. Mollohan certified that neither he nor his spouse has a financial interest in the project.⁹⁸ Nevertheless, Rep. Mollohan owns two properties near the boundary of the refuge and, because there is so little land for sale in the area, at least one local real estate agent opined that the value of Rep. Mollohan's property was likely to increase substantially as a result of the earmark.⁹⁹

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives and the United States of the right of honest services, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self dealing, concealment, bribery, fraud and corruption. 18 U.S.C. § 1346. If Rep. Mollohan used his position as a member of Congress to include an earmark in legislation for the purpose of increasing the value of his personal property, he may have deprived his constituents and the United States of his honest services in violation of 18 U.S.C. § 1341.

⁹⁴ Id.

⁹⁵ Beth Gorczyca Ryan, Possible Subpoenas Sent in Mollohan Issue, *The State Journal*, March 22, 2007 (Exhibit 16).

⁹⁶ Paul Singer, Mollohan Earmarks Nearby Land, *Roll Call*, June 28, 2007 (Exhibit 17).

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

REP. TIMOTHY F. MURPHY

Rep. Timothy F. Murphy (R-PA) is a third-term member of Congress, representing Pennsylvania's 18th congressional district. Rep. Murphy's ethics violations involve his misuse of official resources for political campaign activity. Rep. Murphy currently is the target of a Department of Justice investigation.

Misuse of Congressional Staff

In October 2006, the *Pittsburgh-Post Gazette* reported that former and current staff members alleged that Rep. Murphy had misused taxpayer-funded congressional staff and resources for political campaign activities.¹ Specifically, they alleged that Rep. Murphy used his Mt. Lebanon congressional office for campaign strategy sessions and to store campaign-related materials; that congressional staff who accompanied Rep. Murphy were expected to carry campaign materials with them in case the congressman wanted to hand them out; that congressional staff dropping off official literature throughout the district in the summer before the election were instructed to make drops only at the homes of registered voters; and that in December 2005, district office staff were instructed to assemble and send greeting cards to Rep. Murphy's campaign contributors during the government workday.²

According to Rep. Murphy's aides, while they were not explicitly threatened with dismissal if they did not participate in these activities, they felt pressured to do so.³ Former staff member Emily Campbell said, "Congressman Murphy would very often say, 'Don't you people care about your jobs? If I'm not re-elected, you don't have jobs.'"⁴

A local television news station obtained a campaign planning time-line that appears to require Rep. Murphy's district office employees go door-to-door as well as a poll conducted by district employees with entries such as "He has my vote" and "He's a Republican, forget it."⁵

On November 7, 2006, Rep. Murphy fired the only current staff member who had agreed to be identified in the *Pittsburgh Post-Gazette*, making allegations that the congressman had

¹ Gary Rotstein, Congressman Facing Ethics Flap, *Pittsburgh Post-Gazette*, October 28, 2006 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Andy Sheehan, FBI Probes Claims Against Congressman Murphy, KDKA Channel 2, December 15, 2006 (Exhibit 2).

violated ethics rules.⁶ The stated reason for her termination was that she had violated an internal office rule restricting her from talking to the press without prior approval.⁷

The Federal Bureau of Investigation has opened an investigation into whether Rep. Murphy's legislative staff members performed campaign work on government time and has interviewed some of his former staffers.⁸ Rep. Murphy's FEC filings show that through mid July 2007, he has paid \$22,205 in legal fees.⁹

Solicitation of Political Contributions from Employees

Federal law prohibits members of Congress from soliciting political contributions from employees.¹⁰ Violations of this section are subject to fines and up to three years imprisonment.¹¹ Federal election law defines "contribution" to include "any gift . . . or anything of value . . ."¹² Federal Election Commission regulations define "anything of value" to include all in-kind contributions. Unless specifically exempted under 11 C.F.R. part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services constitutes a contribution.¹³ To the extent members of Rep. Murphy's congressional staff were also performing activities for his political campaign, Rep. Murphy illegally solicited contributions, in the form of service, from his employees.

Using a district office as a campaign office also violates the House of Representatives Standards of Official Conduct. According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, there is a "basic principle that government funds should not be spent to help incumbents gain re-election."¹⁴ The official allowance of House

⁶ Jonathan D. Silver, Rep. Murphy Fires Staffer Who Alleged Ethics Breach, *Pittsburgh Post-Gazette*, November 11, 2006 (Exhibit 3).

⁷ Id.

⁸ Id.

⁹ Tim Murphy for Congress, FEC Form 3, April Quarterly Report 2007, January 2, 2007, p.55 (Exhibit 4); Tim Murphy for Congress, FEC Form 3, July Quarterly Report 2007, April 25, 2007, p.77 (Exhibit 5).

¹⁰ 18 U.S.C. § 602.

¹¹ Id.

¹² 2 U.S.C. § 431(8)(A)(I).

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing Common

offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.¹⁵ The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.¹⁶ As a result, they may not be used to conduct campaign or political activities.¹⁷

The Campaign Booklet provides two cases in which Members were criminally prosecuted for misusing official resources: in 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business;¹⁸ and in 1979, a former Member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign.¹⁹

Thus, Rep. Murphy's use of his district office to conduct campaign strategy sessions is a clear violation of House Standards of Official Conduct. Similarly, any campaign work performed by Rep. Murphy's staff during working hours and using office resources would be a violation of federal law.

Improper Use of Appropriated Funds

Pursuant to 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made." Corresponding regulations of the Committee on House Administration provide that "[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else."²⁰

Cause v. Bolger, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983)).

¹⁵ Campaign Booklet.

¹⁶ Id.

¹⁷ Id.

¹⁸ Campaign Booklet (citing United States v. Bresnahan, Criminal No. 93-0409 (D.D.C. 1993); see Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250).

¹⁹ Campaign Booklet (citing United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); see *id.* 249-50).

²⁰ Committee on House Administration, Members' Handbook, *Staff*.

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”²¹ In addition, Rule XXIII, Clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

By using staff to perform personal errands on official time and with the use of official resources, Rep. Murphy may have violated 31 U.S.C. § 3102(a), House ethics rules and the regulations of the Committee on House Administration.

²¹ Ethics Manual, Chapter 5, Staff Rights and Duties, citing United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

REP. JOHN P. MURTHA

Rep. John P. Murtha (D-PA) is an 18th-term member of Congress, representing Pennsylvania's 12th congressional district. Rep. Murtha chairs the Defense Appropriations Subcommittee of the House Appropriations Committee. Rep. Murtha's ethics violations stem from abuse of his position on the subcommittee to benefit the lobbying firm of a former long-term staffer. In addition, Rep. Murtha violated House rules when he threatened to deny any further spending projects to another committee member who challenged him over an earmark. Rep. Murtha's failure to become majority leader in the House is attributed in large part to the ethical questions about his conduct.¹

PMA Group

Paul Magliocchetti worked with Rep. Murtha as a senior staffer on the Defense appropriations subcommittee for ten years.² After leaving the committee, Mr. Magliocchetti founded the PMA Group, which has become one of the prominent Washington, D.C. defense lobbying firms.³ According to the Center for Responsive Politics, in the 2006 campaign cycle, the PMA Group and eleven of the firm's clients ranked in the top 20 contributors to Rep. Murtha, having made campaign contributions totaling \$274,649.⁴ In the 2004 and 2002 cycles, PMA and nine of the firm's clients ranked in the top twenty contributors having given \$236,799⁵ and \$279,074,⁶ respectively. *Roll Call* has reported that PMA employees and clients contributed \$800,000 to Rep. Murtha's campaigns during a six-year period.⁷

So far in the 2008 election cycle, the PMA group and its clients have contributed

¹ See, e.g., Jerome L. Sherman, Murtha Under Siege; Lobbying Allegations Cloud Bid For Majority Leader, *Pittsburgh Post-Gazette*, November 16, 2006 (Exhibit 1).

² Howard Kurtz, Targeting Murtha, *The Washington Post*, November 15, 2006 (Exhibit 2).

³ Id.

⁴ The Center for Responsive Politics, John P. Mutha: Top Contributors, 2006 election cycle (Exhibit 3).

⁵ The Center for Responsive Politics, John P. Mutha: Top Contributors, 2004 election cycle (Exhibit 4).

⁶ The Center for Responsive Politics, John P. Mutha: Top Contributors, 2002 election cycle (Exhibit 5).

⁷ Nicole Duran, NRCC Hopes To Turn Tables on Ethics, *Roll Call*, June 19, 2007 (Exhibit 6).

\$106,000 to Rep. Murtha's campaign committee and PAC.⁸ Of the PMA clients listed as contributors for the 2008 cycle, nine were ranked in the top 20 donors to Rep. Murtha for the 2006 election cycle.⁹

In turn, many of PMA's clients have benefited significantly from Rep. Murtha's earmarks. In the 2006 Defense Appropriations bill, PMA clients received at least 60 earmarks, totaling \$95.1 million.¹⁰

Concurrent Technologies Corporation

In 2007, Rep. Murtha inserted into the Energy and Water Appropriations bill a \$1 million earmark to establish the Center for Instrumented Critical Infrastructure.¹¹ Rep. Murtha claimed that the Department of Energy supported this earmark for a project in his district protecting natural gas pipelines, but the Department denied supporting the request.¹² The Center is apparently a subsidiary of Concurrent Technology Corporation ("CTC"), a non-profit technology innovation center in Rep. Murtha's district that has received hundreds of millions of dollars in earmarks in recent years.¹³ According to the Department of Energy, the Department decided not to support the provision when it was initially included in a 2007 appropriations bill and has not changed its position.¹⁴

CTC describes itself as an "independent, non-profit, applied research and development professional services organization providing innovative management and technology-based solutions."¹⁵ The corporation has 1,500 employees and a number of buildings, including the

⁸ See Murtha for Congress Committee, FEC Form 3 Reports, 2000-2007, (pages listing contributions attached, Exhibit 7).

⁹ PMA Lobbying Disclosure Report for 2006 cycle; www.opensecrets.com (see Exhibit 3).

¹⁰ Roxana Tiron, Hill Ties Reap Rewards For Top Defense Firms, *The Hill*, June 15, 2006 (Exhibit 8); see also Kim Isaac Eisler, Hired Guns, *Washingtonian*, June 2007 (Exhibit 9).

¹¹ Susan Crabtree, Department Of Energy Disputes Rep. Murtha's Claim On Earmark Request, *The Hill*, July 19, 2007 (Exhibit 10).

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ www.ctc.com (Exhibit 11).

John P. Murtha Technology Center.¹⁶ According to the organization's 2005 tax forms, it received \$243,960,365 in 2005, of which \$212,739,257 consisted of government grants.¹⁷ Daniel DeVos, the president and chief executive officer, received compensation of \$587,296, John Pursley, Jr., the executive vice president, received \$488,009, Michael Katz, senior vice president and chief operating officer, received \$430,511, Edward Sheehan, Jr., senior vice president and chief financial officer, received \$415,954, and twelve other top compensated employees received between \$213,600 and \$374,208.¹⁸ The organization paid lobbying firm PMA Group \$452,659, but claimed to spend only \$302,392 on lobbying.¹⁹ It also paid Sarkady, "a global consulting company, committed to developing courageous, visionary leaders who can transform corporations into high performance engines of financial wealth and social value,"²⁰ \$285,327.²¹

Since 2000, CTC employees, board members, and their families have donated \$113,375 to Rep. Murtha's election campaigns²² and since 2006, have donated \$3,250 to his political action committee, Majority PAC.²³ Notably, Mr. DeVos has recognized Rep. Murtha's significance to his business and has stated that he has been preparing for life after Rep. Murtha for about a decade.²⁴

Other Earmarks

A number of other Johnstown companies also received earmarks in the Fiscal Year 2008 Defense Appropriations Bill: Conemaugh Health System, DRS Technologies, KDH Defense

¹⁶ Paul Singer, Companies Follow Murtha's Earmark Trail, *Roll Call*, June 25, 2007 (Exhibit 12).

¹⁷ Concurrent Technologies Corporation, 2005 Tax Form 990, filed Dec. 4, 2006 (Exhibit 13).

¹⁸ Id.

¹⁹ Id.

²⁰ www.sarkadyprocess.com (Exhibit 14).

²¹ Concurrent Technologies Corporation, 2005 Tax Form 990, filed Dec. 4, 2006 (*see* Exhibit 13).

²² *See* Murtha for Congress Committee, FEC Form 3 Reports, 2000-2007 (pages listing contributions attached, Exhibit 15).

²³ Majority PAC, FEC Form 3 October Quarterly 2006, October 12, 2006, pp. 9,11,29 (Exhibit 16); FEC Form 3 April Quarterly 2007, April 5, 2007, p. 21 (Exhibit 17).

²⁴ Shawn Piatek, Business Prepares for Life After Murtha, *The Tribune-Democrat*, July 9, 2006 (Exhibit 18).

Systems, Kuchera Defense Systems, L. Robert Kimball and Associates, MTS Technologies, Northrop Grumman, St. Francis University's Center for Excellence and Windber Research Institute.²⁵ As it happens, all have contributed generously to Rep. Murtha's campaign committee and his political action committee:

Conemaugh Health System employees, board members and their family members have contributed \$47,750 to Rep. Murtha's campaign since 2002.²⁶

Employees of DRS Technologies and their family members have donated \$83,500 to Rep. Murtha since 2000.²⁷ The firm's political action committee, DRS Technology Good Government Fund, has donated \$35,000 to Rep. Murtha's election committee and his political action committee since 2002.²⁸

Since 2003, KDH Defense system President David E. Herbener has donated \$7,200 to Rep. Murtha's campaign committee.²⁹

Employees of L. Robert Kimball and Associates and their families have donated \$33,700 to Rep. Murtha's campaign since 2002.³⁰ Employees of the firm have also donated \$6,000 to Rep. Murtha's political action committee since 2006.³¹

Employees of Kuchera Defense Industries and their family members have donated

²⁵ \$406b Defense Bill to Benefit Local Organizations, *The Tribune-Democrat*, August 5, 2007 (Exhibit 19).

²⁶ *See* Murtha for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 20).

²⁷ *See* Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 21).

²⁸ *See* Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 22).

²⁹ Murtha for Congress Committee, FEC Form 3 October Quarterly 2003, October 13, 2003, p. 28; FEC Form 3 July Quarterly 2006, July 12, 2006, p. 76; FEC Form 3 April Quarterly 2007, April 13, 2007, pp. 40,41 (Exhibit 23).

³⁰ *See* Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 24).

³¹ Majority PAC, FEC Form 3 October Quarterly 2006, October 12, 2006, p.17; FEC Form 3 Pre-General 2006, October 24, 2006, p.12; FEC Form 3 April Quarterly 2007, April 5, 2007, p.13 (Exhibit 25).

\$61,400 to Rep. Murtha's election committee since 2002³² and have contributed an additional \$6,000 to his political action committee since 2006.³³

MTS Technologies' employees, board members and their families have contributed \$74,200 to Rep. Murtha's campaign committee since 2001.³⁴ In addition, since 2006, employees of MTS have contributed \$9,000 to Rep. Murtha's political action committee.³⁵

Northrop Grumman's PAC has contributed a total of \$34,500 to Rep. Murtha since 2000.³⁶

Employees of St. Francis University and their families have donated \$15,500 to Rep. Murtha's election campaign since 2000.³⁷

Since 2000, Rep. Murtha has received \$21,250 in donations from employees and board members of the Windber Research Institute and their families.³⁸ Additionally, since 2006, employees of Windber Research Institute have also contributed \$2,200 to Rep. Murtha's political action committee.³⁹

³² See Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 26).

³³ Majority PAC, FEC Form 3 October Quarterly 2006, October 12, 2006, pp.19,20; FEC Form 3 April Quarterly 2007, April 5, 2007, p.14 (Exhibit 27).

³⁴ See Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 28).

³⁵ Majority PAC, FEC Form 3 October Quarterly 2006, October 12, 2006, pp.26,32; FEC Form 3 Post-General 2006, December 6, 2006, pp. 15, 10; FEC Form 3 April Quarterly 2007, April 5, 2007, pp.18,19 (Exhibit 29).

³⁶ See Employees of Northrop Grumman Corporation, FEC Form 3 Reports, 2000-2007, (pages listing contributions attached, Exhibit 30).

³⁷ See Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 31).

³⁸ See Murtha for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 32).

³⁹ Majority PAC, FEC Form 3 October Quarterly 2006, October 12, 2006, p. 15; FEC Form 3 July Quarterly 2007, July 11, 2007, pp. 8,11 (Exhibit 33).

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁴⁰ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴¹

If, as it appears, Rep. Murtha accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to clients of the PMA Group, he may have violated the bribery statute.

If, as it appears, Rep. Murtha accepted donations to his campaign committee and political action committee in direct exchange for earmarking federal funds for Concurrent Technologies and other entities, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁴² By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his close friend and staffed by his former associates, and by earmarking federal funds in apparent exchange for campaign contributions, Rep. Murtha may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁴³ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁴

If a link is established between Rep. Murtha's earmarking federal funds for the PMA

⁴⁰ 18 U.S.C. § 201(b)(2)(A).

⁴¹ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁴² 18 U.S.C. § 1341.

⁴³ 18 U.S.C. § 201(c)(1)(B).

⁴⁴ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

Group's clients, Concurrent Technologies and other entities, and the contributions made by employees of those entities to his campaign committee and PAC, he may have violated the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁴⁵

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁴⁶ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Murtha accepted campaign contributions from the PMA Group and its clients, Concurrent Technologies Corporation or anyone else in return for legislative assistance by way of federal earmarks, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁴⁷ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

⁴⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁴⁶ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

⁴⁷ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁴⁸

By funneling federal funds to clients of the PMA Group, the lobbying firm of a former staff member, Rep. Murtha may have dispensed special favors and violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁴⁹ This ethics standard is considered to be “the most comprehensive provision of the code.”⁵⁰ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁵¹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁵² making false

⁴⁸ Id.

⁴⁹ Rule XXIII, clause 1.

⁵⁰ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁵¹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁵² House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

statements to the Committee,⁵³ criminal convictions for bribery,⁵⁴ or accepting illegal gratuities,⁵⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁶

If Rep. Murtha accepted campaign contributions in return for legislative favors in the form of earmarks, his conduct would not reflect creditably on the House in violation of Rule XXIII, clause 1.

Threat to Deny Spending Projects

After Rep. Mike Rogers (R-MI) offered a procedural motion on May 10, 2007, that would have stripped a \$23 million earmark from the intelligence authorization bill designated for the National Drug Intelligence Center (“NDIC”) and have the Department of Justice’s Inspector General audit the effectiveness of the center, located in Rep. Murtha’s district, Rep. Murtha approached Rep. Rogers on the House floor and stated, “I hope you don’t have any earmarks in the defense appropriations bills because they are gone, and you will not get any earmarks now and forever.”⁵⁷ Rep. Rogers replied, “This is not the way we do things here,” and, “is that supposed to make me afraid of you?” Rep. Murtha retorted, “That’s the way I do it.”⁵⁸

⁵³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁵⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁵⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁵⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁵⁷ Jake Tapper, Dem. Rep. Murtha Accused Of Ethics Violation, *ABC News*, May 18, 2007 (Exhibit 34).

⁵⁸ Id.

Although Rep. Rogers declined to file a formal ethics complaint, he described Rep. Murtha's actions as "cajoling, bullying, threatening intimidation and they crossed a line."⁵⁹ On May 22, 2007, a resolution aimed at reprimanding Rep. Murtha for threatening Rep. Rogers' earmark was permanently tabled on a 219-189 vote.⁶⁰ Rep. Michael Doyle (D-PA) was the only member of the House ethics committee to vote to table the resolution.⁶¹ The other members of the committee voted present, except for Chair Stephanie Tubbs Jones (D-OH) who did not vote.⁶² Finally, on May 23, 2007, Rep. Murtha apologized to Rep. Rogers for his "outburst."⁶³

Earlier in May, Rep. Murtha had threatened Rep. Todd Tiahrt (R-KS), the only Republican member to sit on both the House Intelligence Committee and the Defense Appropriations Committee, for voting in favor of Rep. Rogers' amendment to kill the NDIC in the intelligence committee mark-up.⁶⁴ Rep. Murtha approached Rep. Tiahrt on the House floor and unleashed a finger-pointing tirade at the other lawmaker, during which he [Rep. Murtha] threatened to withdraw his support from a defense project associated with the Boeing company in Rep. Tiahrt's district.⁶⁵ When confronted, Rep. Tiahrt explained that he had not known the earmark had been inserted by Rep. Murtha. Asked about the issue later, Rep. Tiahrt claimed, "It was a little misunderstanding," and refused to discuss the matter.⁶⁶ After his conversation with Rep. Murtha, Rep. Tiahrt apparently changed his position regarding the NDIC earmark; despite having voted for Rep. Rogers' amendment in committee, he voted against it on the House floor.⁶⁷

House Rule XXIII, Clause 16 provides:

A Member, Delegate, or Resident Commissioner may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit,

⁵⁹ Susan Davis, Rogers, Murtha To Battle, *Roll Call*, May 21, 2007 (Exhibit 35).

⁶⁰ Democratic Earmark Reforms Lasted 100 Days, *Las Vegas Review-Journal*, June 5, 2007 (Exhibit 36).

⁶¹ Jonathan Kaplan and Jackie Kucinich, Dems Save Murtha A Slap, *The Hill*, May 23, 2007 (Exhibit 37).

⁶² Id.

⁶³ Jackie Kucinich, Rep. Murtha Apologizes To Rep. Rogers, *The Hill*, May 24, 2007 (Exhibit 38).

⁶⁴ Alexander Bolton, Tiahrt Vote On Project Irks Murtha, *The Hill*, May 7, 2007 (Exhibit 39).

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Intelligence Authorization Act for FY 2008, Vote on Motion to Recommit, May 10, 2007 (Exhibit 40).

or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner. For purposes of this clause and clause 17, the terms "congressional earmark," "limited tax benefit," and "limited tariff benefit" shall have the meanings given them in clause 9 of rule XXI.

Rule XXI, clause 9(d) provides:

For the purpose of this clause, the term "congressional earmark" means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula driven or competitive award process.

Rep. Murtha's threat to block any congressional earmarks requested by Rep. Rogers in retaliation for Rep. Rogers' efforts to strip Rep. Murtha's earmark out of legislation and his threat to withdraw his support for a project in Rep. Tiahart's district in retaliation for Rep. Tiahrt's committee vote to kill the NDIC violate Rule XXIII, clause 16 and do not reflect creditably on the House.

REP. STEVE PEARCE

Rep. Steve Pearce (R-NM), is a third-term member of Congress representing the 2nd district of New Mexico. Rep. Pearce's ethics issues stem from his failure to properly report a transaction on his financial disclosure report and from trading legislative assistance for campaign contributions.

Lea Fishing Tools, Inc.

Rep. Pearce was the president of Lea Fishing Tools from which, in 2002, he drew a salary of \$277,352 and held stock worth between \$1 and \$5 million.¹ In the fall of 2003, Rep. Pearce sold the company's assets to Key Energy,² in exchange for 542,477 shares of common stock.³ Rep. Pearce failed to report the transaction on his 2003 financial disclosure report.⁴ In that report, Rep. Pearce indicated only that he was the president of Trinity Industries, Inc. "F/K/A Lea Fishing Tools, Inc." and that he held between \$5 and \$25 million of stock in the company.⁵ Given that all of Lea Fishing Tools' assets were transferred to Key Energy, it appears that Trinity Industries may be a holding company for the Key Energy stock, but this is unclear.

The Ethics in Government Act of 1978 provides that the Attorney General may seek a civil penalty of up to \$11,000 against an individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.⁶ In addition, knowingly and willfully making any materially false, fictitious or fraudulent statement or representation, or falsifying, concealing or covering up a material fact in a filing under the Ethics in Government Act is a federal crime.⁷ Finally, House rule 26 provides that title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the House, meaning that the Committee on Standards of Official Conduct may also impose penalties for violations.⁸

¹ Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2002, filed May 15, 2003, pp.1, 2 (Exhibit 1).

² Pearce Sells His Hobbs Business, *Associated Press*, October 8, 2003 (Exhibit 2).

³ Key Energy Services, Inc., SEC Form 424B5, filed October 3, 2003 (Exhibit 3).

⁴ Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2003, filed May 12, 2004 (Exhibit 4).

⁵ Id., pp. 2, 6.

⁶ 5 U.S.C. app. 4, § 104.

⁷ 18 U.S.C. § 1001.

⁸ Financial Disclosure Instruction Booklet, Form A, Failure to File or Falsifying Disclosure Statements.

After selling Lea Fishing Tools' assets to Key Energy, Rep. Pearce was required to report the sale on his financial disclosure form as a transaction. The instruction booklet provides that filers must include:

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.⁹

In other words, filers must report each purchase, sale, or exchange of real property or securities by themselves, their spouse, or dependent child when the category of value of the transaction, or series of transactions in one type of property, exceeds \$1,000 in a calendar year.¹⁰ "Practically any security or real property that [the filer] purchased, sold, or exchanged during the year will have to be reported on both Schedule III and Schedule IV of FORM A."¹¹

Rep. Pearce appears to have violated the Ethics in Government Act, 18 U.S.C. § 1001 and House rules by failing to list the sale of Lea Fishing Tools' assets on his financial disclosure forms.

Otero Mesa

Rep. Pearce has been a consistent and strong advocate of drilling in Otero Mesa, New Mexico despite environmentalists' and the Bureau of Land Management's (BLM) assertions that only a minuscule amount of oil and natural gas lie beneath the grasslands.¹² Rep. Pearce, however, contends that drilling in the area would keep natural gas prices level and create jobs, thereby stimulating the state's economy.¹³ Initially, the BLM opposed opening the area, arguing that drilling would both directly and indirectly destruct the habitat for wildlife.¹⁴ In 2000, however, BLM reversed its decision and proposed a plan that would open nearly 1.4 million

⁹ Instruction Booklet, Transactions.

¹⁰ Id.

¹¹ Id.

¹² The Environmental Working Group, Who Owns The West? (Exhibit 5); Michael Coleman, Pearce Otero Mesa Stand Earns Environmental Ire, *Albuquerque Journal*, October 19, 2003 (Exhibit 6).

¹³ Id.

¹⁴ The Environmental Working Group, Who Owns the West?.

acres to drilling.¹⁵ The BLM turnaround coincided with the largest lease holder in the Otero Mesa, Yates Petroleum, donating over \$230,000 to the GOP over the last three election cycles.¹⁶

Not coincidentally, Yates Petroleum has been the single largest donor to Rep. Pearce's campaign committees since 2002 with \$32,490 in donations.¹⁷ Individually, members of the Yates family have contributed \$78,379.99 to Rep. Pearce since he first ran for office in 2002.¹⁸

Similarly, Chase Petroleum holds twenty-one leases in Otero County¹⁹ and members of the Chase family have donated \$51,200 to Rep. Pearce's committee since 2002.²⁰ In addition,

¹⁵ Id.

¹⁶ Id.

¹⁷ The Center for Responsive Politics, Steve Pearce: Career Profile Top Contributors, election cycles 2002-2006 (Exhibit 7).

¹⁸ Stevan E. Pearce for Congress, FEC Form 3, Pre-Primary Report 2002, May 25, 2002, pp. 31-32 (Exhibit 8); FEC Form 3, July Quarterly Report 2002, July 15, 2002, pp. 57-59 (Exhibit 9); FEC Form 3, October Quarterly Report 2002, February 15, 2003, pp. 77, 145, 156, 158, 159 (Exhibit 10); FEC Form 3, Pre-General Report 2002, April 11, 2003, pp. 48-50 (Exhibit 11); FEC Form 3, April Quarterly Report 2003, April 15, 2003, p. 45 (Exhibit 12); FEC Form 3, July Quarterly Report 2003, July 15, 2003, p. 21-22 (Exhibit 13); FEC Form 3, October Quarterly Report 2003, October 15, 2003, p. 35 (Exhibit 14); FEC Form 3, April Quarterly Report 2004 Amend, September 9, 2004, pp. 96-99 (Exhibit 15); FEC Form 3, Post-General Report 2004, December 2, 2004, pp. 46-47 (Exhibit 16); FEC Form 3, July Quarterly Report 2005, July 15, 2005, p. 50 (Exhibit 17); FEC Form 3, October Quarterly Report 2005, October 15, 2005, pp. 49-50 (Exhibit 18); FEC Form 3, October Quarterly Report 2005, April 9, 2007, p. 50 (Exhibit 19); FEC Form 3, October Quarterly Report 2005, February 28, 2006, p. 51 (Exhibit 20); FEC Form 3, Year-End Report 2005, January 31, 2006, p. 28 (Exhibit 21); FEC Form 3, Pre-Primary Report 2006, May 25, 2006, pp. 28-30 (Exhibit 22); FEC Form 3, October Quarterly Report 2006, October 15, 2006, p. 129 (Exhibit 23); FEC Form 3, April Quarterly Report 2007, May 1, 2007, pp. 44-45 (Exhibit 24).

¹⁹ The Environmental Working Group, Who Owns The West?

²⁰ Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2002, July 15, 2002, pp. 12-15 (Exhibit 25); FEC Form 3, Pre-General Report 2002, April 11, 2003, pp. 10-11 (Exhibit 26); FEC Form 3, October Quarterly Report 2002, October 15, 2003, p. 10 (Exhibit 27); FEC Form 3, July Quarterly Report 2004, September 9, 2004, pp. 15-16 (Exhibit 28); FEC Form 3, Year-End Report 2005, January 31, 2006, pp. 8-9 (Exhibit 29); FEC Form 3, Pre-Primary Report 2006, April 10, 2007, pp. 8-9 (Exhibit 30); FEC Form 3, Pre-Primary Report 2006, August 14, 2006, p. 10 (Exhibit 31); FEC Form 3, July Quarterly Report 2007, July 12, 2007, p. 33-34 (Exhibit 32).

Marbob Energy holds eighty-nine drilling leases²¹ and its PAC has contributed \$20,500 to Rep. Pearce's PAC since 2002.²²

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.²³ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.²⁴

If, as it appears, Rep. Pearce accepted donations to his campaign and political action committees in direct exchange for advocating drilling in Otera Mesa, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.²⁵ By using his position as a member of Congress to benefit oil companies in exchange for campaign contributions, Rep. Pearce may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.²⁶ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a

²¹ The Environmental Working Group, Who Owns The West?.

²² The Center for Responsive Politics, Steve Pearce: Career Profile (since 2002) Top Contributors.

²³ 18 U.S.C. § 201(b)(2)(A).

²⁴ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

²⁵ 18 U.S.C. §1341.

²⁶ 18 U.S.C. § 201(c)(1)(B).

specific action taken by or to be taken by the government official.²⁷

If a link is established between Rep. Pearce advocating drilling in Otera Mesa and the campaign donations made to him by Yates Petroleum, Chase Petroleum and Marbob Energy, Rep. Pearce might be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.²⁸

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”²⁹ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Pearce accepted campaign contributions from oil companies and individuals associated with oil companies in return for advocating drilling in Otera Mesa, he may have violated 5 U.S.C. § 7353 and House Rule XXIII.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³⁰ This ethics

²⁷ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

²⁸ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

²⁹ See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

³⁰ Rule XXIII, cl. 1.

standard is considered to be “the most comprehensive provision of the code.”³¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,³³ making false statements to the Committee,³⁴ criminal convictions for bribery,³⁵ or accepting illegal gratuities,³⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁷

Rep. Pearce may have accepted campaign contributions in return for advocating for drilling in Otera Mesa. Given that accepting anything of value in exchange for official action does not reflect creditably on the House, Rep. Pearce may have violated House Rule XXIII, clause 1.

³¹ House Comm. on Standards of Official Conduct, House Ethics Manual.

³² House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. RICK RENZI

Rep. Rick Renzi (R-AZ) is a third-term member of Congress, representing Arizona's 1st congressional district. Rep. Renzi's ethics issues stem from assistance he offered to a former business partner and legislation he sponsored that benefitted his father's employer. Rep. Renzi was included in CREW's 2006 congressional corruption report.

Suspect Land Deal

Just before Rep. Renzi's reelection in 2006, federal authorities began investigating whether Rep. Renzi used his position as a member of Congress to promote the sale of land owned by his former business partner.¹ In 2005, mining company Resolution Copper sought to mine for copper in Superior, Arizona.² Before mining could commence however, Resolution needed Congress to approve a land swap of 5,000 acres of private land for 3,000 acres of public land near the mining area.³ Rep. Renzi agreed to support the land exchange bill if, as part of the swap, Resolution bought a 480-acre alfalfa field in his hometown, Sierra Vista, owned by Rep. Renzi's former business partner, James Sandlin.⁴

After Resolution Copper refused the deal, Rep. Renzi solicited the Petrified Forest Group, an investment group that was looking to put together a separate land swap, to purchase the land for \$4 million.⁵ Philip Aries, a land-swap expert who was part of the group, stated that Rep. Renzi told him that if the Petrified Forest Group bought the land, he would make sure that the swap got through the Natural Resources Committee.⁶ After the group purchased the alfalfa field, Resolution Copper complained that Petrified Forest had received priority treatment and Rep. Renzi dropped his support for the land swap.⁷

Rep. Renzi's former chief of staff resigned over the deal and has been cooperating with the FBI as are executives of Resolution Copper and the Petrified Forest Group.⁸

¹ John Wilke, Land Swap Plan Causes Trouble For Congressman, *Wall Street Journal*, April 21, 2007 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Wilke, *Wall Street Journal*, Apr. 21, 2007.

⁶ Id.

⁷ Id.

⁸ Id.

Federal authorities are investigating whether a \$200,000 payment Mr. Sandlin made in May 2005 to Rep. Renzi is connected to the land deal.⁹ The payment was made the same day that Mr. Sandlin received the first payment from the Petrified Forest Group, and went to a wine company owned by Rep. Renzi.¹⁰ A few days later, the wine company was sold to Rep. Renzi's father.¹¹

Rep. Renzi has claimed that Mr. Sandlin paid the \$200,000 to settle a debt stemming from a previous business transaction involving land in northeast Arizona.¹² This explanation is contradicted, however, by the fact that Rep. Renzi failed to report the payment on his 2005 financial disclosure form.¹³ In addition, questions have been raised as to why Mr. Sandlin paid the wine company \$200,000 when the alleged debt bore no relation to the wine company business.¹⁴ The suggestion is that it may have been done to avoid disclosure.¹⁵

On April 19, 2007, Rep. Renzi's business offices were raided by FBI agents.¹⁶ As a result of the federal investigation, Rep. Renzi has stepped down from the House Intelligence Committee, the Natural Resources Committee and the Committee on Financial Services.¹⁷

According to FEC reports released in July 2007, Rep. Renzi paid over \$130,000 in legal fees to Nixon Peabody LLP, Grant Woods P.C. and Patton Boggs LLP during the second quarter of 2007.¹⁸

⁹ Wilke, *Wall Street Journal*, Apr. 21, 2007.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Rep. Rick Renzi, Personal Financial Disclosure Statement 2005, filed May 15, 2006 (Exhibit 2).

¹⁴ Alexander Bolton, Renzi Didn't Reveal \$200K, *The Hill*, April 25, 2007 (Exhibit 3).

¹⁵ Id.

¹⁶ Mike Madden, Renzi's Taxes Telling, *Arizona Republic*, May 2, 2007 (Exhibit 4).

¹⁷ Mike Madden, Renzi Drops House Committee Posts, *The Arizona Republic*, April 25, 2007 (Exhibit 5).

¹⁸ Rick Renzi for Congress Committee, FEC Form 15 July Quarterly Report 2007, pp.36, 43, 52 (Exhibit 6).

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.¹⁹ If Rep. Renzi accepted \$200,000 from Mr. Sandlin in return for persuading the Petrified Forest Group to purchase Mr. Sandlin's alfalfa field at a price higher than the property's worth, he may have accepted a bribe in violation of 18 U.S.C. § 201(b)(2)(A).

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption. 18 U.S.C. § 1341.

By using his position as a member of Congress to push Resolution Copper and the Petrified Forest Group to purchase land from Mr. Sandlin in exchange for legislative assistance, and by receiving \$200,000 from Mr. Sandlin in return for that assistance, Rep. Renzi likely deprived his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.²⁰ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.²¹ By using his position on the Natural Resources Committee to push the Petrified Forest Group to purchase Mr. Sandlin's land in return for a \$200,000 payment from Mr. Sandlin, Rep. Renzi may have violated the illegal gratuity statute.

¹⁹ 18 U.S.C. § 201(b)(2)(A).

²⁰ 18 U.S.C. § 201(c)(1)(B).

²¹ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.²²

Lying on Financial Disclosure Forms

The Ethics in Government Act of 1978 provides that the Attorney General may seek a civil penalty of up to \$11,000 against an individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.²³ In addition, knowingly and willfully making any materially false, fictitious or fraudulent statement or representation, or falsifying, concealing or covering up a material fact in a filing under the Ethics in Government Act is a federal crime.²⁴ Finally, House rule XXVI provides that title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the House, meaning that the Committee on Standards of Official Conduct may also impose penalties for violations.²⁵

The instruction booklet accompanying the financial disclosure statement form provides that filers must include:

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.²⁶

In other words, filers must report each purchase, sale, or exchange of real property or securities by themselves, their spouse, or dependent child when the category of value of the transaction, or series of transactions in one type of property, exceeds \$1,000 in a calendar year.²⁷

²² *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

²³ 5 U.S.C. app. 4, § 104.

²⁴ 18 U.S.C. § 1001.

²⁵ Financial Disclosure Instruction Booklet, Form A, Failure to File or Falsifying Disclosure Statements.

²⁶ Instruction Booklet, Transactions.

²⁷ Id.

By failing to report Mr. Sandlin's alleged payment of \$200,000 to settle a debt related to a previous business transaction, Rep. Renzi violated 18 U.S.C. § 1001, the Ethics in Government Act and House rules.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."²⁸ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should "[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not."²⁹

In addition, House conflict-of-interest rules provide that a member should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance" of his official duties.³⁰ To do so "would raise the appearance of undue influence or breach of the public trust."³¹

By using his position to persuade the Petrified Forest Group to purchase the alfalfa field from Mr. Sandlin, and by receiving \$200,000 from Mr. Sandlin, apparently in return for his assistance in brokering the land purchase, Rep. Renzi may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a) and run afoul of the conflict-of-interest rules.

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people,

²⁸ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁹ Id.

³⁰ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

³¹ Id.

including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”³² House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Renzi sought payment from Mr. Sandlin for persuading the Petrified Forest Group to purchase Mr. Sandlin’s property, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”³³ This ethics standard is considered to be “the most comprehensive provision of the code.”³⁴ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.³⁵ This rule has been relied on by the ethics committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,³⁶ making false

³² See House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

³³ Rule XXIII, cl. 1.

³⁴ House Comm. on Standards of Official Conduct, House Ethics Manual.

³⁵ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

statements to the committee,³⁷ criminal convictions for bribery,³⁸ or accepting illegal gratuities,³⁹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴⁰

By offering to push a land swap deal through Congress that financially benefitted his former business partner and likely himself as well, Rep. Renzi engaged in conduct that does not reflect creditably on the House. As a result, the Committee on Standards of Official Conduct should investigate this matter further.

Rep. Renzi Sponsored Legislation Financially Benefitting His Father

Federal authorities in Arizona have opened an investigation into whether Rep. Renzi violated any laws by sponsoring legislation that benefitted his father's employer, ManTech International Corp.⁴¹

In 2003, Rep. Renzi sponsored legislation (signed into law in November 2003) that earmarked hundreds of millions of dollars to his father's business while, according to environmentalists, devastating the San Pedro River.⁴² The provision, which was added to the National Defense Authorization Act for Fiscal Year 2004, exempted the Army's Fort Huachuca

³⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

³⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁴⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴¹ David Johnston, Congressman From Arizona Is The Focus Of An Inquiry, *New York Times*, October 25, 2006 (Exhibit 7).

⁴² Julie Cart, A Threat To A Lifeline In Arizona, *Los Angeles Times*, September 25, 2003 (Exhibit 8).

base in Sierra Vista, Arizona from maintaining water levels in the San Pedro River as called for in an agreement made in 2002 with the U.S. Fish and Wildlife Service.⁴³ Rep. Renzi claimed he introduced the measure to prevent the closing of the Fort.⁴⁴ Environmentalists, however, concerned about the impact Fort Huachuca's expansion may have on water consumption and the fate of the San Pedro River, argued that as the fort expands, so too would the local population, draining water from the river.⁴⁵ Notably, neither the fort nor the river is located in Rep. Renzi's district.⁴⁶

A key beneficiary of Rep. Renzi's legislation was ManTech, a Fairfax, Virginia based defense contractor where Rep. Renzi's father, Retired Major General Eugene Renzi, is an executive vice president.⁴⁷ General Renzi served at Fort Huachuca during his career in the military.⁴⁸ ManTech had \$467 million in contracts at Fort Huachuca with options for an additional \$1.1 billion between 2004 through 2008.⁴⁹ In addition, the company, which has an office in Sierra Vista, Arizona, was the largest contributor to Renzi's 2002 congressional campaign and the second largest in his 2004 campaign.⁵⁰

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵¹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵² If Rep. Renzi accepted campaign contributions from employees of ManTech in exchange for pushing

⁴³ Id.

⁴⁴ John Dougherty, River Gamble, *Phoenix New Times*, September 18, 2003 (Exhibit 9).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Dougherty, *Phoenix New Times*, Sept. 18, 2003.

⁴⁹ Brody Mullins, Renzi Under Fire For Defense Provision, *Roll Call*, September 11, 2003 (Exhibit 10).

⁵⁰ The Center for Responsive Politics, Rep. Rick Renzi: Top Contributors, 2002- 2004 election cycles (Exhibit 11).

⁵¹ 18 U.S.C. § 201(b)(2)(A).

⁵² McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

through legislation benefitting the company, he would be in violation of 18 U.S.C. § 201(b)(2)(A).

Honest Services Fraud

By using his position as a member of Congress to push legislation that would benefit ManTech and therefore his father, Rep. Renzi may be depriving his constituents, the House of Representatives, and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

If a link is established between Rep. Renzi's actions on behalf of ManTech and his acceptance of generous campaign donations, Rep. Renzi would be in violation of the illegal gratuity statute.

5 U.S.C. § 7353 and House Rules

If Rep. Renzi accepted campaign contributions from Man Tech and its associates in return for legislative assistance by way of earmarks he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

By funneling federal funds to ManTech, a company that employed his father as an executive vice president, Rep. Renzi may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a) and run afoul of the conflict-of-interest rules.

Conduct Not Reflecting Creditably on the House

By pushing legislation which stood to financially benefit his father, Rep. Renzi may have engaged in conduct that does not reflect creditably on the House. As a result, the Committee on Standards of Official Conduct should investigate this matter further.

REP. HAROLD ROGERS

Rep. Harold Rogers (R-KY) is a 14th-term member of Congress representing Kentucky's 5th congressional district. Rep. Rogers is the ranking member of the House Appropriations Subcommittee on Homeland Security and its former chair, where he was responsible for the \$41.1 billion Department of Homeland Security (DHS) budget.¹

Rep. Rogers' ethics issues stem from misuse of his position to steer millions of dollars in earmarks to campaign contributors, including a company that employs his son. A newspaper in his district, *The Lexington Herald-Leader*, has called Rep. Rogers the "Prince of Pork."²

NucSafe Inc.

NucSafe Inc. is a privately held corporation that specializes in radiation detection technology, primarily for use in airports.³ In 2001, NucSafe executives met with Rep. Rogers, his staff and representatives of a local development group that Rep. Rogers co-founded.⁴ Two years later, the company relocated its manufacturing operations to Corbin, Kentucky,⁵ in Rep. Rogers' district.⁶

Between 2004 and 2005, NucSafe executives gave \$11,200 to Rep. Rogers' reelection campaign committee and his leadership PAC, Help America's Leaders Political Action Committee (HALPAC).⁷ In 2005, NucSafe was awarded a \$1.8 million grant from a DHS agency.⁸ Richard Seymour, who runs NucSafe, has admitted: "It's no secret we've gotten

¹ Department of Homeland Security Press Release, US Department of Homeland Security FY 2006 Budget Request Includes Seven Percent Increase, February 7, 2005 (Exhibit 1).

² Eric Lipton, In Kentucky Hills, A Homeland Security Bonanza, *The New York Times*, May 14, 2006 (Exhibit 2).

³ <http://www.nucsafe.com/> (Exhibit 3).

⁴ Robert O'Harrow & Scott Higham, Post 9/11 Rush Mixed Politics with Security, *The Washington Post*, December 25, 2005 (Exhibit 4).

⁵ Id.

⁶ CQ Moneyline, Map of Rep. Rogers' congressional district, July 10, 2007 (Exhibit 5).

⁷ Hal Rogers for Congress, FEC Form 3, July Quarterly Report 2004, September 14, 2004, pp. 19, 29, 30 (Exhibit 6); Hal Rogers for Congress, FEC Form 3, October Quarterly Report 2005, September 15, 2005, pp. 55, 80, 99, 100 (Exhibit 7); Hal Rogers for Congress FEC Form 3, Post General Report 2003, December 3, 2003, p. 26 (Exhibit 8).

⁸ O'Harrow & Higman, *The Washington Post*, Dec. 25, 2005.

support from congressman [sic] Rogers.”⁹

Accenture and Raytheon

Accenture LLP is a global management consulting, technology services and outsourcing company.¹⁰ In May 2004, DHS awarded Accenture a five-year contract worth potentially \$10 billion to support the Smart Border Alliance US-VISIT Program.¹¹ The US-VISIT program is part of a continuum of security measures that tracks international visitors virtually using a finger scan.¹² It has been plagued with cost overruns and delays and, two years after the contract was awarded, it was tracking less than 1% of visitors to the U.S.¹³ In September 2004, Accenture subcontracted the program to three companies, including Raytheon Company.¹⁴ Raytheon specializes in military and homeland security technology.¹⁵

Between 2003 and 2005, Raytheon and Accenture donated \$31,000 to HALPAC.¹⁶

⁹ Id.

¹⁰ Accenture Press Release, Accenture Announces Key Smart Border Alliance Subcontracts for US-VISIT Program, September 3, 2004 (Exhibit 9).

¹¹ Department of Homeland Security Press Release, Department of Homeland Security Announces Award of US-VISIT Prime Contract To Accenture LLP, June 1, 2004 (Exhibit 10).

¹² <http://www.raytheon.com/about/> (Exhibit 11).

¹³ Editorial, Congressman Rogers' Neighborhood, *The American Prospect*, January 2006 (Exhibit 12).

¹⁴ Accenture Press Release, September 3, 2004.

¹⁵ <http://www.raytheon.com/about/>

¹⁶ Help America's Leaders PAC, FEC Form 3, June Monthly Report 2004, November 19, 2004, p. 34 (Exhibit 13); Help America's Leaders PAC, FEC Form 3, July Monthly Report 2004, November 19, 2004, pp. 18, 25 (Exhibit 14); Help America's Leaders PAC, FEC Form 3, March Monthly Report 2004, March 16, 2004, p. 19 (Exhibit 15); Help America's Leaders PAC, FEC Form 3, December Monthly Report 2004, February 6, 2004, p. 24 (Exhibit 16); Help America's Leaders PAC, FEC Form 3, February Monthly Report 2004, May 6, 2004, p. 10 (Exhibit 17); Help America's Leaders PAC, FEC Form 3, April Monthly Report 2004, November 19, 2004, p. 27 (Exhibit 18); Help America's Leaders PAC, FEC Form 3, June Monthly Report 2004, November 19, 2004, p. 22 (Exhibit 19); Help America's Leaders PAC, FEC Form 3, May Monthly Report 2004, January 24, 2005, p. 12 (Exhibit 20); Help America's Leaders PAC, FEC Form 3, June Monthly Report 2006, June 19, 2006, p. 14 (Exhibit 21); Help America's Leaders PAC, FEC Form 3, September Monthly Report 2006, September 20, 2006, p. 8 (Exhibit 22); Help America's Leaders PAC, FEC Form 3, September Monthly Report 2005, September 19, 2005, p. 13 (Exhibit 23); Help America's Leaders PAC, FEC Form 3, May Monthly Report

Identification Card Industry

Since 1998, Rep. Rogers has been involved in efforts to bring to his district companies involved in producing the Transportation Worker Identification Credential (“TWIC”).¹⁷ Toward that end, he has inserted language in appropriations bills requiring the cards to be produced in Corbin, Kentucky, using technology also located there. Companies involved with the technology and that have donated money to HALPAC and Rep. Rogers’ campaign committee have benefitted financially as a result.¹⁸

In 1998, the Clinton administration needed congressional approval to begin producing new, fraud-resistant green cards for legal immigrants.¹⁹ In order to receive an endorsement from Rep. Rogers, the administration agreed that the production plant could be located in Corbin, Kentucky.²⁰ In 2002, the government proposed TWICs as a new type of smart card, which relied on fingerprint identification through the use of tiny computer chips. In response, Rep. Rogers inserted language into appropriations bills that conditioned DHS funding for the TWICs on the requirement that the government use the same technology as the green card and produce the new cards at the existing production plants in Corbin, Kentucky.²¹ In 2003, Rep. Rogers again inserted language in a report urging DHS to use existing production plants and blocked spending until that happened.²²

Rep. Rogers also mandated that DHS hire a contractor, at a cost of \$4 million, to study the differing technologies of the green and smart cards. The study concluded that the smart card approach was far superior.²³ In an effort to speed up production, contractors initially planned to produce the prototype cards in Pennsylvania.²⁴ To comply with Rep. Rogers mandate that all cards be produced in Kentucky, DHS required that the work be moved to Corbin, despite the fact that only a small number of cards were being printed and moving the smart card printing

2006, June 19, 2006, p. 14 (Exhibit 24); Help America’s Leaders PAC, FEC Form 3, July Monthly Report 2006, July 20, 2006, p. 11 (Exhibit 25).

¹⁷ Lipton, *The New York Times*, May 14, 2006.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Lipton, *The New York Times*, May 14, 2006.

²² Id.

²³ Id.

²⁴ Id.

equipment added both expense and delay.²⁵ Under Rep. Rogers' still existing mandate, any production of transportation worker cards will have to occur in Corbin, Kentucky.²⁶

Other companies with close connections to Rep. Rogers were involved in early testing of the identification cards. In 2004, a Virginia-based company, BearingPoint, selected Senture, a call-center service provider, to set up a call-center for a test of a prototype transportation worker card.²⁷ Just before BearingPoint awarded the contract, Senture hired Rep. Rogers' son John as a computer systems administrator.²⁸ Shortly after opening its doors in 2003, Senture won an unrelated \$4 million contract with DHS to field calls from truckers.²⁹

Between 2003 and 2005, Senture officials donated \$12,000 to Rep. Rogers' PAC.³⁰ BearingPoint officials and the lobbying firm that represents BearingPoint, Van Scoyoc, also donated \$29,898 to Rep. Rogers' re-election campaign and PAC between 2002 and 2005.³¹

²⁵ Lipton, *The New York Times*, May 14, 2006.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Lipton, *The New York Times*, May 14, 2006.

³¹ BearingPoint Inc Public Services PAC, FEC form 3, February Monthly Report 2006, July 20, 2006, p. 13 (Exhibit 26); Van Scoyoc Association PAC, FEC Form 3, August Monthly Report 2004, August 20, 2004, p. 18 (Exhibit 27); Van Scoyoc Association PAC, FEC Form 3, June Monthly Report 2004, June 14, 2004, p. 19 (Exhibit 28); Van Scoyoc Association PAC, FEC Form 3, Pre-General Report 2004, October 21, 2004, p. 20 (Exhibit 29); Van Scoyoc Association PAC, FEC Form 3, Pre-General Report 2002, October 17, 2002, p. 12 (Exhibit 30); Help America's Leaders PAC, FEC Form 3, May Monthly Report 2005, September 8, 2005, p. 7 (Exhibit 31); Help America's Leaders PAC, FEC Form 3, September Monthly Report 2005, September 19, 2005, p. 8 (Exhibit 32); Help America's Leaders PAC, FEC Form 3, April Monthly Report 2006, April 18, 2006, p. 7 (Exhibit 33); Help America's Leaders PAC, FEC Form 3, October Monthly Report 2002, December 23, 2002, p. 39 (Exhibit 34); Hal Rogers for Congress, FEC Form 3, Mid Year Report 2001, December 15, 2001, p. 28 (Exhibit 35); Hal Rogers for Congress, FEC Form 3, Post General Report 2004, December 2, 2004, p. 22 (Exhibit 36); Hal Rogers for Congress, FEC Form 3, October Quarterly Report 2003, October 15, 2003, p. 13 (Exhibit 37); Help America's Leaders PAC, FEC Form 3, August Monthly Report 2003, September 16, 2003, pp. 6, 9, 13, 18, 22, 28 (Exhibit 38); Help America's Leaders PAC, FEC Form 3, Year End Report 2003, March 9, 2003, p. 9 (Exhibit 39); Help America's Leaders PAC, FEC Form 3, Pre-General Report 2004, October 21, 2004, pp. 6, 8 (Exhibit 40); Help America's Leaders PAC, FEC Form 3, June Monthly Report 2004, December 19, 2004, p. 11 (Exhibit 41); Help America's Leaders PAC, FEC Form 3, May Monthly Report 2004, December 19, 2004, p.

Executives at three other companies involved in the testing of the identification cards in Corbin – LaserCard Systems, Maximus and Shenandoah Electronic Intelligence – collectively donated \$20,500 to HALPAC between 2002 and 2004.³²

American Association of Airport Executives

Rep. Rogers' staff repeatedly pressed DHS to hire the American Association of Airport Executives to handle background checks for transportation workers.³³ The trade association has longstanding ties with Rep. Rogers, having funded trips he took with his wife worth more than \$75,000. As a result of these trade association-financed trips, Rep. Rogers ranked 7th among members in terms of travel gifts accepted.³⁴ In addition, the American Association of Airport Executives, through its executives and political action committee, contributed at least \$18,000 to Rep. Rogers over a four-year period.³⁵

When Rep. Rogers was unable to persuade DHS to hire the trade association for the identification card program, he inserted language into DHS's 2006 appropriations bill mandating a no-bid contract with the association.³⁶ Association executives along with Daon, a biometrics software company, set up a for-profit venture to handle the promised work, but it never materialized after pressure from Daon's business rivals to rescind the deal.³⁷

Reveal Imaging Technologies

Reveal Imaging Technologies is a Massachusetts-based company that builds explosive-detection machines for use at airports.³⁸ Beginning in 2004 and continuing through 2006, Reveal

10 (Exhibit 42); Help America's Leaders PAC, FEC Form 3, July Monthly Report 2004, December 19, 2004, p. 11 (Exhibit 43).

³² Help America's Leaders PAC, FEC Form 3, October Monthly Report 2003, January 10, 2003, p. 32 (Exhibit 44); Help America's Leaders PAC, FEC Form 3, Year End Report 2003, January 29, 2004, p. 8 (Exhibit 45); Help America's Leaders PAC, FEC Form 3, November Monthly Report 2004, December 19, 2004, p. 7 (Exhibit 46); Maximus Inc PAC, FEC Form 3, Year End Report 2003, May 13, 2004, pp. 16, 37 (Exhibit 47); Maximus Inc PAC, FEC Form 3, April Quarterly Report 2004, April 14, 2004, p. 24 (Exhibit 48).

³³ Lipton, *The New York Times*, May 14, 2006.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Lipton, *The New York Times*, May 14, 2006.

³⁸ Editorial, *The American Prospect*, Jan. 2006.

executives made donations to HALPAC that coincided with contracts Reveal obtained from the Transportation Security Administration (TSA), an agency component of DHS. Rep. Rogers has been the strongest proponent for the use of Reveal's detection devices since early 2004, and was the first person to inform the TSA about the technology.³⁹

In October 2003, TSA awarded Reveal a \$2.38 million grant to develop "next-generation" explosive detection equipment for airport baggage.⁴⁰ On October 22, 2003, three days after Reveal announced the TSA grant, Reveal executives gave \$12,500 to HALPAC.⁴¹

Throughout the next year, Rep. Rogers and his staff questioned DHS officials about Reveal's progress in developing the equipment.⁴² In September 2004, Reveal executives donated \$15,000 to HALPAC.⁴³ Nine days after the donations were reported, a House-Senate conference committee chaired by Rep. Rogers mandated that Congress spend \$30 million on next-generation explosive-detection devices currently being tested and piloted.⁴⁴ Of this earmark, \$15 million was for a manufacturing plant in Annville, Kentucky, within Rep. Rogers' district.⁴⁵

In January 2005, the TSA announced its intention to award to Reveal a single-source contract for eight of Reveal's explosive-detection machines.⁴⁶ One month later, the TSA announced it was conducting a pilot program at three airports with Reveal's machines.⁴⁷ Reveal executives donated \$18,000 to HALPAC on March 18, 2005,⁴⁸ and less than two weeks later the TSA announced it was purchasing eight machines from Reveal.⁴⁹

³⁹ *Id.*; O'Harrow & Higman, *The Washington Post*, Dec. 25, 2005.

⁴⁰ Editorial, *The American Prospect*, Jan. 2006.

⁴¹ *Id.*; Help America's Leaders PAC, FEC Form 3, Post General Report 2005, March 18, 2005, pp. 7, 9, 11, 14, 23, 25, 27 (Exhibit 49).

⁴² O'Harrow & Higman, *The Washington Post*, Dec. 25, 2005.

⁴³ Help America's Leaders PAC, FEC Form 3, October Monthly Report 2004, March 18, 2005, pp. 7-9, 11-13 (Exhibit 50).

⁴⁴ O'Harrow & Higman, *The Washington Post*, Dec. 25, 2005.

⁴⁵ *Id.*

⁴⁶ Editorial, *The American Prospect*, Jan. 2006.

⁴⁷ *Id.*

⁴⁸ Help America's Leaders PAC, FEC Form 3, April Monthly Report 2005, April 19, 2005, pp. 6-8, 10, 11 (Exhibit 51).

⁴⁹ Editorial, *The American Prospect*, Jan. 2006.

On August 19, 2005, Reveal executives and board members contributed \$27,000 to HALPAC.⁵⁰ Two months later, on October 20, 2005, Reveal announced it had received a contract from the TSA for \$24.8 million⁵¹ that, with all options exercised, could eventually be worth \$463 million.⁵² One month later, Reveal received a second contract worth \$3.6 million for research expansion.⁵³

In total, nine executive members of Reveal Imaging Technologies and one spouse donated \$97,500 to HALPAC in the 2004 and 2006 election cycles.⁵⁴

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵⁵ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵⁶

If, as it appears, Rep. Rogers accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to NucSafe Inc., he may have violated the bribery statute.

⁵⁰ Help America's Leaders PAC, FEC Form 3, September Monthly Report 2005, September 18, 2005, pp. 6, 7, 9, 10 (Exhibit 52).

⁵¹ O'Harrow & Higman, *The Washington Post*, Dec. 25, 2005.

⁵² Editorial, *The American Prospect*, Jan. 2006.

⁵³ Id.

⁵⁴ Help America's Leaders PAC, FEC Form 3, April Monthly Report 2006, April 18, 2006, pp. 6-8 (Exhibit 53); Help America's Leaders PAC, FEC Form 3, April Monthly Report 2005, April 19, 2005, pp. 6-8, 10, 11 (Exhibit 54); Help America's Leaders PAC, FEC Form 3, February Monthly Report 2004, November 19, 2004, pp. 7, 8 (Exhibit 55); Help America's Leaders PAC, FEC Form 3, June Monthly Report 2006, June 20, 2006, pp. 7, 13 (Exhibit 56); Help America's Leaders PAC, FEC Form 3, June Monthly Report 2004, June 16, 2004, pp. 7-9, 10, 12, 13, 14 (Exhibit 57); Help America's Leaders PAC, FEC Form 3, May Monthly Report 2006, May 19, 2006, p. 9 (Exhibit 58); Help America's Leaders PAC, FEC Form 3, November Monthly Report 2003, February 6, 2004, pp. 7, 9, 11, 14, 23, 25, 27 (Exhibit 59); Help America's Leaders PAC, FEC Form 3, October Monthly Report 2004, October 20, 2004, pp. 7-9, 11-13 (Exhibit 60); Help America's Leaders PAC, FEC Form 3, September Monthly Report 2005, September 19, 2005, pp. 6, 7, 9, 10 (Exhibit 61).

⁵⁵ 18 U.S.C. § 201(b)(2)(A).

⁵⁶ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

If, as it appears, Rep. Rogers accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to Accenture, he may have violated the bribery statute.

If, as it appears, Rep. Rogers accepted campaign donations in direct exchange for earmarking federal funds to BearingPoint, Senture and other companies associated with the identification cards being developed for DHS, he may have violated the bribery statute.

If, as it appears, Rep. Rogers accepted travel gifts financed by the American Association of Airport Executives in exchange for mandating a no-bid contract between DHS and the association, he may have violated the bribery statute.

If, as it appears, Rep. Rogers accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to Reveal Imaging Technologies, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁷ By using his position as a member of Congress to financially benefit a company that employed his son, Rep. Rogers may be depriving his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁵⁸ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁹

If a link is established between Rep. Rogers' actions to earmark funds for NucSafe Inc. and the campaign donations and donations to his PAC that the company's associates made, Rep. Rogers would be in violation of the illegal gratuity statute.

Rep. Rogers, by apparently accepting campaign donations from Accenture and Raytheon

⁵⁷ 18 U.S.C. § 1341.

⁵⁸ 18 U.S.C. § 201(c)(1)(B).

⁵⁹ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

executives in exchange for earmarking funds for a contract under the US-VISIT Program for Accenture and Raytheon, appears to be in violation of 18 U.S.C. § 201(c)(1)(B).

Rep. Rogers, by apparently accepting campaign donations from companies involved in the identification card industry in exchange for mandating that DHS use the companies' technology to produce the cards, appears to be in violation of 18 U.S.C. § 201(c)(1)(B).

Rep. Rogers, by apparently accepting trips funded by the American Association of Airport Executives in exchange for mandating a no-bid DHS contract with the association, appears to be in violation of 18 U.S.C. § 201(c)(1)(B).

Rep. Rogers, by apparently accepting campaign donations from Reveal executives and the company's lobbying firm in exchange for earmarking funds for multiple contracts with Reveal, appears to be in violation of 18 U.S.C. § 201(c)(1)(B).

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁶⁰

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁶¹ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Rogers accepted campaign contributions from executives of NucSafe Inc., Accenture, Raytheon, multiple companies associated with DHS's identification card program and Reveal Technologies in return for legislative assistance by way of earmarking federal funds for projects and contracts associated with the companies, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

⁶⁰ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁶¹ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁶² House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁶³

By funneling federal funds to Senture, which employed his son, Rep. Rogers may have dispensed special favors and violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”⁶⁴ This ethics standard is considered to be “the most comprehensive provision of the code.”⁶⁵ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶⁶ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁶⁷ making false

⁶² House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁶³ Id.

⁶⁴ Rule XXIII, cl. 1.

⁶⁵ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁶⁶ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of*

statements to the Committee,⁶⁸ criminal convictions for bribery,⁶⁹ or accepting illegal gratuities,⁷⁰ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷¹

Rep. Rogers apparently accepted campaign contributions in return for legislative favors that financially benefitted the company that employed his son. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Representative Edward R. Roybal, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

⁶⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

⁶⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁷⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁷¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

REP. DAVID SCOTT

Rep. David Scott (D-GA) is a third-term member of Congress, representing Georgia's 13th district. Rep. Scott's ethics issues stem from allegations of tax evasion and misuse of official resources for political campaign activity.

Tax Evasion

Rep. Scott and his wife, Alfredia Scott, own Dayn-Mark Advertising.¹ In 2003, the company began missing federal income tax payments that now total nearly \$154,000.² Dayn-Mark Advertising has also failed to pay over \$4,600 in local and state taxes since 1998.³ Since 2003, the Scotts have failed to pay \$23,200 in taxes on their home in Georgia.⁴ At the same time the Scotts were failing to pay their taxes, they increased their stock holdings from \$5,000 to about \$67,000 and bought a \$702,000 rowhouse in Washington D.C.⁵ More than 40 tax liens have been placed against Rep. Scott's home and business.⁶

Personal, Business and Campaign Finances

Since Rep. Scott's first congressional bid in 2002, his wife, two daughters, son-in-law and employees of Dayn-Mark have received disbursements from his campaign committee.⁷ From 2002 through the July 2007 Federal Election Commission reporting period, Rep. Scott's campaign committee paid a total of \$124,795.98 to his wife, two daughters and son-in-law⁸, and \$491,382.00 to Dayn-Mark Advertising and its employees⁹. Dayn-Mark has been paid for rent,

¹ Kenneth P. Vogel, Rep. Scott's Finances Questioned, *The Politico*, May 24, 2007 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Rep. David Scott, Personal Financial Disclosures 2003-2006 (Exhibit 2).

⁶ Bob Kemper, Scott Defends Campaign Finances; Taxes Scrutinized, *The Atlanta Journal Constitution*, May 25, 2007 (Exhibit 3).

⁷ Vogel, *The Politico*, May 24, 2007.

⁸ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 4).

⁹ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 5).

office supplies, canvassing management and postage.¹⁰ Rep. Scott has reimbursed himself \$98,952.75 for travel, billboards and fund-raising expenses.¹¹ In total, since 2002, Rep. Scott's campaign committee has disbursed \$715,330.17 to his family, his business, and himself.¹² The payments to his family and company became larger and more frequent in 2003, around the same time Rep. Scott was falling behind on his taxes.¹³

Rep. Scott has denied any wrongdoing.¹⁴

Tax Law Violations

Any person who willfully attempts to evade or defeat a tax, in addition to other penalties, may be imprisoned up to 5 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁵ Any person who commits fraud or makes false statements in connection with filing a tax return may be imprisoned up to 3 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁶

Rep. Scott, by failing to pay taxes on his home and business and by failing to pay property taxes on his Georgia home, may have violated federal and state tax laws.

Misuse of official resources

In July 2007, *The Politico* reported that a staff member alleged Rep. Scott misused his federally funded congressional staff and resources to run his political campaigns.¹⁷ The staffer, Robert Merrill, alleged that Rep. Scott had designated certain congressional employees to do only campaign work, that congressional employees often did campaign work on taxpayer time and used government office equipment, that congressional employees on taxpayer-funded time

¹⁰ Id.

¹¹ See David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 6).

¹² See David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibits 4,5,6).

¹³ Vogel, *The Politico*, May 24, 2007.

¹⁴ Kemper, *The Atlanta Journal Constitution*, May 25, 2007.

¹⁵ 26 U.S.C. § 7201.

¹⁶ 26 U.S.C. § 7206.

¹⁷ Kenneth P. Vogel, Scott Aide Cries Foul, Gets Fired, *The Politico*, July 11, 2007 (Exhibit 7).

did political work from Rep. Scott's advertising firm and that these employees' absences compromised the productivity of the congressional office.¹⁸

Mr. Merrill forwarded e-mails to *The Politico* sent by Rep. Scott's staff from their congressional e-mail accounts organizing a political fundraiser.¹⁹ The e-mails included an itinerary that spelled out roles for Rep. Scott's congressional employees such as manning the sign-in table and taking photographs at the fundraiser.²⁰

According to Mr. Merrill, he was fired from his congressional staff position in June of 2007 for contacting the media without approval.²¹ Rep. Scott's office would not comment on Mr. Merrill's departure and issued a statement calling his allegations untrue.²²

Solicitation of Political Contributions from Employees

Federal law prohibits members of Congress from soliciting political contributions from employees.²³ Violations of this section are subject to fines and up to three years imprisonment.²⁴ Federal election law defines "contribution" to include "any gift . . . or anything of value . . ."²⁵ Federal Election Commission regulations define "anything of value" to include all in-kind contributions. Unless specifically exempted under 11 C.F.R. part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services constitutes a contribution.²⁶ To the extent members of Rep. Scott's congressional staff were also performing activities for his political campaign, Rep. Scott illegally solicited contributions, in the form of service, from his employees.

Improper Use of Appropriated Funds

Pursuant to 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made." Corresponding regulations of the Committee on House

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Vogel, *The Politico*, July 11, 2007.

²² Id.

²³ 18 U.S.C. § 602.

²⁴ Id.

²⁵ 2 U.S.C. § 431(8)(A)(I).

²⁶ 11 C.F.R. § 100.52(d)(1).

Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”²⁷

In addition, House ethics rules make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing non-official, personal, or campaign duties.”²⁸ Rule XXIII, Clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”²⁹ The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.³⁰ The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.³¹ As a result, they may not be used to conduct campaign or political activities.³²

The Campaign Booklet provides two cases, one in which a Member was criminally prosecuted and another which a staffer was criminally prosecuted, for misusing official resources: in 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business;³³ and in 1979, a former Member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll

²⁷ Committee on House Administration, Members’ Handbook, *Staff*.

²⁸ Ethics Manual, Chapter 5, Staff Rights and Duties, citing United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

²⁹ House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (*citing Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

³⁰ Campaign Booklet.

³¹ Id.

³² Id.

³³ Campaign Booklet (*citing United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993); *see* Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250).

were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign.³⁴

By using congressional staff to engage in campaign activity on official time and with the use of official resources, Rep. Scott may have violated the prohibition on soliciting political contributions from employees, the prohibition on using appropriated funds for campaign activity, House ethics rules and the regulations of the Committee on House Administration.

³⁴ Campaign Booklet (citing United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); *see id.* 249-50).

REP. JERRY WELLER

Rep. Jerry Weller (R-IL) is a seventh-term member of Congress, representing the 11th district of Illinois. He serves on the House Ways and Means Committee and until 2006, served on the House International Relations Committee. Rep. Weller's ethical issues stem from his repeated failure to report assets he bought and sold in Nicaragua, the misuse of his position to sell some of his foreign land holdings, his acceptance of campaign contributions from Puerto Rican interests in apparent exchange for supporting legislation that benefitted Puerto Rico and his acceptance of campaign contributions from Jeffrey Prosser in apparent exchange for assisting Mr. Prosser in his legal battle with the government of Belize. In addition, there is a substantial question of whether Rep. Weller qualifies for a waiver from including his wife's assets and liabilities on his financial disclosure forms.

Nicaraguan Land Holdings

In 2002, Rep. Weller made his first official congressional trip to Nicaragua.¹ That same year, he bought the first of the numerous lots of ocean-view property in the township of San Juan del Sur, Nicaragua that he would eventually purchase.² According to Rep. Weller's 2002 financial disclosure form, the first lot he purchased was worth between \$50,000 and \$100,000.³ Property records at the registrar's office in Rivas, the seat for San Juan, show that on December 7, 2002, Rep. Weller paid only about \$4,333 for a lot measuring four-tenths of an acre.⁴ The *Chicago Tribune* has reported that buyers of property on Nicaragua's Pacific Coast frequently reported artificially low purchase prices "to lessen the bite of local taxes."⁵

Within a year of this purchase Rep. Weller was seated on the House International Relations Committee and Western Hemisphere Subcommittee, which has a focus on Latin America.⁶ That same year, while traveling in Guatemala, Rep. Weller met Zury Rios Sosa, a

¹ Andrew Zajac, Oscar Avila and Jim Tankersley, Illinois Lawmaker Benefits From Trade Accord, Fails To Report Extent Of His Ocean-View Holdings, *Chicago Tribune*, September 7, 2007 (Exhibit 1).

² Id.

³ Rep. Jerry Weller, Financial Disclosure Statement 2002, filed May 12, 2003 (Exhibit 2).

⁴ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

⁵ Id.

⁶ Frank Smyth, Is Jerry Weller's Beach An Ethics Breach?, *Chicago Reader*, October 27, 2006 (Exhibit 3); Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

legislator in Guatemala's congress and the daughter of former dictator General Efraín Ríos Montt.⁷ Eleven months later Rep. Weller announced their engagement.⁸

Following this announcement, Rep. Weller began buying and selling various assets, including the purchase of a second beach property in Nicaragua's San Juan del Sur township.⁹ Rep. Weller's 2004 financial disclosure form lists the value of this property as between \$50,000 and \$100,000, while the value of his previously-purchased lot is now listed as between \$101,000 and \$250,000.¹⁰ According to a notarized bill of sale, however, Rep. Weller paid only \$3,150 for the second lot.¹¹

The *Chicago Tribune* reported recently that in addition to this second lot, Rep. Weller purchased and sold at least eight different pieces of land in Nicaragua, disclosing only one purchase on his financial disclosure forms.¹² In the first four months of 2005 alone, Rep. Weller bought two separate lots at Playa Coco, Nicaragua, he purchased a third lot in June and sold another that same month.¹³ In August 2005, Rep. Weller sold another lot in Nicaragua, he sold two additional lots in September, and in December, in partnership with two others, purchased another property, which was the only transaction of all of these transactions that was included on his 2005 disclosure report.¹⁴ An earlier report in the *Chicago Reader* catalogued two additional lots purchased in 2005, but not reported on his 2005 financial disclosure form.¹⁵ Also missing from Rep. Weller's 2005 financial disclosure form was the February 2005 sale for about \$95,000 of the first lot he purchased in 2002.¹⁶

⁷ Frank Smyth, The Congressman And The Dictator's Daughter, *Chicago Reader*, August 25, 2006 (Exhibit 4).

⁸ Smyth, *Chicago Reader*, Oct. 27, 2006.

⁹ Id.

¹⁰ Rep. Jerry Weller, Financial Disclosure Statement 2004, filed May 13, 2005 (Exhibit 5).

¹¹ Smyth, *Chicago Reader*, Oct. 27, 2006.

¹² Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007; Rep. Gerald C. Weller, U.S. House of Representatives, Financial Disclosure Statement 2005, filed May 12, 2006 (Exhibit 6).

¹³ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

¹⁴ Id.

¹⁵ Smyth, *Chicago Reader*, Oct. 27, 2006.

¹⁶ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007; Rep. Gerald C. Weller, U.S. House of Representatives, Financial Disclosure Statement 2005, filed May 12, 2006.

In 2005, Rep. Weller also publicly pushed for passage of the Central America Free Trade Agreement (“CAFTA”), which was approved by the House in July 2005 by only two votes.¹⁷ At no time during the congressional debate on CAFTA did Rep. Weller disclose his considerable Nicaraguan investments, even though a provision of CAFTA gave added legal protection to American investors, including those who purchased lots from Rep. Weller.¹⁸

Rep. Weller’s 2006 financial disclosure form contains a much more detailed listing of his Nicaraguan land holdings. The three previously disclosed lots were consolidated into one property and then subdivided into 37 separate properties, eleven of which he sold for between \$275,008 and \$700,000.¹⁹ According to a purchaser of two of these lots, the salesman stated about the property: “This is being developed by U.S. Congressman Jerry Weller. He’s on the Ways and Means Committee. It should be a clean deal.”²⁰

Financial Disclosure Requirements

The Ethics in Government Act of 1967²¹ requires all members of Congress to file financial disclosure reports. Under the statute, the Attorney General may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.²²

In addition, 18 U.S.C. § 1001 prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”²³ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”²⁴

Rep. Weller’s failure to disclose the purchase and sale of several pieces of ocean view property in Nicaragua during the past five years appears to be a violation of the Ethics in Government Act. In addition, his failure to include multiple transactions violates House rules. Pursuant to 5 U.S.C. app. 4 § 101(a)(1)(B), Members of Congress must disclose all real property

¹⁷ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

¹⁸ Id.

¹⁹ Rep. Jerry Weller, Financial Disclosure Statement 2006, filed May 14, 2007 (Exhibit 7).

²⁰ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

²¹ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

²² 5 U.S.C. app. 4, § 104.

²³ 18 U.S.C. § 1001(a)(2).

²⁴ Id. at § 1001(c)(2).

held for investment. The instruction booklet accompanying the House financial disclosure forms explains that the Rules require disclosure of “real and personal property held for investment or production of income and valued at more than \$1,000 at the close of the reporting period.”²⁵ By failing to report on his financial disclosure forms all real property he held in Nicaragua for investment, Rep. Weller violated House rules.

In addition, the discrepancies between the value Rep. Weller assigned to those Nicaraguan properties that he did report and the value of the properties listed in the bills of sale and other Nicaraguan property records suggest that Rep. Weller may not have truthfully reported the properties’ value on his financial disclosure forms, which would be a violation of 18 U.S.C. § 1001.

5 C.F.R. § 2635.702(a)

A “fundamental rule of ethics” for members of the House is that they are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”²⁶ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By allowing salesmen of his properties in Nicaragua to use Rep. Weller’s congressional position to boost sales, Rep. Weller appears to have violated 5 C.F.R. § 2635.702(a).

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”²⁷ This ethics standard is considered to be “the most comprehensive provision of the code.”²⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th

²⁵ House Comm. On Standards of Official Conduct, “Assets and Unearned Income,” Financial Disclosure Instruction Booklet.

²⁶ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

²⁷ Rule XXIII, cl. 1.

²⁸ House Comm. on Standards of Official Conduct, House Ethics Manual.

Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.²⁹ This rule has been relied on by the Ethics Committee in numerous prior cases in which the committee found unethical conduct including: the failure to report campaign contributions,³⁰ making false statements to the Committee,³¹ criminal convictions for bribery,³² or accepting illegal gratuities,³³ and accepting gifts from persons with interest in legislation in violation of the gift rule.³⁴

Rep. Weller’s failure to comply with the financial disclosure requirements of the Ethics in Government Act and the use of his position on the House Ways and Means Committee to sell lots he owned in Nicaragua do not reflect creditably on the House.

²⁹ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

³⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

³² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

³⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Marriage to Zury Rios Sosa

Rep. Weller's marriage to Zury Rios Sosa has generated considerable controversy.³⁵ She has been described as "the most powerful woman in Guatemala's controversial FRG party," the party her dictator father, Rios Montt, founded and still leads.³⁶ Her father came to power in a military coup in 1982, and during his 17 months in office up to 70,000 civilians were killed.³⁷

Rep. Weller ignored suggestions that he should resign from his seat on the International Relations Committee after his marriage, although he reportedly sought advice from the House ethics committee.³⁸ Until early 2006, his wife sat on Guatemala's foreign affairs committee, the counterpart to Rep. Weller's committee.³⁹

Despite the fact that the couple now have a daughter together, at no time since his 2004 marriage to Zury Rios Sosa has Rep. Weller included his wife's assets on his financial disclosure statements. Instead, starting with his 2004 financial disclosure form, Rep. Weller has claimed an exemption for her assets and liabilities.⁴⁰ In a letter dated May 14, 2007 to Chairwoman Stephanie Tubbs Jones of the House Committee on Standards of Official Conduct, Rep. Weller claimed that although he is "aware" that his wife "may possess assets in her native Guatemala," he does not know what those assets are and has not inquired about them.⁴¹ He also claimed that he has not contributed to any of her assets, has not received any financial or economic benefit from her assets, and will not inherit any of her assets.⁴² Only one other House member, Rep. David Wu (D-OR), claimed the exemption for his wife's assets and liabilities in 2006.⁴³

The claim that Rep. Weller's finances are completely separate from his wife's is further undercut by the fact that she started an American not-for-profit corporation, the Zury Rios Fund,

³⁵ Dave Newbart and Abdon M. Pallasch, Is Dictator's Daughter A Conflict?, *The Chicago-Sun Times*, October 31, 2006 (Exhibit 8).

³⁶ Smyth, *Chicago Reader*, Aug. 25, 2006.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ *See* Exhibits 5, 6, 7.

⁴¹ Letter from Jerry Weller to Chairwoman Stephanie Tubbs Jones, Committee on Standards of Official Conduct, May 14, 2007 (Exhibit 9).

⁴² Id.

⁴³ Zajac, Avila and Tankersley, *Chicago Tribune*, Sept. 7, 2007.

to help children in Guatemala.⁴⁴ The organization is registered in Illinois and its board of directors includes Rep. Weller's mother, his brother and his business partner, Karl Rozak, who has partnered with Rep. Weller to buy land in Nicaragua.⁴⁵ The fund reportedly started with no money, but expects to raise more than \$10,000 this year alone.⁴⁶

Rep. Weller's assertions that after nearly three years of marriage he continues to have no information whatsoever about any of his wife's assets and liabilities are implausible. Moreover, his wife, as a very powerful and prominent member of the Guatemalan congress, is likely to have considerable assets, some of which may raise difficult questions for Rep. Weller. Accordingly, the ethics committee should investigate the merits of Rep. Weller's exemption claim to determine whether he violated the Ethics in Government Act and 18 U.S. C. § 1001.

Support for Puerto Rican Interests

Despite the fact that Rep. Weller represents a rural district in Illinois, he has been a strong advocate for Puerto Rico and has used his position on the Ways and Means Committee to push for Puerto Rican interests.⁴⁷ Rep. Weller's successes on this front include getting more federal money for Puerto Rican hospitals and securing a lower manufacturing tax that business interests claimed prevented U.S. businesses from locating in Puerto Rico.⁴⁸

Within two months of a trip to Puerto Rico in July 2003 -- funded by the Puerto Rico Bankers Association⁴⁹ -- Rep. Weller received over \$11,000 in Puerto Rican-based campaign donations.⁵⁰ He did not receive any more such contributions until two years later when, on May 4, 2005, Rep. Weller received \$16,000 from 17 individuals with various interests in Puerto

⁴⁴ Jim Tankersley, Board Complicates Weller Asset Claim, *The Chicago Tribune*, September 15, 2007 (Exhibit 10).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Dennis Conrad, Illinois' Weller: Puerto Rico's Go-Go Guy, *The Associated Press*, August 28, 2006 (Exhibit 11).

⁴⁸ Id.

⁴⁹ Gerald C. Weller, U.S. House of Representatives, Member/Officer Travel Disclosure Form, August 12, 2003 (Exhibit 12).

⁵⁰ Jerry Weller for Congress, Inc., FEC Form 3, October Quarterly Report 2003, February 12, 2004, pp. 24, 30, 35, 50, 57, 61, 65, 68, 80 (Exhibit 13); Jerry Weller for Congress, Inc., FEC Form 3, Year-End Report 2003, March 4, 2004, pp. 35, 51, 55, 56 (Exhibit 14). *The Associated Press* reported the amount of these contributions to Rep. Weller as totaling \$15,550: Conrad, *The Associated Press*, Aug. 28, 2006.

Rico.⁵¹ These included high-ranking officials from Popular Inc. and its subsidiary, Banco Popular.⁵² The following day, a bill backed by Puerto Rico's business interests as well as Resident Commissioner Luis Fortuno and subsequently co-sponsored by Rep. Weller was sent to the House Ways and Means Committee.⁵³ At a November hearing, Mr. Fortuno thanked Rep. Weller for backing the bill and showing "leadership in this process."⁵⁴

Of the approximately 698,000 residents in Rep. Weller's congressional district, only between 677 and 3,589 are Puerto Rican.⁵⁵

Assistance for Telecommunications Executive

Rep. Weller also used his congressional influence to assist a telecommunications executive, Jeffrey Prosser, when the government of Belize seized Mr. Prosser's business assets.⁵⁶ Mr. Prosser was involved in a legal dispute over a government-run telephone company in which he owned a controlling share in Belize that resulted in the government seizing control of the company.⁵⁷ In response, Rep. Weller hand-delivered a letter to government officials in Belize suggesting that the government's decision to seize Mr. Prosser's business assets might hurt future investments in that country.⁵⁸ During that same year, Rep. Weller received campaign contributions totaling \$4,200 from Mr. Prosser and his wife.⁵⁹

This is not the first time campaign contributions to Rep. Weller have raised questions. In 2006, Rep. Weller was pressured to return contributions he had received from now-convicted

⁵¹ Jerry Weller for Congress, Inc., FEC Form 3, July Quarterly Report 2005, July 15, 2005, pp. 46, 47, 49-51, 54-58, 60, 64, 65, 68, 69 (Exhibit 15).

⁵² Id.; Conrad, *The Associated Press*, Aug. 28, 2006.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Conrad, *The Associated Press*, Aug. 28, 2006.

⁵⁶ Christi Parsons, Donation Stirs Campaign Dispute: Democrat Pavich Hits Help Given by Weller, *Chicago Tribune*, September 2, 2006 (Exhibit 16).

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Jerry Weller for Congress, Inc., FEC Form 3, July Quarterly Report 2005, July 15, 2007, pp. 62, 75 (Exhibit 17).

lobbyist Jack Abramoff and former Rep. Randy “Duke” Cunningham.⁶⁰ And in December 2005, a spokesperson for Rep. Weller admitted that Rep. Weller’s campaign had failed to report the receipt of a leased luxury suite for a fundraiser, donated by a California Indian tribe the preceding year.⁶¹

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁶² It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶³

If, as it appears, Rep. Weller accepted campaign donations from individuals and entities with interests in Puerto Rico in direct exchange for providing legislative assistance to Puerto Rico, he may have violated the bribery statute.

If, as it appears, Rep. Weller accepted campaign donations in direct exchange for assisting Mr. Prosser in his dispute with the Belizean government he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁶⁴ By using his position as a member of Congress to financially benefit individuals and entities with financial interests in Puerto Rico as well as Mr. Prosser, Rep. Weller may be depriving his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

⁶⁰ Hal Dardick, Foe Pressures Weller to Return ‘Tainted Funds’: Pavich Says \$35,000 is Linked to Scandals, *Chicago Tribune*, January 11, 2006 (Exhibit 18).

⁶¹ Dennis Conrad, Weller Failed to Report Indian Contribution, *The Associated Press*, December 5, 2005 (Exhibit 19).

⁶² 18 U.S.C. § 201(b)(2)(A).

⁶³ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁶⁴ 18 U.S.C. § 1341.

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁶⁵ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁶⁶

If a link is established between Rep. Weller's sponsorship of legislation that assisted Puerto Rico and campaign contributions entities and individuals with economic interests in Puerto Rico made to him, Rep. Weller may be in violation of the illegal gratuity statute.

If a link is established between the campaign donations Rep. Weller received from Mr. and Mrs. Prosser and Rep. Weller's intervention with the government of Belize on behalf of Mr. Prosser and his business interests there, Rep. Weller may be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁶⁷

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁶⁸ House Rule XXIII, clause 3, similarly provides:

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

Rep. Weller's acceptance of campaign contributions from Mr. and Mrs. Prosser and

⁶⁵ 18 U.S.C. § 201(c)(1)(B).

⁶⁶ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁶⁷ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁶⁸ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

individuals and entities with interests in Puerto Rico in return for his legislative assistance likely violated 5 U.S.C. § 7353 and House Rule XXIII.

Conduct Not Reflecting Creditably on the House

Rep. Weller's apparent acceptance of campaign contributions in return for legislative favors does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Legal Fees

Although Rep. Weller's campaign manager has denied the congressman is under investigation,⁶⁹ Rep. Weller has spent almost \$98,000 on legal fees since 2005.⁷⁰ Some of Rep. Weller's legal expenses were incurred to respond to allegations of corruption.⁷¹

⁶⁹ Susan Davis, Members Shell Out For Legal Help, *Roll Call*, April 17, 2007 (Exhibit 20).

⁷⁰ Jerry Weller for Congress, Inc., FEC Form 3, April Quarterly Report 2005, May 18, 2005, p. 92 (Exhibit 21); Jerry Weller for Congress, Inc., FEC Form 3, July Quarterly Report 2005, July 15, 2005, pp. 95, 97, 98 (Exhibit 22); Jerry Weller for Congress, Inc., FEC Form 3, October Quarterly Report 2005, October 15, 2005, p. 114 (Exhibit 23); Jerry Weller for Congress, Inc., FEC Form 3, Year-End Report 2005, January 31, 2006, p. 99 (Exhibit 24); Jerry Weller for Congress, Inc., FEC Form 3, April Quarterly Report 2006, July 14, 2006, p. 85 (Exhibit 25); Jerry Weller for Congress, Inc., FEC Form 3, July Quarterly Report 2006, September 5, 2006, p. 116 (Exhibit 26); Jerry Weller for Congress, Inc., FEC Form 3, October Quarterly Report, December 11, 2006, p. 144 (Exhibit 27); Jerry Weller for Congress, Inc., FEC Form 3, Post General Election Report 2006, February 20, 2007, p. 75 (Exhibit 28); Jerry Weller for Congress, Inc., FEC Form 3, Year-End Report 2006, August 1, 2007, pp. 16, 17 (Exhibit 29); Jerry Weller for Congress, Inc., FEC Form 3, April Quarterly Report 2007, April 14, 2007, p. 69 (Exhibit 30); Jerry Weller for Congress, Inc., FEC Form 3, July Quarterly Report 2007, July 15, 2007, p. 110 (Exhibit 31).

⁷¹ Davis, *Roll Call*, Apr. 17, 2007.

REP. HEATHER WILSON

Rep. Heather Wilson (R-NM) is a sixth-term member of Congress, representing the first district of New Mexico. Her ethical issues stem from improperly contacting a sitting U.S. Attorney.

Contacting U.S. Attorney

The former U.S. Attorney in Albuquerque, New Mexico, David Iglesias, stated that, in mid-October 2006, two members of Congress from New Mexico pressured him about an ongoing corruption probe of state Democrats.¹ Apparently, Rep. Wilson first called Mr. Iglesias and Sen. Pete V. Domenici (R-NM) called a week later.² After Sen. Domenici admitted that he called Mr. Iglesias, Rep. Wilson finally admitted that she too had called the U.S. Attorney.³

Rep. Wilson stated that she contacted Mr. Iglesias to complain about the pace of his public corruption investigation.⁴ She claimed, “I did not ask about the timing of any indictments and I did not tell Mr. Iglesias what course of action I thought he should take or pressure him in any way. The conversation was brief and professional.”⁵

House Rules

Although House ethics rules do not specifically discuss the issue of a member contacting a sitting U.S. Attorney, the rules do anticipate members contacting agency officials and judges. Chapter 7 of the House ethics manual prohibits ex parte communications, directed to executive or independent agency officials, on the merits of matters under their formal consideration. The ethics committee has also stated that such contacts should not be based on political considerations and that the direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is an unwarranted abuse of a member’s role.⁶

¹ Dan Eggen, Domenici Says He Contacted Prosecutor, *The Washington Post*, March 5, 2007 (Exhibit 1).

² Id.

³ Paul Kane and Dan Eggen, Second Lawmaker Contacted Prosecutor, *The Washington Post*, March 6, 2007 (Exhibit 2).

⁴ Id.

⁵ Id.

⁶ House Ethics Manual, ch. 7.

Similarly, the ethics committee has stated that when a member believes it necessary to attempt to affect the outcome in a pending case, he or she has several options:

A Member who has relevant information could provide it to a party's counsel, who could then file it with the court and notify all parties. Alternatively, the Member could seek to file an amicus curiae, or friend of the court brief. Yet another option, in an appropriate case, might be to seek to intervene as a formal party to the proceeding. A Member could also make a speech on the House floor or place a statement in the Congressional Record as to the legislative intent behind the law. A Member should refrain, however, from making an off-the-record communication to the presiding judge, as it could cause the judge to recuse him- or herself from further consideration of the case.⁷

The claim that a member was merely requesting “background information” or a “status report” is not a defense to a violation of the prohibition on ex parte communications. The House has recognized “the possibility that a request for background information or a status report ‘may in effect be an indirect or subtle effort to influence the substantive outcome of the proceedings.’”⁸ To protect the decision-making process, the House has prohibited such ex parte communications.

By contacting Mr. Iglesias about an ongoing investigation, whether to pressure him -- as he believed -- or merely to request a status report, Rep. Wilson violated House rules.

In addition, the House has held that the Code of Ethics for Government Service applies to members of the House, requiring members, like all others in government service, to “uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.”⁹ The House Committee on Standards of Official Conduct has held that this provision:

may be implicated if a House Member were to request that an executive branch employee engage in an activity having an impermissible political purpose . . . Such conduct by a Member may also implicate the fundamental requirement of the House Code of Official Conduct that a Member, officer, or employee ‘shall conduct himself at all times in a manner that shall reflect creditably on the House.’¹⁰

⁷ Id.

⁸ Id.

⁹ Code of Ethics for Government Service, ¶ 2.

¹⁰ Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108th Cong. Oct. 7, 2004); House Rule 23, cl. 1.

By contacting Mr. Iglesias to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Wilson's conduct does not reflect creditably on the House.

REP. DON YOUNG

Rep. Don Young is an 18th-term member of Congress, representing Alaska at-large. Rep. Young served as Chairman of the House Resources Committee from 1994 to 2000, and as the Chairman of the House Transportation and Infrastructure Committee from 2000 to 2006. In the 110th Congress, Representative Young serves as the ranking member of the House Resources Committee.

Rep. Young's ethics violations stem from the misuse of his position to benefit family and friends and to steer millions of dollars in earmarks to corporations in exchange for contributions to his campaign committee and political action committee, Midnight Sun PAC (MSPAC). Rep. Young is currently under four separate federal investigations including an investigation into his role in securing a \$10 million earmark for a road in Florida, assistance he offered to recently convicted VECO Corporation CEO Bill Allen, his ties to convicted lobbyist Jack Abramoff and his financial relationship with recently indicted businessman Dennis Troha.

Earmarking Transportation Funds to a Campaign Donor

The Department of Justice is currently investigating whether Rep. Young earmarked \$10 million dollars for a construction project in exchange for campaign donations.¹

In February 2005, while serving as the chairman of the House Transportation Committee, Rep. Young traveled to Florida's Gulf Coast to discuss transportation projects, including a \$10 million Interstate 75 expansion that would connect the freeway to Coconut Road.² During his stay, Rep. Young attended a fundraiser in his honor, organized by land developer Daniel Aronoff.³ Mr. Aronoff, who owns more than 4,000 acres of land along Coconut Road and stands to gain financially from the project, helped Rep. Young raise \$40,000 from Florida developers and builders.⁴ Mr. Aronoff personally donated \$500 to Rep. Young's campaign committee and an additional \$2,500 to MSPAC.⁵

¹ Greg Gordon and Erika Bolstad, Young's \$10 Million Earmark Focus Of Inquiry, *The Seattle Times*, August 19, 2007 (Exhibit 1).

² David Kirkpatrick, Campaign Funds for Alaska; Road Aid To Florida, *The New York Times*, June 7, 2007 (Exhibit 2).

³ Id.

⁴ Id.

⁵ Id.; Alaskans For Don Young, FEC Form 3X April Quarterly Report, April 12, 2005, p. 37 (Exhibit 3); Midnight Sun Political Action Committee, FEC Form 3X October Quarterly Report, January 31, 2005, p. 6 (Exhibit 4).

In a fiscal year 2006 transportation bill authored by Rep. Young, \$10 million was earmarked for the improvements to Florida's I-75.⁶ After the House and Senate approved the bill but before the president signed it into law, the original language was deleted and the phrase "Coconut Rd interchanges and I-75/Lee County" was inserted.⁷ Rep. Young claimed that Rep. Connie Mack, who represents the district where the interchange was to be built, sponsored the earmark but Rep. Mack has denied making the request.⁸

After the money was earmarked, the Lee County Metropolitan Planning Organization (MPO) voted twice to block the proposed interchange because the Army Corps of Engineers, the Environmental Protection Agency, the Fish and Wildlife Service and the Federal Highway Administration issued studies warning that the interchange could threaten nearby wetlands.⁹ On January 23, 2006, Rep. Young responded to the delay by writing a letter to the chairman of the MPO threatening that if the \$10 million earmark were not used specifically for the Coconut Road Interchange, he would draft another bill revoking the money.¹⁰ Rep. Mack followed up with another letter to the MPO warning that rejecting the money would make it hard for the area to secure future federal funding.¹¹

Earmarking Transportation Funds for Bridges

In the 109th Congress, Rep. Young earmarked over \$400 million dollars to Alaska for two bridges serving tiny populations. In the 2005 Transportation Equity Act, \$202 million¹² was earmarked for a bridge connecting the remote town of Ketchikan (population: 8,900)¹³ to the even more remote island of Gravina (population: 50).¹⁴ Another \$229 million was earmarked for a

⁶ Julio Ochoa, Report Shows Someone Edited Federal Transportation Bill, *Naples Daily News*, August 9, 2007 (Exhibit 5).

⁷ Id.

⁸ Kirkpatrick, *New York Times*, June 7, 2007.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users, August 10, 2005 (Exhibit 6).

¹³ Michael Grunwald, A Bridge to Nowhere An Overstuffed Highway Bill, A Teapot Museum; Pork By Any Other Name, *Washington Post*, April 30, 2006 (Exhibit 7).

¹⁴ Id.

second bridge, “Don Young’s Way”¹⁵ that would connect Knik Arm (population: 1)¹⁶ to Anchorage.

Rep. Young’s daughter, Joni Young, and his son-in-law, Art Nelson, own land in the Knik Arm and stand to profit if the project is completed.¹⁷ Mr. Nelson is a 10% owner in Point Bluff LLC, which owns two pieces of land in the Knik Arm area: a 38.8-acre parcel and a 20.4-acre parcel.¹⁸ The assessed value of the 38 acre plot has gone from \$169,000 to \$180,000 and the value of the 20-acre plot has gone from \$121,000 to \$131,900 since the announcement of the “Don Young’s Way” project.¹⁹

After negative press coverage and pressure from colleagues, Rep. Young agreed to release the obligation that the earmarked money be used for the specific bridges.²⁰ The funds were still given to Alaska, however, as part of the state’s general federal highway allotment fund from which legislators can still fund the bridge projects.²¹ Rep. Young continues to back the proposed development.²²

Association with VECO Corporation

Rep. Young is the subject of a criminal inquiry into whether he accepted bribes, illegal gratuities or unreported gifts from VECO Corporation.²³

¹⁵ Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users, August 10, 2005 (Exhibit 8).

¹⁶ Editorial, House Appropriations Committee Backs Bridges To Nowhere, *State News Service*, July 11, 2007 (Exhibit 9).

¹⁷ John Stanton, Alaska’s Friends And Family Plan, *Roll Call*, May 14, 2007 (Exhibit 10).

¹⁸ Id.

¹⁹ Id.

²⁰ Tom Ichniowski, SAFETEA-LU Remains on Course, Generally; 2006 spending bill stays with multi-year measure’s funding levels, but tinkers with project lists, *Engineering News-Record*, November 28, 2005 (Exhibit 11).

²¹ Id.

²² Stanton, *Roll Call*, May 14, 2007.

²³ John Wilke, Alaska’s Young Stevens Face Inquiry, *The Wall Street Journal* July 25, 2007 (Exhibit 12).

Former VECO Corporation CEO Bill Allen pleaded guilty to criminal charges in May 2007, after an investigation revealed that he had bribed three Alaska state legislators.²⁴ VECO manufactures oil drilling technology and builds natural gas pipelines.²⁵ The company long has recognized the importance of the federal government to its livelihood. In a 2004 newsletter sent to VECO employees, executives wrote, “the right people in the White House, the U.S. Capitol and Alaska State Legislature make a huge impact on oil and gas resource development.”²⁶ Furthermore, VECO President Peter Leathard has been quoted as saying his company works to elect politicians that back mineral exploration, claiming “We put a lot of money into the effort.”²⁷ Since 1997, Mr. Allen, Mr. Leathard, Executive Vice President Roger Chan and Vice President Rick Smith have contributed more than \$384,000 to presidential and congressional races.²⁸ Throughout the 2002, 2004 and 2006 election cycles, VECO executives donated a total of \$89,500 to Rep. Young: \$61,850 to his campaign committee and \$27,650 to MSPAC²⁹ and every August, Mr. Allen hosted a fundraiser called “The Pig Roast” for Rep. Young.³⁰ According to the Center for Responsive Politics, approximately one-quarter of the total VECO contributions went to Rep. Young.³¹

One of VECO’s top legislative priorities is opening the Arctic National Wildlife Refuge (ANWR) to oil drilling.³² Rep. Young has been a long-time and leading proponent of opening the

²⁴ Steve Quinn, Case Shakes Up Alaska Politics, *The Virginia Pilot*, May 10, 2007 (Exhibit 13).

²⁵ <http://www.veco.com/BusinessSectors/PipelinesTerminals/default.asp> (Exhibit 14).

²⁶ Oil Slick Of Corruption Spreads South, *California Chronicle*, September 4, 2007 (Exhibit 15).

²⁷ Id.

²⁸ Id.

²⁹ Alaskans for Don Young, FEC Form 3 Year End Report 2002, January 28, 2002, pp. 60, 61, 62, 67 (Exhibit 16); Alaskans for Don Young, FEC Form 3 October Quarterly Report 2003, October 13, 2003, pp. 32, 36, 54, 98, 100, 109, 111, 141, 142, 156 (Exhibit 17); Alaskans for Don Young, FEC Form 3 Pre-Primary Report 2004, November 4, 2004, pp. 16, 17, 24, 25, 42, 48, 49, 59, 60 (Exhibit 18); Alaskans for Don Young, FEC Form 3 October Quarterly Report 2005, October 11, 2005, pp. 22, 39, 42, 71, 76, 102, 103 (Exhibit 19); Alaskans for Don Young, FEC Form 3 October Quarterly Report 2006, October 6, 2006, pp. 6, 26, 29, 55, 61, 79, 80 (Exhibit 20).

³⁰ John Wilke, *The Wall Street Journal*, July 25, 2007.

³¹ Quinn, *The Virginia Pilot*, May 10, 2007.

³² *California Chronicle*, September 4, 2007.

ANWR for oil drilling and the trans-Atlantic pipeline,³³ shepherding exploration legislation in 1995 and 2001.³⁴

Also helpful to VECO were earmarks obtained by Senator Ted Stevens and Rep. Young for a barge dock development and deep-water marine port construction in Port MacKenzie, Alaska.³⁵ The port will allow VECO to deliver “gargantuan” oil filled modules,³⁶ that house electronics and oil-field equipment,³⁷ by barge to the North Slope,³⁸ the sight of a new oil well,³⁹ which would generate revenue for the company.⁴⁰

Additionally, VECO received \$42,713 in federal funds for work the company provided in the planning phases⁴¹ of “Don Young Way,” the bridge that would connect Knik Arm to Anchorage.⁴²

Association with PBS&J

Rep. Young has received campaign contributions from employees of Florida-based construction firm PBS&J⁴³ Former PBS&J chairman, H. Michael Dye, pleaded guilty to

³³ Hans Nichols and Jonathan E. Kaplan, Reps. Young Pombo Crack ANWR Whip, *The Hill*, April 26, 2005 (Exhibit 21).

³⁴ Almanac of American Politics, *National Journal*, 2006 (Exhibit 22).

³⁵ <http://www.matsugov.us/Port/portprojectinfo.cfm> (Exhibit 23).

³⁶ Press Release, Matanuska-Susitna Borough, Office of Public Affairs, Structural Steel Goes Up on Ferry Terminal, May 17, 2006 (Exhibit 24).

³⁷ Matt Kelley, Stevens’ Ties to Oil Industry Contractor is Focus of Probe; Alaska Republican Senator Denies Any Wrongdoing, *USA Today*, August 1, 2007 (Exhibit 25).

³⁸ Press Release, Matanuska-Susitna Borough, May 17, 2006.

³⁹ Tim Bradner, Post-Allen, VECO Pushes Forward, *Alaska Journal of Commerce*, June 17, 2007 (Exhibit 26).

⁴⁰ <http://www.matsugov.us/Port/portprojectinfo.cfm>.

⁴¹ Knik Arm Bridge and Toll Authority, Annual Report 2004, p. 17 (Exhibit 27).

⁴² Stanton, *Roll Call*, May 14, 2007.

⁴³ Alaskans for Don Young, FEC Form 3 April Quarterly 2003, February 28, 2005, pp. 44, 53, 71, 84 (Exhibit 28).

violating federal campaign laws in July 2007.⁴⁴ Mr. Dye's and former chairman, Richard A. Wickett's scheme was exposed after a federal investigation revealed that they were reimbursing PBS&J employees for making donations to favored candidates.⁴⁵ It is difficult to tell just how much money Mr. Dye and Mr. Wickett steered towards candidates because they used various schemes to subvert campaign finance laws,⁴⁶ but officially Rep. Young received \$1,250.⁴⁷

Notably, PBS&J received a federal grant to conduct a study of the proposed Knik Arm bridge⁴⁸ and in June 2006, prepared a cost estimate review study analyzing the construction planning of the Knik Arm bridge.⁴⁹

Ties to Jack Abramoff

Rep. Young's ties to convicted lobbyist Jack Abramoff are the subject of a grand jury investigation.⁵⁰

Old Post Office Pavilion

In September 2002, Rep. Young and Rep. Steve LaTourette (R-OH) sent a letter to the General Services Administration (GSA) urging it to "give preferential treatment to organizations such as Indian tribes" during the development of the Old Post Office Pavilion in Washington, DC, which would have benefitted Mr. Abramoff's Indian clients.⁵¹ Five weeks after sending the letter to the GSA, MSPAC received \$7,000 from Mr. Abramoff's tribal clients, the Agua Caliente of

⁴⁴ Patrick Danner and Dan Christensen, Ex-PBS&J exec sentenced, *The Miami Herald*, August 4, 2007 (Exhibit 29).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Alaskans for Don Young, FEC Form 3 April Quarterly 2003, February 28, 2005, pp. 44,53,71,84.

⁴⁸ www.fedspending.org PBS&J contract search conducted 8/2/2007 (Exhibit 30).

⁴⁹ http://www.knikbridgefacts.org/Documents/Cost_Estimate_Review_0606.pdf (Exhibit 31).

⁵⁰ Dennis Zaki, Alaska Republican Congressman Don Young in Serious Legal Trouble, *Alaska Report*, July 16, 2007 (Exhibit 32).

⁵¹ In Face Of Old Post Office Scandal, White House Must Disclose Meetings With Lobbyist Abramoff, *US Federal News*, January 25, 2006 (Exhibit 33)

California and the Mississippi Choctaws.⁵² In total, MSPAC received \$12,000 from Mr. Abramoff's tribal clients during the 2002 election cycle.⁵³

Aide Involvement

Members of Rep. Young's staff have also been linked to Mr. Abramoff. In May 2002, Duane Gibson left his position as Rep. Young's chief of staff to join Mr. Abramoff's firm Greenberg Traurig. Before he left, Mr. Gibson recommended that former Commonwealth of the Northern Mariana Islands (CNMI) secretary of Labor and Immigration, Mark Zachares be given a job with the House Transportation and Infrastructure Committee, which Rep. Young chaired.⁵⁴ Mr. Zachares had a previous relationship with Mr. Abramoff dating from the lobbyist's activities on behalf of CNMI.⁵⁵ Mr. Abramoff wanted Mr. Zachares in a position that would give him access to lawmakers.⁵⁶

In April of 2007, Mr. Zachares pleaded guilty to bribery charges.⁵⁷ In his plea agreement, Mr. Zachares admitted that his intent was to use his position with the House Transportation and Infrastructure Committee to steer clients to Greenberg Traurig, with the promise that eventually Mr. Abramoff would hire him to lobby on behalf of those clients.⁵⁸ Mr. Zachares also received a 2003 golf trip to Scotland, free meals and drinks at Mr. Abramoff's restaurant, \$30,000 worth of sporting event and concert tickets and \$10,000 cash from Mr. Abramoff.⁵⁹

MCI Center Skybox Tickets

After asserting in 2006 that he had never had a personal or professional relationship with Jack Abramoff, it was revealed that in 2000, Rep. Young used Mr. Abramoff's MCI Center

⁵² Midnight Sun Political Action Committee, FEC Form 3 Post-General Report 2002, January 31, 2005, p.6 (Exhibit 34).

⁵³ Id.; Midnight Sun Political Action Committee, FEC Form 3 Year-End Report 2001, January 28, 2005, p.15 (Exhibit 35); Midnight Sun Political Action Committee, FEC Form 3 July Quarterly 2002, July 15, 2002, p. 11 (Exhibit 36).

⁵⁴ Paul Singer, Ex-Staffer Helped Zachares Land Job with Panel, *Roll Call*, May 3, 2007 (Exhibit 37).

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Susan Crabtree, Former aide to Young likely to plead guilty, *The Hill*, April 23, 2007 (Exhibit 38).

⁵⁸ Id.

⁵⁹ Crabtree, *The Hill*, Apr. 23, 2007.

skybox tickets for two fund-raisers, which he did not report to the FEC until after the Abramoff scandal broke.⁶⁰

Ties to Dennis Troha

In March of 2007, the FBI and the U.S. Attorney's Office for the Eastern District of Wisconsin opened an investigation into an alleged deal involving Rep. Young, other congressmen and convicted Wisconsin businessman Dennis Troha.⁶¹

Rep. Young's staffer inserted an amendment in the 2005 highway reauthorization bill, that extended the maximum legal length of semi-truck trailers from 75 to 97 feet.⁶² Many truckers opposed the legislation claiming it would be unsafe for drivers and others, but Mr. Troha and his trucking conglomerate, JHT Holdings, disagreed.⁶³ Despite the objections, the bill passed easing federal hauling regulations and directly benefitting Mr. Troha's company.⁶⁴ According to campaign records, three months before the legislation became law, Rep. Young received \$22,000 from Mr. Troha, his family members, JHT executives and their spouses.⁶⁵ In June of 2007, Mr. Troha pleaded guilty to making illegal donations through family members to the Wisconsin Democratic Party as well as President Bush's campaign and is currently cooperating with the government in other unspecified investigations.⁶⁶

Legal Fees

In the first half of 2007, Rep. Young paid \$264, 637 in legal fees.⁶⁷

⁶⁰ Breshnan, *Roll Call*, Jan. 25, 2006.

⁶¹ Daniel Bice, Action in Congress Paid Well For Troha, *Milwaukee Journal Sentinel*, March 18, 2007 (Exhibit 39).

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Alaskans for Don Young Inc., FEC Form 3 July Quarterly Report, May 23, 2005, pp. 76, 77, 90-92 (Exhibit 40). The *Milwaukee Journal Sentinel* reported that Mr. Troha, his four family members and JHT executives have contributed \$25,000 to Rep. Young. Bice, *Milwaukee Journal Sentinel*, Mar. 18, 2007.

⁶⁶ Marie Rohde, Kenosha Businessman Pleads Guilty in Federal Plea Deal, *Milwaukee Journal Sentinel*, July 13, 2007 (Exhibit 41).

⁶⁷ Alaskans for Don Young, FEC Form 3 April Quarterly Report 2007, May 22, 2007, p. 82 (Exhibit 42); Alaskans for Don Young, FEC Form 3 July Quarterly Report 2007, July 24, 2007, pp. 54, 103, 104 (Exhibit 43).

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁶⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶⁹

If, as it appears, Rep. Young accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds for the Coconut Road project in Florida, he may have violated the bribery statute.

If, as it appears, Rep. Young accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds for the Port MacKenzie project, he may have violated the bribery statute.

If, as it appears, Rep. Young accepted campaign donations in direct exchange for earmarking federal funds for PBS&J to conduct a study of the Knik Arm Bridge, he may have violated the bribery statute.

If, as it appears, Rep. Young accepted campaign donations from Jack Abramoff's tribal clients in return for sending a letter to the General Services Administration asking the agency to give the tribes preferential treatment when awarding leases in the Old Post Office Pavilion, he may have violated the bribery statute.

If, as it appears, Rep. Young accepted campaign donations from Dennis Troha and other JHT executives in return for supporting legislation that would extend the maximum legal length of semi-truck trailers, he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the House of Representatives, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁷⁰ By using his position as a member of Congress to financially benefit Daniel Arnoff, PBS&J, VECO, his daughter and son-in-law, Daniel Troha and JHT, and tribal clients of Jack Abramoff, Rep. Young may have deprived his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. § 1341.

⁶⁸ 18 U.S.C. § 201(b)(2)(A).

⁶⁹ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁷⁰ 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁷¹ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁷²

If a link is established between Rep. Young's actions of earmarking funds for the Coconut Road project, PBS&J, the Knik Arm bridges and the Port MacKenzie project and contributions to his campaign committee and PAC, Rep. Young may have violated the illegal gratuity statute.

If a link is established between Rep. Young's sending a letter to the General Services Administration on behalf of some of Jack Abramoff's tribal clients and the contributions made to his campaign committee by those tribes, Rep. Young may have violated the illegal gratuity statute.

If a link is established between Rep. Young's supporting legislation to change the maximum length of semi-truck trailers and contributions made to his campaign committee and PAC by Dennis Troha and other JHT executives, Rep. Young may have violated the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of members, including expulsion.⁷³

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including "anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties."⁷⁴ House Rule XXIII, clause 3, similarly provides:

⁷¹ 18 U.S.C. § 201(c)(1)(B).

⁷² United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁷³ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

⁷⁴ See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

A Member, Delegate, Resident Commissioner, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

If Rep. Young accepted campaign contributions from Daniel Arnoff, PBS&J and VECO in return for legislative assistance by way of earmarking federal funds for projects benefitting Mr. Arnoff, PBS&J and VECO, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting campaign contributions from Indian tribes in exchange for sending a letter to the General Services Administration, Rep. Young likely violated 5 U.S.C. § 7353 and House Rule XXIII.

By accepting campaign contributions from Dennis Troha and other JHT executives in return for supporting legislation to change the maximum length of sem-truck trailers, Rep. Young likely violated 5 U.S.C. § 7353 and House Rule XXIII.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁷⁵ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The Code of Ethics also provides that government officials should “[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not.”⁷⁶

By funneling federal funds to the Coconut Road project, PBS&J, the Knik Arm bridges, and the Port MacKenzie project, Rep. Young may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

⁷⁵ House Comm. on Standards of Official Conduct, “Memorandum For All Members, Officers and Employees,” Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁷⁶ Id.

By writing a letter on behalf of Jack Abramoff's tribal clients in exchange for campaign contributions, Rep. Young may have dispensed special favors and violated 5 C.F.R. § 2635.702(a).

By changing the law concerning the length of semi-truck trailers in exchange for campaign contributions, Rep. Young may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

Federal Election Campaign Act

Federal campaign law defines "contribution" to include "any gift . . . or anything of value."⁷⁷ "Anything of value" includes all in-kind contributions.⁷⁸ Federal law requires candidates and their authorized committees in a federal election to report to the Federal Election Committee, according to a defined schedule, all contributions made to candidates and their authorized committees in a federal election.⁷⁹

By failing to report his use of Jack Abramoff's MCI Center skyboxes until after the Abramoff scandal broke, Rep. Young violated federal campaign finance law.

Conduct Not Reflecting Creditably on the House

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves "at all times in a manner that reflects creditably on the House."⁸⁰ This ethics standard is considered to be "the most comprehensive provision of the code."⁸¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished.⁸² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,⁸³ making false statements to the

⁷⁷ 2 U.S.C. § 431(8)(A)(i).

⁷⁸ 11 C.F.R. § 100.52(d)(1).

⁷⁹ 2 U.S.C. § 434(a)-(b).

⁸⁰ Rule XXIII, cl. 1.

⁸¹ House Comm. on Standards of Official Conduct, House Ethics Manual.

⁸² House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁸³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

Committee,⁸⁴ criminal convictions for bribery,⁸⁵ or accepting illegal gratuities,⁸⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁸⁷

Rep. Young apparently accepted campaign contributions in return for legislative favors that financially benefitted personal friends, relatives and favored businessmen. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule XXIII, clause 1.

Deferral to Department of Justice

The fact that the Department of Justice is currently conducting four separate criminal investigations of Rep. Young and his relationships with VECO, Dennis Troha and Jack Abramoff should not be a basis for the Committee to defer any investigation into, or action on, Rep. Young's ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer action on a complaint against a Member" if: 1) "the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or 2) "the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."⁸⁸

⁸⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

⁸⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁸⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

⁸⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁸⁸ House Comm. on Standards of Official Conduct, Committee Rules, Rule 15(f), 109th Cong. (2005); see also Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay: Memorandum of the Chairman and Ranking Member, p. 24, 108th Cong., 2d Sess. (2004).

A 1975 Committee report explained the Committee's approach in the circumstances of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁸⁹

Under Rule 15(f):

[D]eferral by the Committee where there is an ongoing law enforcement proceeding is not mandatory, but rather is discretionary. Historically, the Committee has been more reluctant to defer where the Member conduct that is at issue is related to the discharge of his or her official duties as a Member of the House.⁹⁰

Rep. Young's conduct unquestionably is related to the discharge of his official duties as a member of the House, as it raises the issues of whether he received financial assistance, bribes, or illegal gratuities as *quid pro quos* for exercising his congressional powers to benefit Daniel Arnoff, PBS&J, VECO, tribal clients of Jack Abramoff and Dennis Troha and JHT. As a result, given the Committee's precedents, a Committee investigation into Rep. Young's activities is appropriate.

⁸⁹ Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay, (quoting House Comm. on Standards of Official Conduct, Policy of the House of Representatives with Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975)).

⁹⁰ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

MEMBERS OF THE SENATE

SEN. PETE V. DOMENICI

Pete V. Domenici (R-NM) is a sixth-term senator from New Mexico. His ethics issues stem from his contacting the U.S. Attorney in Albuquerque, New Mexico to inquire about an ongoing corruption probe of Democrats.

Contacting U.S. Attorney

Former New Mexico U.S. Attorney David Iglesias has claimed that Sen. Domenici contacted him before the November 2006 elections to pressure him about an ongoing corruption probe into state Democrats.¹ Mr. Iglesias previously stated that in mid-October, he was pressured about the pace of the investigation by two New Mexico lawmakers.² Initially, when asked about Mr. Iglesias's allegations, Sen. Domenici stated, "I have no idea what he's talking about."³ Apparently, Rep. Heather Wilson (R-NM) first called Mr. Iglesias and Sen. Domenici called a week later.⁴ Sen. Domenici later admitted that he called Mr. Iglesias, stating "I asked Mr. Iglesias if he could tell me what was going on in that investigation and give me an idea of what time frame we were looking at."⁵

Senate Rule XLIII

Senate Rules provide that at the request of a petitioner, a member of the Senate or Senate employee may communicate with an executive or independent government official or agency to request information, urge prompt consideration, arrange an interview, express a judgment, or call for reconsideration of an administrative response which the member believes is not reasonably supported by law or public policy.⁶ The decision to provide such assistance may not, however, be made "on the basis of contributions or services, or promises of contributions or services, to the Member's political campaigns or to other organizations in which the Member has a political, personal or financial interest."⁷

Interpreting this provision, the Senate Ethics Manual states:

¹ Dan Eggen, Domenici Says He Contacted Prosecutor, *The Washington Post*, March 5, 2007 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Eggen, *The Washington Post*, Mar. 5, 2007.

⁶ Senate Code of Official Conduct, Rule XLIII.

⁷ Id.

The general advice of the Ethics Committee concerning pending court actions is that Senate offices should refrain from intervening in such legal actions . . . until the matter has reached a resolution in the courts. The principle behind such advice is that the judicial system is the appropriate forum for the resolution of legal disputes and, therefore, the system should be allowed to function without interference from outside sources.⁸

The manual also states:

[T]he Committee has ruled that communications with an agency with respect to a matter which may be the subject of litigation in court is, nevertheless, generally permitted, where the communication is with the agency (or its attorneys, e.g. the Department of Justice) and not directed at the court, where the agency is not engaged in an on-going enforcement, investigative, or other quasi-judicial proceeding with respect to the matter, and where the communication is based on public policy considerations and is otherwise consistent with Rule 43.⁹

Here, by pressuring Mr. Iglesias to act quickly on a pending corruption investigation, Sen. Domenici attempted to intervene in a pending legal action before the matter reached a resolution in the courts. Moreover, the communication with Mr. Iglesias appears to have been based on political considerations, *i.e.*, Sen. Domenici made the telephone call in October 2006 in an apparent attempt to influence Mr. Iglesias to take action that might have adversely affected Democrats in the November elections. These actions clearly violate Senate Rule 43.

Senate Rule Prohibiting Improper Conduct

When first confronted with the charges that he improperly contacted the U.S. attorney about a pending criminal investigation, Sen. Domenici denied the allegations.¹⁰ The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation.” Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”¹¹ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹² The Ethics Manual explains that “improper conduct” is

⁸ Senate Ethics Manual, p. 178.

⁹ Id. at 179.

¹⁰ Eggen, *The Washington Post*, Mar. 5, 2007

¹¹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

¹² Id.

given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . .”¹³

When Sen. Domenici stated, in response to Mr. Iglesias’s allegations, “I have no idea what he’s talking about,” he was obviously not telling the truth. This represents improper conduct that reflects upon the Senate.

The Senate Select Committee on Ethics is investigating Sen. Domenici’s conduct.¹⁴

¹³ *Id.* at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

¹⁴ Michael Coleman, Domenici’s Role Got Downplayed: Deputy AG Speaks Out On U.S. Attorney Firings, *Albuquerque Journal*, June 22, 2007 (Exhibit 2).

SEN. MITCH MCCONNELL

Sen. Mitch McConnell (R-KY) is a fourth-term senator from Kentucky. He is the minority leader in the 110th Congress and sits on the Senate Appropriations Committee. Senator McConnell's ethics issues stem from earmarks he has inserted into legislation for clients of his former chief of staff, lobbyist Gordon Hunter Bates, in exchange for campaign contributions as well as the misuse of his nonprofit McConnell Center for Political Leadership at the University of Louisville.

Gordon Hunter Bates and the Bates Capitol Group LLC

Gordon Hunter Bates served as Sen. McConnell's chief legal counsel and then-chief of staff from 1997 to 2002.¹ After a 2003 lawsuit ended his bid for lieutenant governor of Kentucky he opened a lobbying firm, Bates Capitol Group LLC (Bates Capitol).² Mr. Bates' business has been aided by his connection to Sen. McConnell. Rusty Thompson, a Versailles, Kentucky tobacco farmer and board member of the Burley Tobacco Cooperative, a Bates Capitol client, said that Sen. McConnell told him "you need to hire Hunter Bates, I can work with Hunter Bates."³ The Bates Capitol Group has employed other former staffers of Sen. McConnell including: Holly Piper, wife of Sen. McConnell's chief of staff Bill Piper and a former Sen. McConnell aide herself, Patrick Jennings and Lesley Elliot.⁴ Bates Capitol clients include: E-Cavern, Voice for Humanity, Appriss Inc. and Boardpoint LLC, all of which have received earmarks thanks to Sen. McConnell. In addition, the senator rewrote legislation to help another Bates Group client, UPS Inc. All of these companies have made substantial contributions to Sen. McConnell's campaigns.

E-Cavern

In tandem with the University of Louisville and the University of Kentucky, E-Cavern has been attempting to build an underground computer data storage center near the Louisville Airport.⁵ E-Cavern unsuccessfully lobbied the Kentucky congressional delegation to support

¹ <http://www.batescapitol.com/bio.htm> (Exhibit 1).

² John Cheves, A Lucrative Connection: Lobbyist's Close Ties To Senator Pay Off For Them Both And Client, *Lexington Herald-Leader*, October 22, 2006 (Exhibit 2).

³ Id.

⁴ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006; Matt Kelley and Peter Eisler, Relatives Have 'Inside Track' In Lobbying for Tax Dollars; No Laws Prevent Family Members From Trying To Influence Lawmakers Or Top Congressional Staffers, *USA Today*, October 17, 2006 (Exhibit 3).

⁵ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006; Senator McConnell Secures Over \$13 Million In Funding For Transit Project In Kentucky, *US Fed News*, November 18, 2005 (Exhibit 4).

this project for three years before hiring Bates Capitol in 2003.⁶ Soon after E-Cavern hired Bates Capitol, Sen. McConnell earmarked \$1 million for the underground project in the fiscal year (FY) '05 Omnibus Appropriations Conference Report.⁷ In 2005, Sen. McConnell inserted an additional \$1.5 million earmark for E-Cavern into the FY '06 Transportation, Judiciary and Housing and Urban Development Appropriations Conference Report.⁸ In 2006, Sen. McConnell earmarked \$1 million for E-Cavern in the FY '07 Transportation, Treasury, and Housing and Urban Development Appropriations bill.⁹ In July of 2007, Sen. McConnell took credit for another \$1 million earmark for the E-Cavern project in the FY '08 Senate Financial Services and General Government Appropriations bill.¹⁰

Between July 2003 and December 2006, E-Cavern paid Bates Capitol \$460,000 for lobbying.¹¹ In August of 2005, E-Cavern president Mark Roy and executive James Philpolt each contributed \$1,000 to the McConnell Senate Committee.¹² Between August of 2004 and August of 2006, Mr. Philpolt and Mr. Roy donated \$8,500 to the McConnell Senate Committee and Sen. McConnell's leadership PAC, the Bluegrass Committee.¹³ Neither executive had donated to Sen. McConnell prior to hiring Bates Capitol.¹⁴

⁶ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

⁷ Sen. McConnell Secures Funding For E-Cavern Project, *US Fed News*, November 22, 2004 (Exhibit 5).

⁸ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006; *States News Service*, Nov. 18, 2005.

⁹ Congress Passes Transportation, Treasury, Housing, And Urban Development Appropriations Measure, *US Fed News*, June 17, 2006 (Exhibit 6).

¹⁰ Senator McConnell Secures Funding For Two University Of Kentucky Financial Services Projects, *States News Service*, July 12, 2007 (Exhibit 7).

¹¹ Bates Capitol Group, LLC, Lobbying Reports, Year End 2003 through Year End 2006 (Exhibit 8).

¹² McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 270, 282 (Exhibit 9).

¹³ Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, p. 156 (Exhibit 10); McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 270, 282 (See Exhibit 9); Bluegrass Committee, FEC Form 3, October Quarterly Report 2006, October 13, 2006, pp. 87, 93, 94 (Exhibit 11). Notably, Mark Roy's contributions to the Bluegrass Committee were designated Earmarked Intermediary Out (EIO), meaning they were passed along by Sen. McConnell's Bluegrass Committee to another political committee.

¹⁴ The FEC's website, www.fec.gov, lists no contributions by Mark Roy or James Philpolt to Sen. McConnell prior to August 2004.

Boardpoint LLC

Boardpoint LLC hired Bates Capitol in early 2004, paying between \$280,000 and \$290,000 in lobbying fees through December 2006.¹⁵ In December of 2005, Sen. McConnell announced a \$2.1 million earmark from the Department of Defense for Accella Learning, a division of Boardpoint, to create an “intelligent tutoring system” for medical personnel.¹⁶ Just two months earlier, Boardpoint Director Joe Coons donated \$2,100 to the McConnell Senate Committee.¹⁷

Voice for Humanity

Voice for Humanity is a non-profit organization¹⁸ originally formed by two Lexington businessmen to spread the word of Christ throughout the world.¹⁹ Their mission changed however when they began receiving federal funding in 2004 thanks to earmarks introduced by Sen. McConnell in his role as chair of the Senate Appropriations Subcommittee on Foreign Operations.²⁰ The company now creates small audio devices that are sent to third world countries to play messages promoting democracy and warning about the dangers of HIV/AIDS.²¹

Voice for Humanity hired Bates Capitol in July 2003, paying the lobbying firm between \$240,000 and \$260,000 in lobbying fees between 2003 and 2006.²² In October 2003, Sen. McConnell delivered a speech on the Senate floor praising Voice for Humanity.²³ Between 2003 and December 2005, Sen. McConnell steered \$8.3 million in federal funds to the organization

¹⁵ The Bates Capitol Group LLC, Lobbying Report, Mid Year 2004 through Year End 2006 (Exhibit 12).

¹⁶ McConnell Secures \$95 million In Funding for Kentucky in FY'06 DOD Appropriations Bill, *States News Service*, December 22, 2005 (Exhibit 13).

¹⁷ McConnell Senate Committee FEC Form 3, Year End Report 2005, January 1, 2006, p. 15 (Exhibit 14).

¹⁸ Voice for Humanity, IRS 2005 Form 990, October 27, 2006 (Exhibit 15).

¹⁹ Linda B. Blackford, Voice For Humanity Finds Friendly Ears In Washington, *Lexington Herald Leader*, December 18, 2005 (Exhibit 16).

²⁰ Id.

²¹ Id.

²² The Bates Capitol Group LLC Lobbying Report, Year End 2003 through Year End 2006 (Exhibit 17).

²³ Blackford, *Lexington Herald Leader*, Dec.18, 2005.

from the State Department for devices to be sent to Afghanistan and Nigeria.²⁴ A program evaluation conducted by USAID found that the organization's programs produced mixed results.²⁵ Nevertheless, Sen. McConnell recommended an additional \$15 million for Voice for Humanity to extend its work into Iran and North Korea.²⁶

Voice for Humanity founder Michael Kane never contributed to Sen. McConnell's campaigns before the senator began earmarking for the organization,²⁷ but in 2004 donated \$1,000 to Sen. McConnell's leadership PAC, and in 2005 donated \$4,200 to his campaign committee.²⁸ Voice for Humanity director Samuel Mitchell, who like Mr. Kane previously had not contributed to Sen. McConnell's campaigns,²⁹ has contributed a total of \$9,600 to the McConnell Senate Committee and to Sen. McConnell's joint fund-raising committee, the McConnell Majority Committee.³⁰

Appriss Inc.

Appriss Inc. is a Louisville based company that sells communication technology to law enforcement and owns VINE, the National Victim Notification Network.³¹ VINE is the largest data network providing victim notification systems in the country.³² Appriss has been providing technology such as VINE since 1994.³³ VINE data network technology did not become widely

²⁴ Id.

²⁵ Id.

²⁶ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

²⁷ The FEC's website, www.fec.gov, lists no contributions by Michael Kane to Sen. McConnell prior to July 2004.

²⁸ Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, p. 119 (Exhibit 18). Notably, this contribution was marked EIO; McConnell Senate Committee, FEC Form 3, July Quarterly Report 2006, July 14, 2006, p. 40 (Exhibit 19).

²⁹ No contributions of Samuel Mitchell to Sen. McConnell could be discovered on the website, www.fec.gov, prior to March 2007.

³⁰ McConnell Senate Committee, FEC Form 3, April Quarterly Report 2007, April 13, 2007, pp. 223, 331 (Exhibit 20); McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, p. 107 (Exhibit 21).

³¹ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³² <http://www.appriss.com/sitedocs/VINECutSheet.pdf> (Exhibit 22).

³³ <http://www.appriss.com/> (Exhibit 23).

used, however, until after Appriss hired Bates Capitol.³⁴

After Appriss hired Bates Capitol in 2004, Sen. McConnell praised Appriss in a 2004 news conference.³⁵ Between 2004 and 2006, Appriss paid Bates Capitol \$320,000.³⁶ During the same period, Sen. McConnell sat on a small Senate budget negotiations team that earmarked \$17 million in the Department of Justice's budget to purchase victim notification systems.³⁷ Between January and September 2006, four states signed contracts to use VINE and Appriss expected to add six more state-wide contracts by the end of 2006.³⁸ The increase in VINE contracts can be attributed to the increase in federal funding earmarked for victim-notifications programs.³⁹

Since 2004, ApprissPAC as well as individual Appriss employees and their spouses have contributed \$55,000 to Sen. McConnell's leadership PAC, joint fundraising committee, and campaign committee.⁴⁰ Dating back to 1997, Appriss CEO Douglass Cobb and his wife, Gena Cobb, have contributed \$29,000 to Sen. McConnell: \$12,000 between 1997 and 2002, \$6,000 in 2003, and \$11,000 since early 2004.⁴¹ Appriss director David Grissom donated \$5,000 to Sen.

³⁴ Sarah Jeffords, Appriss Adds Contracts, Products, Workers, *Business First of Louisville*, September 25, 2006 (Exhibit 24).

³⁵ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³⁶ The Bates Capitol Group LLC, Lobbying Report, Mid Year 2004 through Year End 2006 (Exhibit 25).

³⁷ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³⁸ Jeffords, *Business First of Louisville*, Sept. 25, 2006.

³⁹ Id.

⁴⁰ Appriss Inc. PAC, FEC Form 3, April Quarterly Report 2007, April 16, 2007, p. 8 (Exhibit 26); Bluegrass Committee, FEC Form 3, April Quarterly Report 2004, April 15, 2004, pp. 6, 10 (Exhibit 27); Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, pp. 11, 73, 74, 83 (Exhibit 28). All 2004 contributions but the Appriss PAC contribution to the Bluegrass Committee were marked EIO; Bluegrass Committee, FEC Form 3, July Quarterly Report 2006, July 14, 2006, pp. 29, 30 (Exhibit 29). Both 2006 contributions to the Bluegrass Committee were marked EIO; McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, pp. 33, 42, 115, 133, 164, 169 (Exhibit 30); McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 122, 173, 243, 278, 291, 330, 331 (Exhibit 31); McConnell Senate Committee, FEC Form 3, April Quarterly Report 2007, April 13, 2007, pp. 259, 395, 422 (Exhibit 32).

⁴¹ Bluegrass Committee, FEC Form 3, Year-End Report 1997, January 30, 1998, p. 4 (Exhibit 33); Bluegrass Committee, FEC Form 3, Mid-Year Report 1999, July 30, 1999, p. 7 (Exhibit 34); Bluegrass Committee, FEC Form 3, Year-End Report 2003, January 30, 2004, p. 54 (Exhibit 35); Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October

McConnell's Bluegrass Committee in 2003 and donated \$3,000 to the McConnell Senate Committee in 2005.⁴²

UPS

UPS has been a Bates Capitol client since 2003, having paid the firm \$320,000 as of the end of 2006.⁴³ In 2004, Sen. McConnell lobbied President Bush to include the UPS pension fund in a bill that allowed large employers to delay pension fund contributions for two years because of stock market losses.⁴⁴ The UPS PAC contributed \$10,000 to the McConnell Senate Committee between July 2004 and August 2005⁴⁵ and the company has donated \$400,000 to the McConnell Center for Political Leadership at the University of Louisville.⁴⁶

The McConnell Center for Political Leadership

The McConnell Center for Political Leadership was founded by Sen. McConnell in 1991⁴⁷ as a non-profit organization for which the senator raises funds.⁴⁸ The University of Louisville Foundation was sued by the *Courier Journal* of Louisville, Kentucky because the

15, 2004, pp. 73, 74 (Exhibit 36); Bluegrass Committee, FEC Form 3, October Quarterly Report 2006, October 13, 2006, pp. 29, 30 (Exhibit 37); McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, p. 33 (Exhibit 38); McConnell Senate Committee, FEC Form 3, Year-End Report 2001, January 31, 2002, p. 23 (Exhibit 39); McConnell Senate Committee, FEC Form 3, July Quarterly Report 2003, July 15, 2003, p. 1 (Exhibit 40); McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, p. 173 (Exhibit 41).

⁴² Churchill Downs Incorporated Conducts 2007 Annual Meeting, *Business Wire*, June 28, 2007 (Exhibit 42); Bluegrass Committee, FEC Form 3, Mid-Year Report 2003, July 15, 2003, p. 9) (Exhibit 43); McConnell Senate Committee, FEC Form 3 October Quarterly Report 2005, October 14, 2005, p. 291 (Exhibit 44).

⁴³ The Bates Capitol Group LLC, Lobbying Report, Mid Year 2003 through Year End 2006 (Exhibit 45).

⁴⁴ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

⁴⁵ United Parcel Service Inc. PAC, FEC Form 3, August Monthly Report 2004, August 19, 2004, p. 151 (Exhibit 46); United Parcel Service Inc. PAC, FEC Form 3, September Monthly Report 2005, September 19, 2005, p. 331 (Exhibit 47).

⁴⁶ Mark Pitsch, Foundation Releases Donor List; U Of L Includes McConnell Center Gifts, *The Courier-Journal*, December 14, 2004 (Exhibit 48).

⁴⁷ <http://louisville.edu/mcconnellcenter/about/> (Exhibit 49).

⁴⁸ The Money Funnels, *www.kentucky.com*, October 15, 2006 (Exhibit 50).

center insisted on maintaining the anonymity of its donors.⁴⁹ In November 2004, a Kentucky court ordered the foundation to release the names of corporate donors, including donations made to the McConnell Center.⁵⁰ Sen. McConnell and the University of Louisville Foundation had maintained that donors' identities were kept confidential at the request of donors, although an official from at least one corporate donor, Toyota Motor Manufacturing of North America, said, "Toyota's never made any secret of our contribution to the McConnell program."⁵¹ Two of the largest donors to the McConnell Center are Ashland Inc. and UPS, which have donated \$500,000 and \$400,000 respectively.⁵² Some donations to the McConnell Center have been delivered to Sen. McConnell's Capitol Hill office.⁵³

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵⁵

If, as it appears, Sen. McConnell accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to clients of Bates Capitol, he may have violated the bribery statute. Similarly, if he provided legislative assistance in return for contributions to the McConnell Center he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the United States Senate, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁶ By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his

⁴⁹ Pitsch, *The Courier-Journal*, Dec. 14, 2004.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ *www.kentucky.com*, Oct.15, 2006.

⁵⁴ 18 U.S.C. § 201(b)(2)(A).

⁵⁵ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁵⁶ 18 U.S.C. § 1341.

former staff member, Sen. McConnell may be depriving his constituents, the United States Senate and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.⁵⁷ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁸

If a link is established between Sen. McConnell's actions to earmark funds for clients of Bates Capitol and the campaign donations and donations made to his PAC by Bates Capitol's clients, or if a link is established between contributions made to the McConnell Center and legislative assistance provided by Sen. McConnell, Sen. McConnell would be in violation of 18 U.S.C. § 201(c)(1)(B).

5 U.S.C. § 7353

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the Congress, officers, and employees from asking for anything of value from a broad range of people, including "anyone seeking official action from, doing business with, or . . . conducting activities regulated by the individual's employing entity; or whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."

If Sen. McConnell sought campaign contributions from either Bates Capitol or any of the organizations for which he inserted earmarks, including E-Cavern, Boardpoint, Voice for Humanity or Appriss, Inc., in exchange for those earmarks, he may have violated 5 U.S.C. § 7353. Similarly, if he sought contributions for the McConnell Center in return for legislative assistance, Sen. McConnell may have violated 5 U.S.C. § 7353.

5 C.F.R. § 2635.702(a)

5 C.F. R. § 2635.702(a) prohibits government employees, including members of the Senate from "taking any official actions for the prospect of personal gain for themselves or anyone else." Specifically, 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another

⁵⁷ 18 U.S.C. § 201(c)(1)(B).

⁵⁸ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By funneling federal funds to clients of Bates Capitol, the lobbying firm of his former aide, Gordon Hunter Bates, Sen. McConnell may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as ‘improper conduct which may reflect upon the Senate.’”⁵⁹ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁶⁰ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . . .”⁶¹

In 1991, the Senate Select Committee on Ethics concluded that Senator Alan Cranston had engaged in improper conduct which reflected on the Senate by “engaging in an impermissible pattern of conduct in which fund raising and official activities were substantially linked.”⁶² Although the committee found that none of Senator Cranston’s activities violated any particular law or Senate rule, the committee nonetheless found Senator Cranston’s conduct “violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate . . .”⁶³ As a result, the committee issued a reprimand to Senator Cranston.⁶⁴

In addition, the Senate Select Committee on Ethics’ Rules specifically list the Code of

⁵⁹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁶⁰ Id.

⁶¹ Id. at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

⁶² Senate Ethics Manual, p. 434.

⁶³ Id. at 435.

⁶⁴ Id.

Ethics for Government Service as a source for committee jurisdiction.⁶⁵ The code states that a person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”⁶⁶

If Sen. McConnell accepted campaign contributions or contributions to the McConnell Center from companies such as E-Cavern, Boardpoint, Voice for Humanity, Appriss and UPS in return for legislative assistance, he may have engaged in improper conduct which reflects upon the Senate.

⁶⁵ Id. at 436.

⁶⁶ Id. (*citing* H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12)).

SEN. LISA MURKOWSKI

Sen. Lisa Murkowski (R-AK) is a first-term senator representing Alaska. Sen. Murkowski's ethics violations stem from her purchase of land in Alaska, far below the market value, and her failure to accurately disclose the transaction in her 2006 financial disclosure report.

Kenai River Property Purchase

On December 22, 2006, Sen. Murkowski and her husband paid \$179,400 for a 1.2 acre vacant lot on the banks of the Kenai River in Alaska from long-time friend and campaign contributor Bob Penney.¹ Three days after the purchase, the Kenai Peninsula Borough Assessing Department valued the land at \$214,900,² 20% over what Sen. Murkowski paid for the land.³

According to numerous real estate sources in the area, the Kenai lots actually sell for significantly higher than the Borough assessed price because they are located on a world-famous fishing river.⁴ For example, the Alaskan online real estate listing service lists a one-acre parcel of Kenai Riverfront property at \$399,000, almost triple the per-acre cost of what Sen. Murkowski paid.⁵ Alaskan real estate agents have suggested the value of Sen. Murkowski's property is between \$250,000 and \$350,000.⁶

Mr. Penney, the seller of the property, has been questioned in connection with a criminal investigation into real estate transactions involving Alaska Senator Ted Stevens.⁷ Mr. Penney entered into a real estate venture with Sen. Stevens in 1998, in which Sen. Stevens initially invested \$15,000 and later sold his share for \$150,000.⁸ Mr. Penney and Sen. Stevens also both

¹ Rachel D'Oro, Sen. Murkowski Plans To Sell Back Alaska Land Amid Allegations Of Sweetheart Deal, *Associated Press*, July 27, 2007 (Exhibit 1).

² Brandon Loomis & Erika Bolstad, Murkowski Defends Price Paid For Kenai Land, *Anchorage Daily News*, July 20, 2007 (Exhibit 2).

³ Editorial, Lisa's Deal, *Anchorage Daily News*, July 19, 2007 (Exhibit 3).

⁴ Steve Quinn, Watchdog Group Questions Senator's Purchase Of Sportsman's Paradise Tract, *Associated Press*, July 20, 2007 (Exhibit 4).

⁵ Editorial, *Anchorage Daily News*, July 19, 2007.

⁶ Quinn, *Associated Press*, July 20, 2007.

⁷ Richard Mauer, D.C. Grand Jury Examines Stevens' Ties To VECO, *Anchorage Daily News*, June 17, 2007 (Exhibit 5).

⁸ Brandon Loomis, Senator's Land Deal Scrutinized, *Anchorage Daily News*, July 19, 2007 (Exhibit 6).

own stakes in a racehorse purchased from former VECO executive and convicted felon Bill Allen.⁹

Mr. Penney is a real-estate developer who owns the two lots directly next to the property he sold to Sen. Murkowski¹⁰ and has testified regarding the economic impact of fishing upon the Kenai River property values.¹¹ He claimed, however, he was unaware that the Borough assessed value of Sen. Murkowski's land had increased since 2005, when it was valued at \$120,000.¹²

Mortgage for Kenai River Property

Sen. Murkowski financed the purchase of the property with a loan for 80% of the purchase price from First Bank in Ketchikan.¹³ Sen. Murkowski once sat on the board of directors of First Bank, her sister is a shareholder and member of the bank's board of directors, her father previously sat on the board of directors and her grandfather was president of the bank.¹⁴ Financial records show the maturity date for Sen. Murkowski's loan as 2046, making it a thirty-nine year term.¹⁵ First Bank, however, told an Alaskan media outlet that the standard loans for undeveloped property such as Sen. Murkowski's have a maximum seven-year maturity.¹⁶ On her 2006 financial disclosure form, Sen. Murkowski reported the term as 15 years.¹⁷

⁹ National Legal and Policy Center, Letter to Senate Select Committee on Ethics Requesting Investigation of Senator Lisa Murkowski's Land Deal, July 24, 2007 (Exhibit 7).

¹⁰ Quinn, *Associated Press*, July 20, 2007.

¹¹ House Committee On Economic Development, Trade, and Tourism, Agrium's Economic Impact on the Kenai, April 24, 2007 (Exhibit 8).

¹² Loomis, *Anchorage Daily News*, July 19, 2007.

¹³ Brandon Loomis & Richard Mauer, Ethics Complaint Targets Murkowski Land Deal, *Anchorage Daily News*, July 26, 2007 (Exhibit 9).

¹⁴ Jason Moore, Murkowski Land Deal Questioned, *KTUU-TV*, July, 26 2007 (Exhibit 10).

¹⁵ Loomis & Mauer, *Anchorage Daily News*, July 26, 2007.

¹⁶ Moore, *KTUU-TV*, July, 26 2007.

¹⁷ Sen. Lisa Murkowski, Annual Financial Disclosure Report for 2006, filed May 15, 2007 (Exhibit 11).

Sen. Murkowski also failed to report the land purchase as a transaction on her 2006 financial disclosure report. Instead, she reported it as a liability, with no listed value, that she claimed was incurred on “11/0.”¹⁸

On July 25, 2007, the National Legal and Policy Center asked the Senate Select Committee on Ethics to investigate Sen. Murkowski’s land deal and as a result, the next day Sen. Murkowski announced that she would sell the property back to Mr. Penney for the original purchase price.¹⁹

Senate Gift Rule

The Property

Rule 35, paragraph 1(a)(1) of the Senate Code of Official Conduct states that “No Member, officer or employee of the Senate shall knowingly accept a gift except as provided in this rule.”²⁰ The Ethics Manual defines “gift” to mean:

any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.²¹

The gift rule prohibits a member of the Senate from accepting an opportunity or benefit not available to a wide group.²² The Ethics Manual defines this provision to allow a member to accept benefits or opportunities that are offered because of the member’s membership in a group that is not defined on the basis of the member’s employment with the Senate.²³ Thus, members of the Senate may accept offers made to the general public, but not offers specifically targeted at senators or their staff.²⁴

¹⁸ Id.

¹⁹ Erika Bolstad and Richard Mauer, Murkowski Returns Disputed Land, *Anchorage Daily News*, July 26, 2007 (Exhibit 12)

²⁰ Senate Ethics Manual, Select Committee on Ethics. U.S. Senate, p. 314 (2003 ed.).

²¹ Senate Rule 35(1)(b)(1).

²² Senate Rule 35(1)(c)(19).

²³ Senate Ethics Manual, p. 40.

²⁴ Id.

Mr. Penney did not offer the Kenai River property for sale at the price of \$179,400 to the general public; he offered the land only to Sen. Murkowski. Thus, Sen. Murkowski, by purchasing property from Mr. Penney for a price substantially less than the value of the land -- likely between \$35,500 and \$170,600 less -- appears to have accepted an improper gift from Mr. Penney.

The Bank Loan

Rule 35, paragraph 1(c)(19)(E), allows Members, officers and employees to accept “loans from banks and other financial institutions on terms generally available to the public.”²⁵

Here, Sen. Murkowski took out a loan for 80% of the price of the property from the First Bank for a term of 39 years, although First Bank stated that the standard term for undeveloped property such as Sen. Murkowski was purchasing is only seven years. Thus, by accepting a mortgage from First Bank on terms not available to the general public, but perhaps made available to her because of her and her family’s connections to the bank, Sen. Murkowski violated Rule 35.

Financial Disclosure Requirements

The Ethics in Government Act of 1967²⁶ requires all members of Congress to file financial disclosure reports. Under the statute, the Attorney General may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.²⁷ Senate Rule 34 incorporates the financial disclosure provisions of the Ethics in Government Act.

In addition, the Senate Ethics Manual requires members to disclose the date, total purchase or sale price and description of any property bought or sold in Part IV of the financial disclosure form.²⁸ Members are also required to report as liabilities in Part VII of the form obligations over \$10,000 to one creditor and to identify the name and type of creditor, the interest rate, term and amount of the liability.²⁹

As the National Legal and Policy Center explained in its complaint, by incorrectly reporting the terms of her First Bank loan, including the date incurred, length until maturity and the value of the loan in Part VII of her financial disclosure report, and by failing to report the

²⁵ Id.

²⁶ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

²⁷ 5 U.S.C. app. 4, § 104.

²⁸ Senate Ethics Manual, p. 133.

²⁹ Id., p. 135.

purchase of the property in Part IV of the report, Sen. Murkowski appears to have violated the Ethics in Government Act and Senate ethics rules.³⁰

³⁰ Sen. Lisa Murkowski, Annual Financial Disclosure Report for 2006, filed May 15, 2007.

SEN. TED STEVENS

Ted Stevens (R-AK) is a seventh-term senator, representing Alaska. Sen. Stevens was chairman of the Senate Appropriations Committee from 1997 to 2005, except for an 18-month period when the Democrats controlled the Senate.¹ He stepped down from this position in January of 2005 due to Republican six-year term limits on chairmanships.² Sen. Stevens sits on the Commerce, Justice, Science, and related Agencies Subcommittee of the Appropriations Committee, which oversees the Justice Department's budget. Sen. Stevens' ethics issues stem from his ties to VECO Corporation; earmarks he has inserted for companies that paid his son, Ben Stevens; his relationship with his brother-in-law, lobbyist William Bittner; his relationship with Alaskan real estate developers Jonathan Rubini and Leonard Hyde; as well as the activities of his non-profit, The Ted Stevens Foundation.

VECO Corporation

Sen. Stevens is currently under federal investigation for his ties to VECO Corporation, an oil field engineering firm in Alaska.³ The Justice Department is investigating whether Sen. Stevens accepted bribes, illegal gratuities or unreported gifts from VECO.⁴ Part of the inquiry focuses on a 2000 remodeling project on the senator's Girdwood, Alaska home.⁵ Two VECO executives, former VECO CEO Bill Allen and former Vice President of Community Affairs and Government Relations Rick Smith, pleaded guilty on May 7, 2007, to bribing Alaska state lawmakers,⁶ including 'Senator A' who fits the description of former Alaska State Senate President Ben Stevens, Sen. Stevens' son.⁷

¹ Larry Margasak and Matt Apuzzo, Stevens Fears Impact Of Current Probe, *Associated Press Online*, July 10, 2007 (Exhibit 1).

² Sean Cockerham, Money Bill Passes Amid Fury; Stevens; Alaska Senator Denies Role In Placing Controversial Item Into Bill, *Anchorage Daily News*, November 21, 2004 (Exhibit 2).

³ Two US Lawmakers Face Corruption Probe: Report, *Agence France Press*, July 25, 2007 (Exhibit 3).

⁴ Id.

⁵ Richard Mauer, Feds Eye Stevens' Home Remodeling Project, *Anchorage Daily News*, May 29, 2007 (Exhibit 4).

⁶ Timeline of Federal Investigation into Alaska Politics, *Anchorage Daily News*, May 8, 2007 (Exhibit 5).

⁷ Lisa Demer, Ben Stevens ID'd as Senator A, *Anchorage Daily News*, August 30, 2007 (Exhibit 6).

The federal government charged that VECO paid Sen. Ben Stevens \$200,000 in bribes masquerading as consulting fees.⁸ Mr. Allen and Mr. Smith also pleaded guilty to conspiring to defraud the IRS by reimbursing officials who made campaign contributions to VECO-supported candidates.⁹

Since 1998, Mr. Allen and other VECO executives have given \$72,000 to Sen. Stevens' campaign committee and leadership PAC, Northern Lights PAC.¹⁰ Mr. Allen contributed \$25,000, including \$14,000 after 2004 and his son, Mark Allen, contributed \$12,000. In 2002, VECO's PAC gave \$25,000 to the Northern Lights PAC.¹¹ In June 2007, an aide to Sen. Stevens said that the senator would give all VECO-related contributions made between 2004 and 2006 to charity.¹²

Girdwood House Remodeling Project

Since at least May of 2007, federal authorities have been investigating a remodeling

⁸ Richard Mauer and Lisa Demer, Veco Executives Allen, Smith Plead Guilty to Bribery, Conspiracy, *Anchorage Daily News*, May 8, 2007 (Exhibit 7).

⁹ Tom Kizzia, Sabra Ayres, and Kevin Diaz, A Long, Long Way from Bankruptcy: Influence Peddler: Since Bottom Days 25 Years Ago , Veco has Turned into Big Corporate Political Operator, *Anchorage Daily News*, May 8, 2007 (Exhibit 8).

¹⁰ Northern Lights Political Action Committee, FEC Form 3, August Monthly Report 1998, August 20, 1998, pp. 1, 2 (Exhibit 9); Northern Lights Political Action Committee, FEC Form 3, Year End Amend to Report 2003, October 14, 2004, pp. 6, 10 (Exhibit 10); Northern Lights Political Action Committee, FEC Form 3, Mid Year Report 2005, p. 6 (Exhibit 11); Northern Lights Political Action Committee, FEC Form 3, June Monthly Report 2006, June 20, 2006, pp. 6, 12 (Exhibit 12); Stevens for Senate Committee, FEC Form 3, Year End Report 2000, January 31, 2001, pp. 3, 7, 9, 13, 39 (Exhibit 13); Stevens for Senate Committee, FEC Form 3, Year End Report 2001, March 18, 2002, pp. 80, 127, 258, 299, 322 (Exhibit 14); Stevens for Senate Committee, FEC Form 3, Pre-Primary Report 2002, August 18, 2002, p. 5 (Exhibit 15); Stevens for Senate Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, pp. 7, 9, 10, 13 (Exhibit 16); Stevens for Senate Committee, FEC Form 3, Year End Report 2004, January 1, 2005, p. 5 (Exhibit 17); Stevens for Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 8, 14, 16, 17, 19 (Exhibit 18); Stevens for Senate Committee, FEC Form 3, October Quarterly Report 2006, October 13, 2006, pp. 7, 12, 15 (Exhibit 19).

¹¹ Northern Lights PAC Non-Federal Account, IRS Form 8872 Political Organization Report of Contributions and Expenditures, December 19, 2002 (Exhibit 20).

¹² Paul Kane, Sen. Stevens Told to Keep Records for Graft Probe, *The Washington Post*, June 7, 2007 (Exhibit 21).

project that more than doubled the size of Sen. Stevens' official Alaska residence in Girdwood.¹³ The statement of facts that accompanied Mr. Allen and Mr. Smith's May 2007 guilty pleas stated that "VECO was not in the business of residential construction or remodeling."¹⁴ In June of 2007, Sen. Stevens said that the FBI had requested that he preserve his records as part of a widening investigation into political corruption in Alaska.¹⁵ Sen. Stevens confirmed that he has hired a lawyer to handle the probe and that his son, Ben, is also under investigation.¹⁶

In the summer of 2000, the Stevens' began the remodeling project, which involved raising the first story of the home and constructing a new level beneath the original one.¹⁷ On July 26, 2000, Sen. Stevens faxed a letter to the Anchorage building safety officials saying that his good friend Bob Persons, owner of the Girdwood Double Musky Restaurant, had authority to act on behalf of the Senator and his wife Catherine "in regard to construction at my house in Girdwood."¹⁸

Mr. Persons has testified before a federal grand jury, although he has not revealed the nature of his testimony. It is known, however, that Mr. Persons obtained a land use permit for the project on July 31, 2000, and listed the total value of construction as \$84,878, much lower than the actual cost of over \$100,000.¹⁹

Tony Hannah was responsible for the crew that initially raised the house in July and August of 2000.²⁰ Mr. Hannah, who has testified before the grand jury, said that the crew who worked on flooring for what was to be the new ground floor botched the job.²¹ As a result, during late summer 2000, Augie Paone, owner of Christensen Builders Inc. of Anchorage was hired to fix and complete the home renovations.²²

¹³ Mauer, *Anchorage Daily News*, May 29, 2007.

¹⁴ U.S. v. Bill J. Allen, Factual Basis for Plea, Case No. 3:07-cr-00057 (D. Alaska May 4, 2007) (Exhibit 22).

¹⁵ Kane, *The Washington Post*, June 7, 2007.

¹⁶ Id.

¹⁷ Mauer, *Anchorage Daily News*, May 29, 2007.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Mauer, *Anchorage Daily News*, May 29, 2007.

²² Id.

Mr. Paone testified before the grand jury in December 2006 that Mr. Allen hired him to fix and complete the construction on the Stevens' home.²³ Mr. Paone said, "Bill Allen and some of the VECO boys, some of the VECO guys, were the ones that approached me and wanted to know if I could give them a hand. I did it more as a favor, you know. It's one of those things when somebody is the head, and packs that much power and asks you for a favor, it's kind of hard to say no."²⁴

Mr. Allen knew Mr. Paone because he had worked as a carpenter on a VECO office building in Anchorage and had remodeled the basement of VECO Chief Financial Officer Roger J. Chan. Mr. Paone said that Mr. Chan as well as Mr. Allen asked him to work on the Stevens' house.²⁵ Mr. Paone explained that before he sent any bills to the Stevens, he was directed to provide them first to VECO. If VECO approved the invoice, he faxed it to the Stevens in Washington.²⁶ Mr. Paone received payments from what he said appeared to be a checking account opened for the project because the checks, which were imprinted with Ted and Catherine Stevens' names, had single and double digit numbers.²⁷

The FBI began questioning Mr. Paone about the project in 2006, asking for all paperwork related to the job. He said that agents seemed particularly interested in VECO and its officials and that the government already had copies of most of his invoices, having obtained them from VECO.²⁸

Sen. Stevens has insisted that he paid for the renovations with his own money.²⁹ Barbara Flanders, a clerk on the Senate Commerce Committee, helped Sen. Stevens with his personal finances including paying bills. She testified before a federal grand jury sometime during the summer of 2007 and provided documents regarding the senator's bills.³⁰ She was questioned about how the bills were paid for the Stevens' Girdwood home renovation project.³¹

²³ Id.

²⁴ Mauer, *Anchorage Daily News*, May 29, 2007.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Mauer, *Anchorage Daily News*, May 29, 2007.

²⁹ Stevens Denies Wrongdoing Related to House Renovations, *The Frontrunner*, July 18, 2007 (Exhibit 23).

³⁰ Matt Apuzzo, Feds Question Bookkeeper in Stevens Case, *Associated Press Online*, August 1, 2007 (Exhibit 24).

³¹ Id.

On July 30, 2007, Sen. Stevens' Girdwood home was raided by the FBI and the IRS.³² The FBI would not comment officially on the search, but agents were seen taking extensive photographs and videotapes of all aspects of the house.³³ A law enforcement official with knowledge of the investigation confirmed that the raid on Sen. Stevens' house was connected to the VECO investigation.³⁴ The FBI removed a trash bag full of items from the home.³⁵ It appears that the FBI and IRS may have been attempting to assess the exact value of renovations performed on Sen. Stevens' house in order to determine if he actually paid for all of the remodeling work.³⁶ Agents appeared to take particular notice of and pains to document Sen. Stevens' extensive wine collection.³⁷

On September 14, 2007, Mr. Allen admitted in court that VECO employees worked for several months remodeling Sen. Steven's Girdwood home and that VECO paid for at least some of the remodeling work.³⁸

Sen. Stevens' Legislative Assistance to VECO

Sen. Stevens supported construction of the Alaska oil pipeline, directed federal job-training money to oil field workers and in 2003 pushed for a natural gas pipeline, all of which benefitted VECO.³⁹ During the late 1990s, the number of federal contracts VECO received increased significantly.⁴⁰ This increase coincided with Sen. Stevens' rise to chairman of the

³² Richard Mauer and Erika Bolstad, Warrant Served At Ted Stevens' Girdwood Home; FBI, IRS Examine Residence; Remodeling Job Under Scrutiny, *Anchorage Daily News*, July 31, 2007 (Exhibit 25).

³³ Id.

³⁴ Matt Apuzzo, Corruption Investigators Photograph Wine During Raid On Sen. Stevens' Home, *The Associated Press*, July 31, 2007. [hereinafter Corruption Investigation] (Exhibit 26).

³⁵ Mauer and Bolstad, *Anchorage Daily News*, July 31, 2007.

³⁶ Id.

³⁷ Apuzzo, Corruption Investigation, *The Associated Press*, July 31, 2007.

³⁸ Dan Joling, Allen Says VECO Staff worked on Ted Stevens Home Remodel, *Associated Press*, September 14, 2007 (Exhibit 27)

³⁹ Chuck Neubauer, Judy Pasternak, and Richard T. Cooper, The Senators' Sons; A Washington Bouquet: Hire a Lawmaker's Kid; Stiffer Rules are Making it Harder to Direct Cash to a Congressman. But You Can Still Put His Family on the Pay Roll, *The Los Angeles Times*, June 23, 2003 (Exhibit 28).

⁴⁰ Margasak and Apuzzo, *Associated Press Online*, July 10, 2007.

Senate Appropriations Committee in 1997.⁴¹ Since 1997, VECO has won more than \$65 million in federal contracts, more than triple what the company had received in the previous nine years.⁴² The federal contracts included Navy engineering contracts, oil industry maintenance deals and office repair agreements.⁴³ According to fedspending.org, which tracks government contracts since 2000, VECO received approximately \$41 million in federal contracts between 2000 and 2006.⁴⁴ In the late 1990s, VECO became the exclusive provider of logistical support to Arctic researchers for the National Science Foundation.⁴⁵

In 1999, Sen. Stevens helped VECO in its dealings with the Pakistani government over a \$70 million pipeline the company built, but that the Pakistani government was refusing to pay for.⁴⁶ Sen. Stevens was prepared to block trade legislation strongly supported by the Pakistani government until Pakistani officials agreed to arbitration with VECO.⁴⁷ Once the Pakistani government and VECO settled their financial dispute, the trade bill easily passed the Senate.⁴⁸

Ben Stevens

Sen. Stevens has repeatedly used his legislative powers to benefit companies that have hired his son, former Alaska State Senator Ben Stevens, as a consultant. Sen. Stevens put a rider on an appropriations bill to help the Cook Inlet Region, Inc. (CIRI) make a profit from a telecommunications investment and pushed to make CIRI eligible for tribal gaming. The firm paid Ben Stevens \$218,774.⁴⁹ While Sen. Ted Stevens earmarked more than \$10 million for the 2001 Special Olympics in Anchorage, Ben Stevens was paid \$715,395 over three years to run the games and then paid an additional \$57,000 as a consultant to the national Special Olympics.⁵⁰ While Sen. Stevens pushed legislation to require federal fishing regulators to come up with a plan

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ www.fedspending.org, September 9, 2007 (Exhibit 29).

⁴⁵ Margasak and Apuzzo, *Associated Press Online*, July 10, 2007.

⁴⁶ Neubauer, Pasternak, and Cooper, *The Los Angeles Times*, June 23, 2003.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Neubauer, Pasternak, and Cooper, *The Los Angeles Times*, June 23, 2003.

for crab quotas, Ben Stevens was paid \$56,000 by the North Pacific Crab Association.⁵¹ When Sen. Ted Stevens pushed through legislation for a \$100 million buy-back program for crabbing vessels, the Bearing Sea Crab Effort Reduction Fund paid Ben Stevens \$42,500.⁵² When Sen. Ted Stevens earmarked \$10 million to market Alaska seafood and passed legislation requiring the Department of Defense to purchase only domestically produced seafood, Norquest Seafood paid Ben Stevens \$37,502 and Adak Fisheries paid him \$80,000.⁵³ When Sen. Stevens picked the Southwest Alaska Municipal Conference to hand out \$30 million in disaster relief after a bad groundfish season in 2000, Ben Stevens was paid \$12,800.⁵⁴ Other payments have also drawn the attention of federal investigators.

VECO Corporation

Ben Stevens was the president of the Alaska State Senate from 1995 until the VECO bribery scandal forced him not to seek re-election in 2006. In August 2007, Sen. Ben Stevens was identified as ‘Senator A’, who Mr. Allen and Mr. Smith pleaded guilty to bribing by way of phony consulting payments.⁵⁵ This is corroborated by the fact that the \$243,250 in consulting payments Sen. Ben Stevens received between 2002 and 2006 from VECO precisely match the amount government documents indicate that Mr. Allen and Mr. Smith paid to ‘Senator A’.⁵⁶

Fishing Industry

In the fall of 2006, the federal government issued subpoenas for Sen. Ben Stevens’ records involving the Alaska Fisheries Marketing Board⁵⁷ as well as to fishing industry executives in Washington state, Washington, D.C. and Alaska.⁵⁸ The Alaska Fisheries Marketing Board (AFMB) is a non-profit federal grant distribution organization set up by Sen. Ted Stevens to

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Neubauer, Pasternak, and Cooper, *The Los Angeles Times*, June 23, 2003.

⁵⁵ Mauer and Demer, *Anchorage Daily News*, May 8, 2007.

⁵⁶ U.S. v. Bill J. Allen, Factual Basis for Plea, Case No. 3:07-cr-00057 (D. Alaska May 4, 2007).

⁵⁷ Richard Mauer, Subpoena May Signal a Wider Corruption Net; Grand Jury: Head of Seine Group Says Records Touch Ben Stevens Marketing Board, *Anchorage Daily News*, December 10, 2006 (Exhibit 30).

⁵⁸ John Stanton, Stevens’ Home Raided by Feds, *Roll Call*, July 31, 2007 (Exhibit 31).

distribute federal funds to fishing companies.⁵⁹ Sen. Ben Stevens chaired the AFMB from its creation in 1993 until he resigned on April 19, 2006.⁶⁰ Sen. Ted Stevens' former aide, Trevor McCabe, also served on the board.⁶¹ During this period the AFMB distributed millions of dollars in federal funds to companies that paid \$775,435 in consulting fees to Sen. Ben Stevens.⁶²

In December of 2006, Sen. Ted Stevens passed legislation that included a \$25 million appropriation to reduce salmon fishing boats, or seine boats, through a federal buy-back of fishing permits.⁶³ The buyback is intended to help fisherman who are suffering financially because of decreased salmon prices because fewer fishing boats should lead to less fish in the market which, in turn, should result in higher prices for fish.⁶⁴ The Southeast Seiners, a salmon fishing association, hired lobbying firm Advance North LLC, which was co-owned by Sen. Ben Stevens and Trevor McCabe.⁶⁵ Only Mr. McCabe registered to lobby Congress on the issue of the permit buy-backs, but both men were paid as consultants.⁶⁶ Although Sen. Ben Stevens' contract stipulated that his monthly payments of \$5,000 would double to \$10,000 if the buy-back became federal legislation, it is unclear what, if anything, Sen. Ben Stevens did for the money.⁶⁷ The boat owners' association raised concerns as to how they would pay Sen. Ben Stevens' increased salary, but according to association member Victor Smith, association Executive Director Rob Zuanich said that he would keep the payments for Sen. Ben Stevens off the books through "convoluted accounting."⁶⁸ Questions about the financial wisdom of the buy-back program were raised because lower salmon prices had already reduced the amount of permits used.⁶⁹ The legislation including the buyback provision encountered problems in the Senate, leading Sen. Stevens to amend it, passing a new version out of committee in July 2007.

⁵⁹ Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁶⁰ *Id.*

⁶¹ Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁶² *Id.*

⁶³ Peter Overby, Corruption Probe Ensnarers Powerful Alaska Senator, *NPR Weekend Edition*, July 15, 2007 (Exhibit 32).

⁶⁴ *Id.*

⁶⁵ Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁶⁶ Overby, *NPR Weekend Edition*, July 15, 2007.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

SeaLife Center

A Seward, Alaska marine center called the SeaLife Center received a \$1.6 million earmark in 2005 to purchase property adjacent to the SeaLife Center owned by Sen. Stevens' former aide and Sen. Ben Stevens' business partner, Mr. McCabe.⁷⁰ The Department of the Interior's Inspector General and the FBI are jointly investigating the earmark and the subsequent decision to purchase the property.⁷¹ SeaLife bought Mr. McCabe's property for \$558,000 and Mr. McCabe also agreed to operate boat tours for the Center through another company he owned with Sen. Ben Stevens, Alaska Outfitters.⁷²

William Bittner, Jonathan Rubini and Leonard Hyde

William Bittner is Sen. Stevens' brother-in-law, an Anchorage lawyer and a Washington, D.C. lobbyist⁷³ at Birch Horton Bittner and Cherot.⁷⁴ Sen. Stevens has repeatedly used his position on the Senate Appropriations Committee to push through legislation that has benefitted Birch Horton Bittner and Cherot clients including: Hyundai Merchant Marine,⁷⁵ Arctic Slope Regional Corporation and its subsidiary Arctic Slope World Services and the Alaska Communications Systems Group.⁷⁶ Mr. Bittner also helped to arrange Sen. Stevens' initial 1997 investment with Jonathan Rubini, a successful Alaskan real estate developer.⁷⁷

In 1997, Mr. Bittner approached his friend, Mr. Rubini, about possible investments for

⁷⁰ Stanton, *Roll Call*, July 31, 2007.

⁷¹ Paul Kane and Dan Eggen, FBI Probes Stevens's Earmarks; \$1.6 Million Appropriation Went to Alaska Marine Life Center, *The Washington Post*, August 1, 2007 (Exhibit 33); Stanton, *Roll Call*, July 31, 2007.

⁷² Stanton, *Roll Call*, July 31, 2007.

⁷³ Chuck Neubauer and Richard T. Cooper, Federal Buyout With A Family Connection, *Los Angeles Times*, December 17, 2003 [*hereinafter* Federal Buyout] (Exhibit 34).

⁷⁴ http://www.birchhorton.com/attorney_bittner.html, September 10, 2007 (Exhibit 35).

⁷⁵ Birch Horton Bittner and Cherot, Lobbying Registration, 2003 (Exhibit 36).

⁷⁶ Chuck Neubauer and Richard T. Cooper, Senator's Way To Wealth Was Paved With Favors; Circle Of Influence, *Los Angeles Times*, December 17, 2003 [*hereinafter* Senators' Way to Wealth] (Exhibit 37).

⁷⁷ Liz Ruskin, Financial Wizard Work Magic For Stevens; Rubini: Investing With Property Developer Has Turned The Senator's Financial Fortunes Around, *Anchorage Daily News*, August 17, 2003 (Exhibit 38); Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

Sen. Stevens.⁷⁸ Mr. Rubini arranged for Sen. Stevens to be part of a new syndicate, JLS Properties LLC.⁷⁹ The syndicate consisted of Jonathan Rubini, Leonard B. Hyde, Stuart Bond and Sen. Stevens.⁸⁰ All partners except Sen. Stevens were required to personally guarantee any debts that the syndicate might acquire, as well as provide additional capital as needed for syndicate projects.⁸¹ The three other partners each invested \$200,000, while Sen. Stevens invested just \$50,000.⁸² JLS Properties was very successful and by the start of 2001, Sen. Stevens' investment was worth between \$250,000 and \$500,000.⁸³

In June 2001, Mr. Rubini and Mr. Hyde began construction on a 10-story office building in midtown Anchorage, called Centerpoint I.⁸⁴ Centerpoint I currently houses the headquarters of Alaska Slope Regional Corporation, a subsidiary of which was a client of Mr. Bittner, and which has benefitted from legislation introduced by Sen. Stevens.⁸⁵ In October 2001, Sen. Stevens became an investor in Centerpoint I and Centerpoint II, the 22-acre development next to Centerpoint I.⁸⁶ Sen. Stevens' investments in the Centerpoint buildings were included as part of his original \$50,000 investment in JLS Properties;⁸⁷ he was not required to pledge additional capital.⁸⁸

As of October 2001, Sen. Stevens' initial investment in the Centerpoint buildings was worth between \$115,000 and \$300,000; 14 months later in December 2002, his Centerpoint investments were worth between \$500,000 and \$1 million.⁸⁹

⁷⁸ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁷⁹ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003; Sen. Ted Stevens, Personal Financial Disclosure Statements for 1996 and 1997 (Exhibit 39).

⁸⁰ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁸¹ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁸² Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

⁸³ Id.

⁸⁴ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁸⁵ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁸⁶ Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

⁸⁷ Id.

⁸⁸ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁸⁹ Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

In 2003, Sen. Stevens reported that his investments with Mr. Rubini, Mr. Hyde, and Mr. Bond including Centerpoint I and II, were worth between \$750,000 and \$1.5 million.⁹⁰ Additionally, Catherine Bittner Stevens, Sen. Stevens' wife, runs Chamer Co., a private family investment firm that earned \$37,500 through a \$250,000 investment in Centerpoint I.⁹¹ This investment was not disclosed on the senator's financial disclosure forms.⁹² In 2004, Sen. Stevens sold his assets in JLS Properties and the Centerpoints and put them in a blind trust worth between \$1 and \$5 million.⁹³

Elmendorf Housing Project

In 2000, Mr. Rubini and a group of investors including Mr. Bittner, Mr. Hyde, and Mr. Bond bid on a \$450,000,000 federal contract to build private housing at Elmendorf Air Force Base in Alaska.⁹⁴ At one point during the bidding process, Mr. Rubini requested that Air Force officials provide him with additional time to prepare his bid and sent a copy of his request to Sen. Stevens.⁹⁵ Mr. Rubini was given a two-week extension, and with only the final paperwork to be completed, claimed he was led to believe that his group had secured the contract.⁹⁶ In September 2000, only a few days before the deal between the Air Force and Mr. Rubini's group was to become final, the Air Force backed out citing doubts about the Rubini group's ability to complete the project.⁹⁷ Mr. Rubini filed a formal complaint against the Air Force and went to Washington, D.C. to meet with Sen. Stevens regarding the matter.⁹⁸

Sen. Stevens was chairman of the Senate Appropriations Committee, and his good friend former Sen. Conrad Burns (R-MT) was chairman of the Military Construction Subcommittee.⁹⁹

⁹⁰ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁹¹ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁹² Sen. Ted Stevens, Personal Financial Disclosure Statement for Calendar year 2003 (Exhibit 40).

⁹³ Margasak and Apuzzo, *Associated Press Online*, July 10, 2007.

⁹⁴ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁹⁵ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

In October 2000, Sen. Burns wrote a letter to F. Whitten Peters, Secretary of the Air Force, threatening to take away federal funding for the Elmendorf housing privatization project because of the conflict surrounding the awarding of the contract.¹⁰⁰ Sen. Burns also arranged for a similar letter to be sent by the chairman of the corresponding House Committee.¹⁰¹ House aides said they were aware of Sen. Stevens' interest in the awarding of the Elmendorf housing contract to Mr Rubini's group.¹⁰²

While Mr. Rubini was waiting to see if the Air Force would accept his bid he collaborated with Hunt Building Corporation of El Paso, Texas to create a new partnership to vie for the Elmendorf housing contract.¹⁰³ In early December 2000, the Air Force awarded the new Rubini-Hunt partnership the Elmendorf housing contract.¹⁰⁴ In late 2003, the Air Force announced that the Rubini-Hunt Group would get a no-bid contract to complete a second round of housing.¹⁰⁵

National Archives and Records Administration Relocation Project

In 1998, the National Archives and Records Administration ("NARA") began the process of securing a new facility for documents in Alaska.¹⁰⁶ The same year, Sen. Stevens and local officials began working on a redevelopment plan for a largely unused part of Anchorage.¹⁰⁷ As part of the plan, officials proposed having the federal government purchase a piece of undeveloped land owned by a group of retired schoolteachers through their company, the 40th Street Investors, for the new archives facility.¹⁰⁸

In 1998 and 1999, Sen. Stevens earmarked more than \$1.7 million for a site selection study to determine where in Anchorage NARA's new archives building would be located.¹⁰⁹ Nevertheless, neither NARA nor Sen. Stevens' office ever contacted the 40th Street Investors and

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ John Stanton, Government Good To Stevens' Friends, *Roll Call*, July 10, 2007 (Exhibit 41).

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

Congress' interest in the project appeared to wane.¹¹⁰

Then, on May 21, 2002, Mr. Hyde and Mr. Rubini entered into an agreement with the 40th Street Investors to purchase the property.¹¹¹ On June 19th, Mr. Hyde and Mr. Rubini formally incorporated Eagle River Center LLC and transferred their interest in the property to the new company.¹¹² On July 11, 2002, the Senate Appropriates Subcommittee on Treasury and General Government passed a spending measure that included a \$3.75 million earmark for NARA to purchase property for a new facility in Anchorage.¹¹³ In 2003, Sen. Stevens inserted an additional \$2.25 million for the project in the Fiscal Year 2004 Treasury appropriations bill.¹¹⁴

In May 2003, the General Service Administration (GSA) released a request for bids and Eagle River Center responded, despite the fact that it would not formally close on the property until June. Then, on June 2, 2003, Eagle River closed on the property paying \$1.5 million for it.¹¹⁵ Seven months later, on January 21, 2004, GSA informed Eagle River that it had selected its property for the new NARA site and by March, Eagle River had agreed to sell the land to the government on June 8, 2004 for \$3.5 million, putting the closing just past one year from the date Eagle River purchased it to avoid a significant capital gains tax.¹¹⁶

Since the government acquired the land, federal funding to build the new archives center has stalled and the Alaska Archives remains in its old location.¹¹⁷ In May of 2007, Sen. Stevens transferred \$290,000 that had been tagged for the construction of the archives center to a speed skating rink in Midtown Park, Alaska.¹¹⁸ A spokesman for Sen. Stevens said that while the senator fully supports the project, it remains unclear whether any more funding will be earmarked.¹¹⁹

¹¹⁰ Stanton, *Roll Call*, July 10, 2007.

¹¹¹ Id.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Stanton, *Roll Call*, July 10, 2007.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Rosemary Shinohara, Midtown Park Will Have A Speedskating Oval, *Anchorage Daily News*, May 11, 2007 (Exhibit 42).

¹¹⁹ Id.

Officials at NARA confirm that they were contacted during the summer of 2007 by staff on the Senate Homeland Security and Government Affairs Subcommittee on Federal Financial

Management, Government Information, Federal Services and International Security, which is investigating NARA's purchase of property from Mr. Rubini and Mr. Hyde.¹²⁰

The Ted Stevens Foundation (a/k/a the North to the Future Foundation)

The Ted Stevens Foundation is a non-profit 501(c)3 foundation founded in 2000¹²¹ "to honor the career of Senator Ted Stevens by making the papers and mementos of his career available to the public and to support programs similar to those he has supported."¹²² In October 2006, the foundation changed its name to The North to the Future Foundation.¹²³ A 2004 phone call by *The Washington Post* to the number listed on the foundation's 990 tax form connected the paper with Tim McKeever, then the foundation's chairman, a lobbyist before the Senate Appropriations Committee, and treasurer of the Sen. Stevens' campaign committee.¹²⁴

In 2002, the Ted Stevens Foundation received \$55,000 in contributions: \$45,000 from Sen. Stevens' leadership PAC, the Northern Lights PAC, and \$10,000 from the Pollock Conservation Fund, a group connected to the Alaska fishing industry.¹²⁵ In 2003, the Ted Stevens Foundation listed total assets as \$144,584.¹²⁶ This figure jumped to \$2,310,840 by the end of 2005.¹²⁷ Between 2003 and 2005, the foundation spent \$380,000 on fundraisers, and has made only two grants; a \$40,000 desk to the Smithsonian Institute and \$10,000 to the Anchorage

¹²⁰ Stanton, Stevens' Home Raided by Feds, *Roll Call*, July 31, 2007.

¹²¹ State of Alaska Charitable Organization, Annual Registration Form, November 5, 2003 (Exhibit 43).

¹²² Id.

¹²³ State of Alaska Department of Commerce, Form 08-440, Articles of Amendment (Domestic Business, Professional Corporation or Non Profit Corporation), December 20, 2006 (Exhibit 44).

¹²⁴ Ponying Up for Ted, *The Washington Post*, March 5, 2004 (Exhibit 45).

¹²⁵ The Ted Stevens Foundation, 2002 IRS Form 990-EZ, October 10, 2003 (Exhibit 46).

¹²⁶ The Ted Stevens Foundation, 2003 IRS Form 990-EZ, November 19, 2004 (Exhibit 47).

¹²⁷ The Ted Stevens Foundation, 2005 IRS Form 990-EZ, November 21, 2006 (Exhibit 48).

Rowers Association.¹²⁸ The organization hasn't paid any fees or filed registration documents since 2004.¹²⁹

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.¹³⁰ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹³¹

If, as it appears, Sen. Stevens allowed VECO to pay for the renovations to his Alaska home in return for using his position as a U.S. senator to assist the company, he may have violated the bribery statute. Similarly, if he provided legislative assistance in return for contributions to the Ted Stevens Foundation he may have violated the bribery statute.

If, as it appears, Sen. Stevens offered legislative assistance to Jonathan Rubini and Leonard Hyde in connection with the Elmendorf Housing Project and the National Archives and Records Administration Relocation project in return for being allowed to participate in the pair's lucrative real estate deals, without contributing his fair share of the capital, Sen. Stevens may have violated the bribery statute.

If, as it appears, Sen. Stevens has supported legislation and inserted earmarks into spending bills in return for companies hiring his son, Ben Stevens, Sen. Stevens may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the United States Senate, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.¹³² By using his position as a member of Congress to financially benefit VECO, Sen. Stevens may be depriving his constituents, the United States Senate and the United States of his honest services in violation

¹²⁸ Anupama Narayanswamy, Out of Compliance: Nonprofit with Ties to Stevens' PAC, Tardy on Paperwork and Fees to State of Alaska, *The Sunlight Foundation*, July 23, 2007. (Exhibit 49).

¹²⁹ Id.

¹³⁰ 18 U.S.C. § 201(b)(2)(A).

¹³¹ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

¹³² 18 U.S.C. § 1341.

of 18 U.S.C. §1341.

If Sen. Stevens used his position as a member of Congress to financially benefit his son, Ben Stevens, his brother-in-law, William Bittner, or his business partners, Jonathan Rubini and Leonard Hyde, he may have deprived his constituents, the United States Senate and the United States of his honest services in violation of 18 U.S.C. § 1341.

Illegal Gratuity

The illegal gratuity statute prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to accept anything of value personally for or because of any official act performed or to be performed by such official.¹³³ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.¹³⁴

If a link is established between Sen. Stevens' legislative actions and his inclusion in lucrative real estate deals with Jonathan Rubini and Leonard Hyde, or if a link is established between the renovations on his house and legislative assistance provided by Sen. Stevens to VECO, Sen. Stevens would be in violation of 18 U.S.C. § 201(c)(1)(B).

5 U.S.C. § 7353

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the Congress, officers, and employees from asking for anything of value from a broad range of people, including "anyone seeking official action from, doing business with, or . . . conducting activities regulated by the individual's employing entity; or whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."

If Sen. Stevens sought to be included in real estate deals at a time when Jonathan Rubini and Leonard Hyde had business before the Senate, he may have violated 5 U.S.C. § 7353. Similarly, if he sought contributions for the North to the Future Foundation (f/k/a the Ted Stevens Foundation), in return for legislative assistance, Sen. Stevens may have violated 5 U.S.C. § 7353.

5 C.F.R. § 2635.702(a)

5 C.F. R. § 2635.702(a) prohibits government employees, including members of the Senate from "taking any official actions for the prospect of personal gain for themselves or anyone else." Specifically, 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, provides:

An employee shall not use or permit use of his Government

¹³³ 18 U.S.C. § 201(c)(1)(B).

¹³⁴ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position as a senator to benefit those companies that hired his son as a consultant, Sen. Stevens may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

Financial Disclosure Requirements

The Ethics in Government Act of 1967¹³⁵ requires all members of Congress to file financial disclosure reports. Under the statute, the Attorney General may seek a civil penalty of up to \$11,000 against any individual who knowingly and willfully falsifies or fails to file or report any information required by the Act.¹³⁶ Senate Rule 34 incorporates the financial disclosure provisions of the Ethics in Government Act.

In addition, the Senate Ethics Manual requires members to disclose the date, total purchase or sale price and description of any property bought or sold in Part IV of the financial disclosure form.¹³⁷ All sales must be included on financial disclosure forms as transactions. The instruction booklet provides that filers must include:

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.¹³⁸

In other words, filers must report each purchase, sale, or exchange of real property or securities by themselves, their spouse, or dependent child when the category of value of the transaction, or series of transactions in one type of property, exceeds \$1,000 in a calendar year.¹³⁹ “Practically any security or real property that [the filer] purchased, sold, or exchanged during the

¹³⁵ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

¹³⁶ 5 U.S.C. app. 4, § 104.

¹³⁷ Senate Ethics Manual, p. 133.

¹³⁸ Instruction Booklet, Transactions.

¹³⁹ Id.

year will have to be reported on both Schedule III and Schedule IV of FORM A.”¹⁴⁰

By failing to include his wife’s investment in Centerpoint I on his financial disclosure forms, Sen. Stevens has violated federal law and Senate rules.

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”¹⁴¹ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹⁴² The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . . .”¹⁴³

In 1991, the Senate Select Committee on Ethics concluded that Senator Alan Cranston had engaged in improper conduct which reflected on the Senate by “engaging in an impermissible pattern of conduct in which fund raising and official activities were substantially linked.”¹⁴⁴ Although the committee found that none of Senator Cranston’s activities violated any particular law or Senate rule, the committee nonetheless found Senator Cranston’s conduct “violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate . . .”¹⁴⁵ As a result, the committee issued a reprimand to Senator Cranston.¹⁴⁶

In addition, the Senate Select Committee on Ethics’ Rules specifically list the Code of

¹⁴⁰ Id.

¹⁴¹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

¹⁴² Id.

¹⁴³ Id. at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

¹⁴⁴ Senate Ethics Manual, p. 434.

¹⁴⁵ Id. at 435.

¹⁴⁶ Id.

Ethics for Government Service as a source for committee jurisdiction.¹⁴⁷ The code states that a person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”¹⁴⁸

If Sen. Stevens used his position to provide legislative assistance to VECO in return for house renovations, if he provided legislative assistance to Jonathan Rubini and Leonard Hyde in return for being allowed to participate in lucrative real estate transactions, if he used his position to benefit companies that hired his son, Ben Stevens, or his former aide, Trevor McCabe, or if he accepted contributions to his foundation from companies that need his legislative assistance, he may have engaged in improper conduct which reflects upon the Senate.

¹⁴⁷ Id. at 436.

¹⁴⁸ Id. (*citing* H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12)).

DISHONORABLE MENTIONS

SEN. LARRY E. CRAIG

Larry E. Craig (R-ID) is a third-term senator from Idaho. His ethics issues stem from his conviction for disorderly conduct in the Minneapolis-St. Paul International Airport.

Disorderly Conduct

On August 27, 2007, it was revealed that Senator Craig had pleaded guilty to disorderly conduct charges stemming from his June arrest by an undercover police officer in Minnesota.¹ On June 11, 2007, undercover officers were monitoring a men's restroom in the Minneapolis-St. Paul International Airport following complaints of sexual activity there.² According to the complaint:

Sergeant Karsnia observed an older white male, later identified as [Craig] standing outside of the stall occupied by Sergeant Karsnia. Sergeant Karsnia observed the Defendant look through the crack between the stall door and its frame into the stall that Sergeant Karsnia was occupying.

Sergeant Karsnia observed the Defendant tap his right foot, which Sergeant Karsnia recognized as a signal often used by persons communicating a desire to engage in sexual conduct. Sergeant Karsnia observed the Defendant tap his foot several more times and move his foot closer to the stall occupied by Sergeant Karsnia. Sergeant Karsnia moved his own foot up and down slowly. Sergeant Karsnia observed the Defendant move his right foot so that it touched Sergeant Karsnia's left foot, at which point the Defendant's foot was within the stall area of the stall occupied by Sergeant Karsnia.

Sergeant Karsnia then observed the Defendant swipe his hand under the stall divider for a few seconds, swiping from the front of the stall back towards the back wall, which was done with the Defendant's hand palm-up and guiding it along the stall divider. A few minutes after noon, Craig entered the restroom and sat in the stall next to him. Sergeant Karsnia observed the Defendant again swipe his hand in the same motion and manner. Sergeant Karsnia observed the Defendant make the same motion for a third time.³

Sen. Craig was arrested and charged with interference with privacy and disorderly conduct.⁴ On August 8, 2007, his plea to one count of disorderly conduct was filed with the

¹ Paul Kane and Shailagh Murray, GOP Senator Pleaded Guilty After Restroom Arrest, *The Washington Post*, August 28, 2007 (Exhibit 1).

² Id.

³ State of Minnesota v. Larry Edwin Craig, Complaint, Case No. 07043231 (Minn. 4th Jud. Dist. July 7, 2007) (Exhibit 2).

⁴ Id.

Hennepin County, Minnesota court clerk.⁵ Sen. Craig was sentenced to 10 days in jail and a fine of \$1,000, but the jail time and \$500 of the fine were stayed on the condition that he not commit the same or a similar offense for one year.⁶

Minnesota Law

Under Minnesota law, a person who “engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others” in a public or private place, “knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor.”⁷

Despite his guilty plea, Sen. Craig now claims that he did not engage in any “inappropriate conduct” and that he should not have pleaded guilty.⁸

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”⁹ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹⁰ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”¹¹

⁵ State of Minnesota v. Larry Edwin Craig, Petition to Enter Plea of Guilty-Misdemeanor (Minn. 4th Jud. Dist. Aug. 8, 2007) (Exhibit 3).

⁶ Id.

⁷ Minn. Stat. § 609.72(3).

⁸ Kane and Murray, *The Washington Post*, Aug. 28, 2007.

⁹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108th Cong. 2003 ed.).

¹⁰ Id.

¹¹ Id. at 433; and fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

Sen. Craig, by pleading guilty, has been adjudicated to have broken Minnesota criminal law. As a result, the Select Committee on Ethics should investigate the matter and consider whether Sen. Craig's conduct also violates the Senate rule prohibiting improper conduct which reflects upon the Senate.

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd who was censured for converting campaign funds to personal use.¹² In 1990, the Senate denounced Senator David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.¹³ In 1995, the Committee recommended that Senator Bob Packwood be expelled for repeated sexual misconduct.¹⁴

The Select Committee on Ethics also has the option of criticizing Sen. Craig's conduct. On some occasions, the Committee has stopped short of finding that alleged conduct was "improper conduct reflecting upon the Senate," but has found "that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee."¹⁵ For example, the Committee has found that: a senator's "interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgement," that a senator "exercised poor judgment in intervening with regulators," and that another senator conducted office business "in an inappropriate manner . . ."¹⁶ Most recently, the Committee severely admonished Senator Robert Torricelli in 2002 for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.¹⁷ Therefore, even if the Committee is not persuaded that Senator Craig's conduct reaches the level of improper conduct -- though given the circumstances it appears that it does -- at the very least, the Committee should issue a public statement criticizing the Senator's conduct.

¹² Senate Ethics Manual at 434.

¹³ Id. at 434-35.

¹⁴ Id. at 435

¹⁵ Senate Ethics Manual at 435.

¹⁶ Id., fn. 19.

¹⁷ Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.

SEN. DAVID VITTER

David Vitter (R-LA) is a first-term senator from Louisiana. His ethics issues stem from his soliciting for prostitution.

Solicitation of Prostitution

On July 9, 2007, it was revealed that Sen. Vitter's telephone number was included in the so-called "D.C. Madam," Deborah Jeane Palfrey's, list of client telephone numbers.¹ Sen. Vitter confirmed that he had sought Ms. Palfrey's services, saying in a statement, "this was a very serious sin in my past for which I am, of course, completely responsible."²

Two other women also have alleged that Senator Vitter engaged the services of prostitutes.³ According to Jeanette Maier, the "Canal Street Madam," Senator Vitter visited a New Orleans, Louisiana brothel several times in the mid-1990s and a woman who worked as a prostitute in New Orleans under the name of Wendy Cortez has claimed that several years ago, Senator Vitter was a regular client of hers.⁴

District of Colombia and Louisiana Law

Under District of Columbia law, it is unlawful for any person to engage in prostitution or to solicit for prostitution.⁵ The penalties for violation of this section shall be a fine of \$500 or not more than 90 days imprisonment, or both, for the first offense, a fine of \$750 or not more than 135 days imprisonment, or both, for the second offense, and a fine of \$1,000 or not more than 180 days imprisonment, or both, for the third and each subsequent offense.⁶

Under Louisiana law, it is unlawful for any person to solicit, invite, induce, direct or transport a person to any place with the intention of promoting prostitution.⁷ The penalties for violations of this section include a fine of not more than \$500 and up to six months

¹ Carrie Budoff, 'D.C. Madam' List Includes Sen. Vitter, *The Politico*, July 10, 2007 (Exhibit 1).

² Id.

³ Kate Moran and Martha Carr, Madam: Vitter A Client At Canal Street Brothel, *The Times-Picayune*, July 10, 2007 (Exhibit 2); Kate Moran and Brendan McCarthy, Prostitute Describes Vitter Affair, *The Times-Picayune*, July 12, 2007 (Exhibit 3).

⁴ Id.; Moran and Carr, *The Times-Picayune*, July 10, 2007.

⁵ D.C. Code § 22-2701.

⁶ Id.

⁷ La. R.S. § 14.83.

imprisonment, or both.⁸ Section 54-242 of the New Orleans Code of Ordinance also prohibits soliciting for prostitutes.

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation”. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”⁹ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹⁰ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”¹¹

Whether or not Sen. Vitter is ultimately adjudicated to have broken any criminal laws, the Senate may still discipline him for improper conduct as it has other members in the past. For example, in 1797, Senator William Blount was expelled from the Senate for inciting Native Americans against the government, despite the fact that he had not committed a crime.¹² In 1929, the Senate condemned Senator Hiram Bingham for placing an employee of a trade association with a direct interest in pending legislation on the Senate payroll.¹³ In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd and the Senate censured him for converting campaign funds to personal use.¹⁴ In 1990, the Senate denounced Senator David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official

⁸ Id.

⁹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108th Cong. 2003 ed.).

¹⁰ Id.

¹¹ Id. at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

¹² Senate Ethics Manual at 433 (*citing In re Chapman*, 166 U.S. 661, 669-670 (1897)).

¹³ Senate Ethics Manual at 433.

¹⁴ Id. at 434.

activities.¹⁵ In 1995, the Committee recommended that Senator Bob Packwood be expelled for repeated sexual misconduct.¹⁶

By soliciting prostitutes on multiple occasions, Sen. Vitter, appears to have violated both District of Columbia and Louisiana laws. As a result the Select Committee on Ethics should investigate the matter and consider whether Sen. Vitter's conduct also violates the Senate rule prohibiting improper conduct which reflects upon the Senate.

The Select Committee on Ethics also has the option of criticizing Sen. Vitter's conduct. On some occasions, the Committee has stopped short of finding that alleged conduct was "improper conduct reflecting upon the Senate," but has found "that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee."¹⁷ For example, the Committee has found that: a senator's "interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgement," that a senator "exercised poor judgment in intervening with regulators," and that another senator conducted office business "in an inappropriate manner . . ."¹⁸ In 2002, the Committee severely admonished Senator Robert Torricelli for creating at least an appearance of impropriety by accepting gifts in violation of the Senate gift rules.¹⁹ Therefore, even if the Committee is not persuaded that Senator Vitter's conduct reaches the level of improper conduct, at the very least, the Committee should issue a public statement criticizing the Senator's conduct.

¹⁵ Id. at 434-35.

¹⁶ Id. at 435.

¹⁷ Senate Ethics Manual at 435.

¹⁸ Id., fn. 19.

¹⁹ Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.

EXHIBITS

To view all the exhibits cited in this report, please visit www.beyonddelay.org.