

CREW's Most **CORRUPT**

Members of Congress

The 20 most corrupt Members of Congress
(and four to watch)



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UNDER INVESTIGATION

CREW

citizens for responsibility
and ethics in washington

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EXECUTIVE SUMMARY

This is CREW's 2008 annual report – our fourth edition – on congressional corruption. Over the past few years, corruption has become a significant political issue, with interest peaking in early 2007. 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. With the downturn in the economy, however, voters' attention is unsurprisingly more focused on pocketbook issues than on congressional misconduct. Nevertheless, ethics still matter if for no other reason than that members of Congress who are using their positions for their own self-interest may not be focusing on the needs of their constituents.

Nine members included on last year's list have fallen off either because they have announced their retirements, the ethics committees have taken limited action or more likely failed to act, or there is no new information to add. Whenever a member falls off, however, another is always available to serve as a replacement. New to this year's list are Reps. Marsha Blackburn, Vern Buchanan, Vito Fossella, Dan Lipinski, Charlie Rangel, Laura Richardson and Mike Turner, and Sens. Mary Landrieu and Norm Coleman.

Of this year's list of 24, at least 12 are under investigation: Ken Calvert, John Doolittle, Tom Feeney, Vito Fossella, William Jefferson, Jerry Lewis, Alan Mollohan, Gary Miller, Tim Murphy, Rick Renzi, Don Young and Ted Stevens. One other, Charlie Rangel, is under a self-initiated House ethics committee investigation.

As in the past, 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. As we noted last year, the number of members who have provided incorrect information or failed to include information on their personal financial disclosure forms is striking.

Lying on personal financial disclosure forms is a federal crime, punishable by up to five years in jail under 18 U.S.C. § 1001. Last year we advised members that although prosecutions for such violations have been rare, they are possible. Perhaps now that Sen. Ted Stevens has been indicted on seven counts of lying on his financial disclosure forms, members will take their obligations to respond fully and truthfully on these forms more seriously. We continue to suggest that the House and Senate ethics committees take a stronger stand against members who deliberately provide erroneous information or withhold information on these forms. As we have said repeatedly, ignoring congressional misconduct until it becomes so egregious that the Department of Justice steps in is simply not a rational, responsible, or reasonable ethics enforcement strategy.

Although new ethics reforms were passed this Congress and the House finally approved a new investigative process, little appears to have changed with the ethics committees. In the Senate, both Sens. David Vitter and Pete Domenici were given passes for their misconduct. Sen. Vitter on the weak ground that his crime of soliciting for prostitution had taken place before he was a senator, and Sen. Domenici on the absurd notion that there was "no substantial evidence" that he had attempted to improperly influence an ongoing corruption investigation in New Mexico, despite clear statements from former U.S. Attorney David Iglesias that the senator had done exactly that.

The committee never even considered Sen. Stevens' misconduct. In fact, the only senator chastised by the committee was Larry Craig, suggesting that the Senate believes there is no more serious offense than gay sex.

Things were worse in the House, where that body's ethics committee didn't even bother to investigate Reps. Heather Wilson or Doc Hastings for attempting to influence corruption investigations, despite strong statements by U.S. Attorneys David Iglesias and John McKay that they had done so. In fact, over the past year the House has not issued so much as a mild reprimand against any member, though there are several whose conduct clearly merits inquiry. Notably, the only investigation the House ethics committee has agreed to undertake is one against Rep. Charlie Rangel, and then only because Rep. Rangel himself has requested it.

Although the House claims to have improved its ethics process, there is no evidence of this. Only in July were members appointed to the newly created Office of Congressional Ethics and the office has yet to set up offices or hire staff. Whether it will be any more effective than the ineffectual House ethics committee remains to be seen. Moreover, we continue to register concern about the fact that outside groups like CREW are still barred from filing complaints.

Finally, the House ethics committee has taken to announcing and then immediately suspending investigations pending the outcome of a criminal investigation, though members generally announce their resignations or retirements before such investigations are concluded. This neatly allows the committee to avoid ever taking action against an unethical member.

Most notably this year is the number of members who are using the Speech or Debate Clause of the Constitution to defend against criminal actions. The House counsel's office is broadly interpreting this legislative privilege to quash subpoenas for documents and testimony – not only of members themselves, but also of congressional staff. Sen. Stevens and Reps. Rick Renzi and William Jefferson are currently arguing in court that the clause prevents them from being prosecuted for actions they took while in Congress, and Rep. Lewis has used this to prevent a staff member from testifying before a grand jury. Rep. John Doolittle has suggested that he too will raise this defense should he be indicted. The breadth of the Speech or Debate clause is wending its way through the courts and may well reach the Supreme Court. Although the subject of little public discussion, broad readings of the clause present very serious obstacles to public corruption investigations.

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. VERN BUCHANAN

Rep. Vern Buchanan (R-FL) is a first-term member of congress representing Florida's 13th district. His ethics issues stem from pressuring his employees to make contributions to his campaign committee and improper use of corporate resources for campaign purposes.

Conduit Contributions

Rep. Buchanan owns several car dealerships in Florida and after he began his congressional campaign in 2005, in one seven day period, he raised \$110,000 from employees of his numerous car dealerships.¹ Several employees have since alleged that Rep. Buchanan pressured his employees to make contributions to his campaign committee.²

According to the sworn affidavits of Carlo A. Bell³ and David J. Padilla, employees of Rep. Buchanan's Automobile Holdings, Inc (BAH), including employees of Venice Nissan Dodge and Sarasota Ford, were either reimbursed with corporate funds for making \$1,000 contributions to Rep. Buchanan's 2006 congressional campaign, or were coerced into making contributions.⁴

Mr. Bell, the former finance director at Venice Nissan Dodge, stated that on September 15, 2005, Don Caldwell, the general manager of Venice Nissan Dodge, called him into a meeting with Jack Prater, the Dodge sales manager, and Jason Martin, the Dodge finance manager and Mr. Caldwell's nephew.⁵ According to Mr. Bell,

Mr. Caldwell shut the door to the office and told the three of us that we needed to contribute to the campaign of Vern Buchanan, who was then running for Congress in Florida's 13th congressional district. Mr. Caldwell was holding cash in his hand at the time and said that the company would reimburse us for our contributions. He explained that the company would give us \$1,000 cash in

¹ Jeremy Wallace, Buchanan Workers Tell of Donation Pressure, *Herald Tribune*, July 24, 2008 (Exhibit 1).

² Id.

³ Exhibit A to FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Affidavit of Carlo A. Bell, filed August 19, 2008 (hereinafter "Bell Affidavit") (Exhibit 2).

⁴ Exhibit D to FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, Affidavit of David Padilla, filed August 19, 2008 (hereinafter "Padilla Affidavit") (Exhibit 3).

⁵ Bell Affidavit.

exchange for our writing \$1,000 checks to the campaign.⁶

Mr. Bell asked Mr. Caldwell if this was legal, but rather than answering, Mr. Caldwell instead asked if Mr. Bell was on the team or not.⁷ Afraid that he might lose his job, Mr. Bell replied yes, he was a part of the team and agreed to write the check.⁸ Mr. Caldwell then handed \$1,000 to Mr. Bell, Mr. Prater and Mr. Martin.⁹ Mr. Bell later discussed the meeting with Mr. Prater and Mr. Martin, and all agreed it seemed wrong to accept cash to write checks to the Buchanan campaign, but they were “afraid that refusing to do so might endanger [their] employment with Venice Nissan Dodge.”¹⁰ Mr. Bell subsequently learned that two other Venice Nissan Dodge employees, Marvin White and William Mullins, also received \$1,000 cash reimbursements when they agreed to write checks to the Buchanan campaign.¹¹

On September 15, 2005, the same day he was given the \$1,000 by Mr. Caldwell, Mr. Bell deposited \$960 in cash to his bank account, keeping the remaining \$40 for spending money.¹² On September 17, 2005, Mr. Bell wrote a check to the Buchanan campaign for \$1,000.¹³

Mr. Bell’s account of the reimbursement scheme is confirmed by David J. Padilla, a finance manager at Venice Nissan Dodge in 2005.¹⁴ In September 2005, Mr. Padilla was approached by Brad Combs, another finance manager at Venice Nissan Dodge, who told him “Mr. Buchanan needed campaign contributions and that anyone who made a contribution would get his money back plus additional compensation.”¹⁵ When Mr. Padilla refused to participate in the reimbursement scheme, Mr. Combs told him “that all of the managers were being asked to contribute and that many were planning to accept reimbursements in exchange for

⁶ Id.

⁷ Id.

⁸ Bell Affidavit.

⁹ Id.

¹⁰ Id.

¹¹ Bell Affidavit; Vern Buchanan for Congress, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 76, 88, 99, 129 (Exhibit 4).

¹² Bell Affidavit.

¹³ Id.; Exhibit B to FEC Complaint filed by Citizens for Responsibility and Ethics in Washington, Carlo Bell and David Padilla, filed August 19, 2008, Cancelled Check and Deposit Slip (Exhibit 5).

¹⁴ Padilla Affidavit.

¹⁵ Id.

contributions.”¹⁶ Mr. Padilla later discovered that several other Venice Nissan Dodge employees, including Mr. Bell, Mr. Prater and Mr. Martin, had been reimbursed for making \$1,000 contributions to Mr. Buchanan’s congressional campaign.¹⁷

The reimbursement scheme was not limited to Venice Nissan Dodge. Joseph Kezer, the former finance director of Sarasota Ford, said he personally observed campaign finance violations before Rep. Buchanan’s 2006 general election and that some of the \$8 million spent by the Buchanan campaign in 2006 was “laundered corporate cash funneled through higher-ups at Buchanan’s numerous dealerships.”¹⁸ Mr. Kezer “fielded phone calls from other dealership executives wanting to know whether company reimbursement checks they had cashed put them in legal peril.”¹⁹ He said, “After it happened, a couple of [managers] contacted me because they were concerned . . . I didn’t know at the time . . . whether it was a good thing or a bad thing.”²⁰

Mr. Kezer also alleges that he was pressured to make a contribution and that as a further reward, Rep. Buchanan offered him the use of his vacation house in Vail, Colorado.²¹ Aware that it might not be legal, but fearing for his job, Mr. Kezer made a contribution of \$2,000 to Rep. Buchanan’s campaign committee.²² Neither Mr. Kezer nor Mr. Bell ever donated to a political campaign before or after donating to Rep. Buchanan.²³

Another former employee, Richard Thomas, who was the director of fixed operations for one of Rep. Buchanan’s dealerships, has alleged that Rep. Buchanan repeatedly used dealership cars for campaign purposes.²⁴ Mr. Thomas has alleged that vehicles were taken out of inventory for use by the campaign and when returned, would frequently contain campaign materials such as literature and posters, which would be cleaned out, and the cars detailed by dealership staff

¹⁶ Id.

¹⁷ Id.

¹⁸ Matthew Murray, Buchanan Faces Another Lawsuit, *Roll Call*, June 2, 2008 (Exhibit 6).

¹⁹ Id.

²⁰ Id.

²¹ Jeremy Wallace, Official Denies Donation Pressure, *Herald Tribune*, July 29, 2008 (Exhibit 7).

²² Id.; Vern Buchanan for Congress, FEC Form 3, October Quarterly Report 2005, October 14, 2005, p. 64 (Exhibit 8).

²³ Wallace, *Herald Tribune*, Jul. 29, 2008.

²⁴ Richard Thomas v. Sarasota 500, Complaint (12th Cir. Fla.), ¶¶ 141, 142 (Exhibit 9).

before the cars were made available to customers.²⁵ The dealership may not have been paid fair market value for the use of the vehicles.²⁶ Rep. Buchanan also stored campaign materials at the dealership.²⁷

Coercing Contributions

The Federal Election Campaign Act (“FECA”) and Federal Election Commission (“FEC”) regulations specifically prohibit corporations from using job discrimination, financial reprisals, or the threat of job discrimination or financial reprisals to force employees to make political contributions.²⁸ Corporations are also prohibited from facilitating the making of contributions to federal candidates. FEC regulations specifically cite as an example of illegal corporate facilitation “Using coercion, such as the threat of a detrimental job action, the treat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.”²⁹

By using coercion, including the implied threat of detrimental job action, to force employees of the Buchanan automobile dealerships to make contributions to the 2006 Buchanan campaign, Vern Buchanan, Don Caldwell, Brad Combs, Venice Nissan Dodge, Sarasota Ford and BAH violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.2.

Conduit Contributions

FECA and FEC regulations both prohibit the making of a contribution in the name of a person other than the true source of the contribution.³⁰ By reimbursing employees for contributions made to the 2006 Buchanan campaign, Vern Buchanan, Don Caldwell, Brad Combs, Venice Nissan Dodge, Sarasota Ford and BAH violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(I).

²⁵ Id., ¶¶ 142-143.

²⁶ The FEC reports filed by Vern Buchanan for Congress in the 2006 election cycle show one payment made to Sarasota Ford in the amount of \$600 for “transportation.” Vern Buchanan for Congress, FEC Form 3, October Quarterly Report 2005, October 14, 2005, p. 151 (Exhibit 10).

²⁷ Richard Thomas v. Sarasota 500, ¶ 144.

²⁸ 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

²⁹ 11 C.F.R. § 114.2(f)(2)(iv).

³⁰ 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(I).

Corporate Contributions

FECA and FEC regulations both prohibit corporations from making contributions in connection with any federal election, including elections for the House of Representatives.³¹ By reimbursing employees with corporate funds for contributions made to the 2006 Buchanan campaign, BAH, Venice Nissan Dodge and Sarasota Ford, and Vern Buchanan, Don Caldwell and Brad Combs, as officers or directors of BAH and/or Venice Nissan Dodge and/or Sarasota Ford, violated both 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a).

Similarly, by lending the Buchanan congressional committee vehicles for use in connection with the campaign, and by allowing the campaign committee to store campaign materials at the dealership, the dealership made illegal in-kind corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a).

³¹ 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a).

REP. KEN CALVERT

Rep. Ken Calvert (R-CA) is an eighth-term member of Congress, representing California's 44th congressional district. Rep. Calvert's ethics issues stem from his use of earmarks for personal gain, his illegal land purchase and his connections to a lobbying firm under investigation. Rep. Calvert was included in CREW's 2006 and 2007 reports 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 co-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 Danelski 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 Danelski 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 23

Rule 23 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 23, cl. 1.

²² House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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 23, clause 1. Similarly, by using his position to co-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 was 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.

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, *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; Press Release, Office of Representative Ken Calvert, Rep. Calvert Supports Two Appropriations Bills, November 18, 2005; Press Release, Office of Representative Ken Calvert, Rep. Calvert Helps Secure Funding for Local Police Priorities, November 8, 2005; Press Release, Office of Representative Ken Calvert, Rep. Calvert Helps Secure More Than \$75 million for Local Water Supply and Flood Control Projects, November 8, 2005; Press Release, Office of Representative Ken Calvert, Calvert Priorities Included in

Calvert has put 69 earmarks into spending bills during the 2005-2006 congressional 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

FY 2005 Omnibus Appropriations Bill, November 17, 2005 (Exhibit 10).

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).

established between the gratuity and a specific action taken by or to be taken by the government official.⁴⁶

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.

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

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.

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).

Houses Rule 23

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 23, clause 1.

2007 Update

In 2007, Rep. Calvert came to the attention of federal investigators, who were 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 was 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 (R-CA), who gave up his seat as a result of an ongoing federal investigation into his relationship with convicted former lobbyist Jack Abramoff.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

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, *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 Danelski, Report: Land Sold Too Cheaply, *Press Enterprise*, April 12, 2007 (Exhibit 14).

⁵³ Id.

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 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, which he had purchased for between \$250,000 and \$500,000, for between \$100,000 and \$1 million.⁵⁷

2008 Update

Jurupa Land Deal

Rep. Calvert maintains that he had no knowledge that any rules were being broken when he purchased land from the Jurupa Community Services District and that he is only coming under fire for the purchase because of his position as a federal lawmaker.⁵⁸

In March of 2008, the Riverside County Board of Supervisors denied the Jurupa Area Recreation and Park District's (JARPD) request to use eminent domain to acquire the land in question.⁵⁹ The JARPD has maintained that the land was given to the Jurupa

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

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, *Washington Post*, June 15, 2007 (Exhibit 17); Rep. Kenneth Stanton Calvert, Personal Financial Disclosure Statement for Calendar Year 2005, Filed May 11, 2006; Rep. Kenneth Stanton Calvert, Personal Financial Disclosure Statement for Calendar Year 2006, Filed May 15, 2007 (Exhibit 18).

⁵⁸ Ben Goad and Sandra Stokley, Inland Parks District Considers Forcing Calvert, Partners to Sell Disputed Land, *Press Enterprise*, November 16, 2007 (Exhibit 19).

⁵⁹ Liset Marquez, Eminent Domain Request Denied, *Inland Valley Daily Bulletin*, March 11, 2008 (Exhibit 20).

Community Services District with the stipulation that it be used for a park.⁶⁰ A grand jury agreed that the Community Services District violated the law by selling the land to a private entity before offering it to other public agencies.⁶¹ The Community Services District has since offered JARPD \$570,000 to drop the issue -- half of what it received from Rep. Calvert and his partner -- but the JARPD has refused.⁶² In August 2008, JARPD filed a lawsuit against the Jurupa Community Services District alleging fraud and deceit in the property sale.⁶³

A survey of Riverside County residents, conducted by JARPD found that 90% of the community favored Rep. Calvert's land being put to public use.⁶⁴ In July of 2008, based on the overwhelming response, JARPD put the issue to the voters, asking them to decide on Measure P, which would allow the use of eminent domain to seize the land.⁶⁵ In August of 2008, voters approved the measure overwhelmingly, allowing Jurupa parks officials to begin eminent domain proceedings.⁶⁶

Federal Investigation

In November 2007, it was reported that federal investigators are continuing their probe into Rep. Calvert's earmarking activities and have pulled Rep. Calvert's 2006 and 2007 personal financial disclosures.⁶⁷

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Sandra Stokely, Jurupa District Voters Endorse Using Eminent Domain for Park Site, *Press Enterprise*, August 26, 2008 (Exhibit 21).

⁶⁴ Liset Marquez, Survey: People Want Public Use for Calvert's Land, *Inland Valley Daily Bulletin*, June 8, 2008 (Exhibit 22).

⁶⁵ Sandra Stokely, District Seeks Voter Approval, *Press Enterprise*, July 26, 2008 (Exhibit 23).

⁶⁶ Stokely, *Press Enterprise*, Aug. 26, 2008.

⁶⁷ Tory Newmayer, FBI Probes Continuing, *Roll Call*, November 19, 2007 (Exhibit 24).

REP. JOHN T. DOOLITTLE

Rep. John T. Doolittle (R-CA) is an ninth-term member of Congress representing California's fourth 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 and 2007 reports 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, *Sacramento Bee*, April 20, 2006 (Exhibit 2).

⁴ Jonathan Weisman and Jeffrey H. Birnbaum, Lawmaker Criticized For PAC Fees Paid To Wife, *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, *Washington Post*, April 21, 2006 (Exhibit 4).

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

⁷ Whitney, *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 Id.

¹² Kane, *Roll Call*, July 3, 2006.

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 23 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

¹⁸11 C.F.R. § 113.1(g).

¹⁹11 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, p. 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 23, 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

²⁴18 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 23 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 23, cl. 1.

²⁹ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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, *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 Fitial, 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, *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 Id.

⁵⁰ Whitney, *Sacramento Bee*, Aug. 5, 2006.

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Whitney, *Sacramento Bee*, Aug. 5, 2006.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Whitney, *Sacramento Bee*, Aug. 5, 2006.

⁵⁹ Id.

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

⁶¹ David Whitney, Doolittle Defends Helping Iowa Tribe, *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).

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.

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

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).

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.

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.

⁶⁹ 18 U.S.C. § 201(c)(1)(B).

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

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.

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 23.

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:

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.

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.

⁷³ Id.

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 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

⁷⁴ Whitney, *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).

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.

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, 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

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

⁸³ David Whitney, Doolittle Blames Democrats For Leaks, *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.

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, *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, *Sacramento Bee*, June 28, 2007 (Exhibit 21).

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

2008 Update

In January 2008, Rep. Doolittle announced his intention to retire from congress at the end of his current term.⁹⁵

Conversion of Campaign Funds to Personal Use

In October 2007, Rep. Doolittle's campaign committee made a payment of \$45,000 to Ms. Doolittle's firm for fundraising services rendered during the 2006 cycle.⁹⁶ Rep. Doolittle still owes his wife's company \$31,471.20 for services rendered during the 2006 election cycle.⁹⁷

⁹⁰ Id.

⁹¹ Id.

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

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

⁹⁴ Id.

⁹⁵ Erica Werner, Rep. Doolittle to Retire From Congress, *Associated Press*, January 10, 2008 (Exhibit 24).

⁹⁶ John T. Doolittle for Congress, FEC Form 3, October Quarterly Report 2007, November 13, 2007, p. 24 (Exhibit 25).

⁹⁷ John T. Doolittle for Congress, FEC Form 3, April Quarterly Report 2008, May 5, 2008, p. 41 (Exhibit 26).

Ties to Brent Wilkes

Former defense contractor, Brent Wilkes was convicted of bribery and twelve other charges in November 2007.⁹⁸ Rep. Doolittle was subpoenaed by Mr. Wilkes' defense team along with twelve other members of congress.⁹⁹ The House Counsel's office moved to quash the subpoenas based on the Speech or Debate Clause of the Constitution.¹⁰⁰ In October 2007, Mr. Wilkes' attorney withdrew the subpoenas, sparing Rep. Doolittle from testifying.¹⁰¹

Legal Expense Trust

Rep. Doolittle remains the subject of an ongoing Department of Justice investigation over his ties to convicted lobbyist Jack Abramoff.¹⁰² From July 2007 through December 31, 2007, the John T. Doolittle Legal Expense Trust received donations totaling \$66,200 and made expenditures totaling \$50,360.34.¹⁰³

Rep. Doolittle's legal fees have also been paid by his campaign committee. From October 2007 through April 2008, the John T. Doolittle for Congress committee has paid a total of \$13,465.29 in legal expenses to Wiley, Rein & Fielding, LLP.¹⁰⁴ Finally, as of April 2008 Rep. Doolittle still owes the criminal defense firm of Williams Mullens \$121,380.95.¹⁰⁵

⁹⁸ Greg Moran, Jury Finds Wilkes Guilty, *San Diego Union-Tribune*, November 6, 2007 (Exhibit 27).

⁹⁹ David Whitney, Doolittle Called As Witness in Bribery Trial, *Sacramento Bee*, September 19, 2007 (Exhibit 28).

¹⁰⁰ Id.

¹⁰¹ Anna Palmer, Wilkes Withdraws Member Subpoenas, *Roll Call*, October 3, 2007 (Exhibit 29).

¹⁰² Werner, *Associated Press*, Jan. 10, 2008.

¹⁰³ John T. Doolittle Legal Expense Trust, Filed October 30, 2007; John T. Doolittle Legal Expense Trust, Filed January 30, 2008 (Exhibit 30).

¹⁰⁴ John T. Doolittle for Congress, FEC Form 3, October Quarterly Report 2007, November 13, 2007, p. 32; John T. Doolittle for Congress Committee, FEC Form 3, Year-End Report 2007, March 14, 2008 pp. 30, 34; John T. Doolittle for Congress, FEC Form 3, April Quarterly Report 2008, May 9, 2008 p. 30 (Exhibit 31).

¹⁰⁵ John T. Doolittle for Congress, FEC Form 3, April Quarterly Report 2008, May 9, 2008 p. 41, 42 (Exhibit 32).

Federal Investigation

In September 2007, Rep. Doolittle and six aides were served with grand jury subpoenas as part of the investigation into Mr. Abramoff's activities.¹⁰⁶ The six aides were office manager and scheduler Alisha Perkins,¹⁰⁷ chief of staff Ron Rogers,¹⁰⁸ deputy chief of staff Dan Blankenburg,¹⁰⁹ field representative Gordon Hinkle,¹¹⁰ legislative director and Granite Bay spokesman Evan Goitein,¹¹¹ and senior executive assistant Martha Franco.¹¹² According to Rep. Doolittle's lawyer, the aides are merely witnesses.¹¹³ The Department of Justice also is seeking records from Rep. Doolittle's office -- including legislative records -- going back 11 years, indicating that the Department wants to review records dating from the year Rep. Doolittle met Mr. Abramoff, 1996.¹¹⁴ On December 19, 2007, Rep. Doolittle disclosed that his attorney is fighting the subpoenas on constitutional grounds.¹¹⁵ He also predicted that the investigation will be delayed one to two years while the subpoenas are fought.¹¹⁶

¹⁰⁶ John Bresnahan, Doolittle Six Aides Hit With Grand Jury Subpeonas, *Politico*, September 27, 2007; Congressional Record-House, Communication From The Honorable John T. Doolittle, H11010, September 27, 2007 (Exhibit 33).

¹⁰⁷ Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H10127, September 5, 2007 (Exhibit 34).

¹⁰⁸ Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H10021, September 4, 2007 (Exhibit 35).

¹⁰⁹ Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H11010, September 27, 2007 (Exhibit 36).

¹¹⁰ Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H11010, September 27, 2007 (Exhibit 37).

¹¹¹ Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H11010, September 27, 2007 (Exhibit 38).

¹¹² Congressional Record-House, Communication From Staff Member of The Honorable John T. Doolittle, H11011, September 27, 2007 (Exhibit 39).

¹¹³ Bresnahan, *Politico*, Sept. 27, 2007.

¹¹⁴ David Whitney, Rep. Doolittle, Five Staffers Subpoenaed in Abramoff Probe, *Sacramento Bee*, September 27, 2007. (Exhibit 40).

¹¹⁵ David Whitney, Doolittle Sees Delay in Case, *Sacramento Bee*, December 20, 2007 (Exhibit 41).

¹¹⁶ Id.

Ring Indictment

On September 5, 2008, former Doolittle staffer Kevin Ring was indicted on ten counts for conspiracy, making illegal gratuities, honest services fraud, and obstruction of justice.¹¹⁷ The indictment describes a course of conduct in which Mr. Ring and Mr. Abramoff repeatedly provided tickets to events, paid for meals and travel for Rep. Doolittle and members of his staff, held campaign fundraisers for Rep. Doolittle and -- at Rep. Doolittle's request -- even hired Rep. Doolittle's wife, all in exchange for legislative assistance.¹¹⁸ When referring to the role for Julie Doolittle, Mr. Abramoff wrote an email stating, "I am not sure what role she should play and it does not have to be significant. She should just be helpful to you as you need her. I don't want her to have to do too much, though, since she has responsibilities at home as a mother and wife."¹¹⁹

The legislative assistance offered by Rep. Doolittle in exchange for all of these things of value included signing a "Dear Colleague letter on behalf of a gaming client,"¹²⁰ chairing a hearing regarding Puerto Rican statehood,¹²¹ securing appropriations for the CNMI,¹²² including an earmark in a bill for a jail for a tribal client,¹²³ submitting an earmark request for a client's interchange project,¹²⁴ and sending a letter to the Department of Interior supporting a tribal client in an issue pertaining to the reopening of a tribal casino.¹²⁵

¹¹⁷ United States v. Kevin A. Ring, Crim. No. CR-08-27 (D.D.C.) Indictment (Exhibit 42).

¹¹⁸ Id. §§ 61-145.

¹¹⁹ Id. § 125.

¹²⁰ Id. § 76.

¹²¹ Indictment, § 86.

¹²² Id. §§ 98, 100, 102.

¹²³ Id. §§ 104, 106 107, 110.

¹²⁴ Id. § 129.

¹²⁵ Indictment, § 135.

REP. TOM FEENEY

Rep. Tom Feeney (R-FL) 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 and 2007 congressional corruption reports.

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 Later, Rep. Feeney claimed to have discovered 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 Id.

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 26, 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 For Calendar Year 2003, filed May 10, 2004 (Exhibit 6), nor on his amended Personal Financial Disclosure Statement For Calendar Year 2003, filed July 13, 2004 (Exhibit 7).

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

¹² Rotterman and Associates, Lobbying Reports 2002-2003, United States Senate, Office of Public Record (Exhibit 9).

¹³ Rule 26, 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 26.

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 For Calendar Year 2003, page 8, filed May 10, 2004 (*see* Exhibit 6), as well as his amended Personal Financial Disclosure Statement for Calendar Year 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 Tom Feeney, Member/Officer Travel Disclosure Form, filed on 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 26, 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 26. 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

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

¹⁹ Rule 26, 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.*

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

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 26,

²² Tom Feeney, Member/Officer Travel Disclosure Form, filed on December 29, 2003. (See Exhibit 1).

²³ Rule 26, cl. 5(b)(4)(C); Acceptable Travel Expenses, Rules of the U.S. House of Representatives on Gifts and Travel.

²⁴ Rule 26, 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).

clause 5(b)(1)(A) of the House.

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

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).

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.

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

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).

legislative branch.”⁴⁰

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 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

⁴⁰ Id. at § 1001(c)(2).

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).

actual cost of the trip was \$160,000, putting the individual cost for each of the eight individuals 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

2008 Update

The federal investigation into Rep. Feeney's ties to former lobbyist Jack Abramoff is ongoing.⁵⁴

Rep. Feeney has done little to distance himself from his ties to Mr. Abramoff. In November of 2007, Todd Boulanger, a former top aide to Mr. Abramoff, held a fundraiser for Rep. Feeney.⁵⁵ Mr. Boulanger is a registered lobbyist with Cassidy & Associates and represents

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 Tom Feeney Legal Expense Trust, Filed June 20, 2007 ¶ A (Exhibit 18).

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

⁵⁴ Primary Voters Best Bets Are The Incumbent And A Experienced Challenger, *Orlando Sentinel*, August, 8 2008 (Exhibit 20).

⁵⁵ Mark Matthews, Rep. Feeney Pays Baltimore Company \$28,000 for Help in Abramoff Probe, *Orlando Sentinel*, November 13, 2007 (Exhibit 21).

clients with financial regulatory interests.⁵⁶ Rep. Feeney is a member of the House Financial Services Committee.⁵⁷

Since July 2007, Rep. Feeney's legal defense trust has paid FTI Consulting over \$56,000⁵⁸ and his campaign committee has paid the company an additional \$12,000.⁵⁹ The company was hired to help with the federal investigation into Rep. Feeney's ties to Mr. Abramoff and specializes in computer forensics and email recovery.⁶⁰ Aides to the congressman would not confirm why he hired the firm, although they did admit that in late 2007 Rep. Feeney turned over documents to the Department of Justice.⁶¹ Rep. Feeney's campaign committee has paid \$60,000 in legal fees since July of 2007.⁶²

⁵⁶ Cassidy & Associates, Lobbying Report, 2007 (Exhibit 22).

⁵⁷ http://www.house.gov/feeney/legislative_information.shtml (Exhibit 23).

⁵⁸ Tom Feeney Legal Expense Trust, Filed October 30, 2007; Tom Feeney Legal Expense Trust, Filed January 30, 2008; Tom Feeney Legal Expense Trust, Filed April 30, 2008 (Exhibit 24).

⁵⁹ Tom Feeney for Congress, FEC Form 3, July Quarterly Report 2008, July 17, 2008, pp. 170, 171; Tom Feeney for Congress, FEC Form 3, Pre-Primary Report 2008, August 14, 2008, p. 66 (Exhibit 25).

⁶⁰ Matthews, *Orlando Sentinel*, Nov. 13, 2007.

⁶¹ Id.

⁶² Tom Feeney for Congress, FEC Form 3, July Quarterly Report 2008, July 17, 2008, pp. 179, 180, 219; Tom Feeney for Congress, FEC Form 3, Pre-Primary Report 2008, August 14, 2008, pp. 70, 89 (Exhibit 26).

REP. VITO FOSSELLA

Rep. Vito Fossella (R-NY) is a sixth-term member of Congress, representing New York's 13th congressional district. Rep. Fossella's ethics issues stem from a drunken driving incident and improper official travel. As a result of the incident, Rep. Fossella announced he would not seek re-election in 2008.¹

Drunk Driving

In the early morning hours of May 1, 2008, Rep. Fossella was stopped and arrested for drunk driving in Alexandria, Virginia.² Soon after Rep. Fossella's arrest, he admitted that he had been having an affair with now retired Lieutenant Colonel Laura Fay, and that the two have a three-year-old daughter together.³

Improper Travel

Reports have indicated that the affair commenced in 2002 during a congressional trip to Europe when Lt. Col. Fay was serving as an Air Force congressional liaison officer who traveled with congressional delegations.⁴ In the summer of 2003, Rep. Fossella took part in another congressional trip to Europe, during which the affair became obvious to other attendees.⁵ Rep. Fossella was not originally invited on the trip and had asked Scott Palmer, then Speaker Dennis Hastert's chief of staff, to include him on the trip.⁶ At the end of the trip, Rep. Fossella decided to return home from Spain on a commercial flight instead of the military transport provided, costing taxpayers \$2,094.⁷ Lt. Col. Fay had abandoned the speaker on a special tour to accompany Rep. Fossella to the airport. Believing the couple to be "kind of cozy," and that Lt. Col. Fay had shirked her responsibilities, Mr. Palmer made a mental note that Lt. Col. Fay was

¹ Molly Hooper and Marie Horrigan, Fossella to Retire at End of this Congress, *CQ Today Online News*, May 20, 2008 (Exhibit 1).

² Richard Sisk, Mike Jaccarino, Matthew Lysiak and Tina Moore, Vito Fossella & Pal Were Pickled at Pub, Had to be Kicked Out, Waiters Say, *New York Daily News*, May 6, 2008 (Exhibit 2).

³ Rich Schapiro, Kenneth R. Bazinet and Tina Moore, Vito Fossella Admits He Has Love Child With Virginia Woman, *New York Daily News*, May 9, 2008 (Exhibit 3).

⁴ Adam Lisberg, Their Romance Amid the Ruins, *New York Daily News*, May 11, 2008 (Exhibit 4).

⁵ Id.

⁶ James Gordon Meek, Wives Were Wise to Vito's Cheatin' Ways, *New York Daily News*, May 16, 2008 (Exhibit 5).

⁷ Id.

not to accompany the Speaker on any further trips.⁸ He also filed a formal complaint with the Air Force about Lt. Col. Fay's unprofessional conduct.⁹

Although there is little information publicly available, Rep. Fossella allegedly was the sole member of Congress traveling to France in January 2003 in Lt. Col. Fay's company.¹⁰

Violation of Travel Rules

Under House ethics rules, "the fundamental requirement of the travel provisions of the gift rule is that the subject matter of the trip must be related to the official duties of the participating Member, officer, or employee."¹¹ A member's travel must be in connection with the individual's duties as an officeholder and do not create the appearance that the individual is using public office for private gain.¹²

House Rule 23, clause 1 provides "A Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House."¹³ The Committee on Standards of Official Conduct has "historically viewed clause 1 as encompassing violations of law and abuses of one's official position."¹⁴

Clause 2 of Rule 23 provides "A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House . . ." This standard is intended to provide the House "with the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision."¹⁵ The ethics committee has cited this provision for the proposition that "a narrow technical reading of a House rule should not overcome its 'spirit' and the intent of the House in adopting that and other rules of conduct."

⁸ Id.

⁹ Carl Campanile, Chuck Bennet and Daphne Retter, Pol's Aide Ratted Out Vito's Gal, *New York Post*, May 13, 2008 (Exhibit 6).

¹⁰ James Gordon Meek, Celeste Katz, Feds Probe Fossella Trip Financing, *New York Daily News*, May 12, 2008 (Exhibit 7).

¹¹ Committee on Standards of Official Conduct, House Ethics Manual, p. 90 (2008 ed.).

¹² Id. at 91.

¹³ House Ethics Manual, p. 12.

¹⁴ Id. at 16.

¹⁵ Id. at 17.

As required by House rules,¹⁶ on May 21, 2008, the House ethics committee voted to establish an investigative subcommittee to examine Rep. Fossella's drunk driving arrest.¹⁷ The committee then deferred action on the probe until court proceedings are concluded.¹⁸ Rep. Fossella's trial date set for June 27, 2008 was postponed and a new date has not yet been set.¹⁹

The House ethics committee should consider whether Rep. Fossella violated House travel rules. The committee should consider not only the trips previously reported, but also should investigate whether Rep. Fossella availed himself of other unreported congressional delegation travel opportunities in order to conduct his illicit affair. If, as it appears, Rep. Fossella participated in congressional travel or incurred any other additional expenses, not for any official purpose but rather for the private purpose of pursuing his relationship with Lt. Col. Fay, his conduct violated the travel rules

Conduct that does not Reflect Creditably on the House

Members of the House are required to conduct themselves "at all times in a manner that reflects creditably on the House."²⁰ This ethics standard is considered to be "the most comprehensive provision of the code."²¹ If Rep. Fosella was driving while intoxicated and if he availed himself of taxpayer funded travel for the purpose of conducting his affair with Lt. Col. Fay, such behavior does not reflect creditably on the House.

¹⁶ House Ethics Manual, p. 14.

¹⁷ Lauren W. Whittington, Ethics Panel Defers Fossella Probe to Courts, *Roll Call*, May 21, 2008 (Exhibit 8).

¹⁸ Id.

¹⁹ Tom Wroblewski, Fossella's DWI Trial Postponed, *Staten Island Advance*, June 19, 2008; Jennifer Yachnin, Fossella Case Delayed, *Roll Call*, August 28, 2008. (Exhibit 9).

²⁰ Rule 23, clause 1.

²¹ House Ethics Manual, p. 12.

REP. WILLIAM J. JEFFERSON

Rep. William J. Jefferson (D-LA) is a ninth-term member of Congress, representing Louisiana's second 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 2005, 2006 and 2007 reports 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, *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.

²⁸ Press Release, Office of Representative William Jefferson, Jefferson Appointed to Senate Business Committee, January 31, 2007 (Exhibit 6).

²⁹ Press Release, Office of Representative William Jefferson, Congressman Jefferson to take Temporary Leave from Committee, June 5, 2007 (Exhibit 7).

³⁰ Paul Kane, Opportunity In Lawmakers Fall, *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.

Foreign Corrupt Practices Act

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.

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.

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.

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, p. 12.

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.

2008 Update

Pending Criminal Case

The Department of Justice appealed the August 3, 2007 District of Columbia Circuit Court of Appeals decision that the search of Rep. Jefferson's office violated the Speech or Debate Clause, but on March 31, 2008, the Supreme Court denied *certiorari*, letting the appellate

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).

decision stand.⁵³ The court's decision allows Rep. Jefferson to challenge evidence collected in the raid of his congressional office because he was not permitted to assert privilege over seized items. The Justice Department argued that the ruling would damage, potentially fatally, future corruption investigations.⁵⁴

Rep. Jefferson has filed a series of motions in Virginia federal courts in an effort to have the charges against him dismissed. For example, he unsuccessfully sought the suppression of evidence from a 2005 search of his home in Louisiana by the FBI as well as preceding police interview, arguing that the search and interview violated his constitutional rights.⁵⁵ He unsuccessfully sought to have the court reconsider its earlier refusal to move the case against him to the District of Columbia, arguing that his equal protection rights would be violated by the disparity in racial composition in the two jurisdictions.⁵⁶ The court rejected Rep. Jefferson's efforts to have the two bribery counts in his 16 count indictment dismissed on the grounds that he had not engaged in official acts in return for anything of value.⁵⁷ The court refused to dismiss the indictment on the grounds that it had been returned on the basis of information privileged by the Speech or Debate Clause of the U.S. Constitution.⁵⁸ Rep. Jefferson has appealed the Speech or Debate Clause issue to the Fourth Circuit Court of Appeals, which is scheduled to hear oral argument in the matter on September 24, 2008.

Currently, Rep. Jefferson's criminal case is scheduled to begin in December 2008, but is likely to be delayed further while Rep. Jefferson continues appealing preliminary matters.⁵⁹ Rep. Jefferson, his wife and Vernon Jackson, the CEO of iGate, also face a civil suit – brought by an iGate shareholder -- filed in federal court in Louisville, Kentucky. That case has been continued until the criminal case is decided.⁶⁰

⁵³ Susan Crabtree, Supreme Court Denies DOJ Appeal in Jefferson Case, *The Hill*, March 31, 2008 (Exhibit 11).

⁵⁴ Paul Singer, Supreme Court Ruling Opens Door for Jefferson to Challenge Evidence, *Roll Call*, March 31, 2008 (Exhibit 12).

⁵⁵ U.S. v. Jefferson, No. 1:07cr209, 2008 U.S. Dist. Lexis 48109 (E.D. Va. June 23, 2008)

⁵⁶ U.S. v. Jefferson, No. 1:07cr209, 2008 U.S. Dist. Lexis 51310 (E.D. Va. June 27, 2008).

⁵⁷ U.S. v. Jefferson, No. 1:07cr209, 2008 U.S. Dist. Lexis 46474 (E.D. Va. May 23, 2008).

⁵⁸ U.S. v. Jefferson, 534 F. Supp.2d 645 (E.D. Va. 2008).

⁵⁹ Susan Crabtree, Judge Rejects Jefferson on Evidence, *The Hill*, June 25, 2008 (Exhibit 13).

⁶⁰ Judge Delays Lawsuit Against Embattled Congressman, *Associated Press*, February 26, 2008 (Exhibit 14).

“Blood Diamond” Trips

Rep. Jefferson and at least one family member traveled to Botswana four times in 2001 and 2002.⁶¹ He filed a travel disclosure form for just one of the trips, but not the other three. Nor did he include those trips on his 2001 or 2002 travel disclosure forms.⁶² The first trip, for which he did file a form, cost \$20,753 and was sponsored by the Botswana Confederation of Commerce, Industry and Manpower.⁶³ Rep. Jefferson claimed the purpose of the trip was a “CODEL investigating AGOA implementation; anti-AIDS initiatives and diamond industry in Botswana.”⁶⁴ The subsequent three trips, which cost a total of \$102,000 were paid for by the Debswana Diamond Company, a joint venture between DeBeers SA and the Botswana Government.⁶⁵ Rep. Jefferson did not include any of the trips on his financial disclosure forms.

The trips came to light as part of an on going prosecution in Botswana of Louis Garva Nchindo a former director of the Debswana Diamond Company.⁶⁶ Mr. Nchindo allegedly claimed the trips were official company business when, in reality, they were to benefit the private business interests of Rep. Jefferson and Mr. Nchindo.⁶⁷

In 2001, Rep. Jefferson was an original co-sponsor of the “Clean Diamonds Act” designed to curb the trade of “blood diamonds.”⁶⁸ By Jefferson’s own admission, the new law would have had an effect on Botswana.⁶⁹ In April of that same year, just before leaving for his

⁶¹ Cain Burdeau, Jefferson Linked to Africa Diamond Case, *Associated Press*, January 18, 2008 (Exhibit 15).

⁶² William Jefferson, Financial Disclosure Statement for Calendar Year 2001, filed May 15, 2002; William Jefferson Financial Disclosure Statement for Calendar Year 2002, filed May 15, 2003 (Exhibit 16).

⁶³ William Jefferson, Member/Officer Travel Disclosure Form, filed May 2, 2001 (Exhibit 17).

⁶⁴ Id.

⁶⁵ Burdeau, *Associated Press*, Jan. 18, 2008.

⁶⁶ Id.

⁶⁷ Susan Crabtree, Watchdogs Hit Jefferson on “Blood Diamond” Trips, *The Hill*, January 23, 2008.(Exhibit 18).

⁶⁸ Id.

⁶⁹ Id.

first trip to Botswana, Jefferson dropped his co-sponsorship.⁷⁰ When he returned from his trip, Jefferson actively spoke out against the bill, which Debswana opposed.⁷¹

18 U.S.C. § 1001 and House Rules

In 1978, Congress enacted the Ethics in Government Act (“EIGA”), which requires members of Congress to file a form each year detailing their financial transactions of the prior calendar year. House Rule 26 adopts title I of the EIGA as a rule of the House.⁷² Members must disclose travel-related expenses provided by non-governmental sources when they exceed a certain dollar value (\$335 in 2008, \$260 in 2001). Financial disclosure statements must include the source, travel itinerary, inclusive dates and nature of expenses provided.⁷³ Travel paid for by a private source must be disclosed, even if unrelated to the member’s congressional duties.⁷⁴

On the financial disclosure form on which Rep. Jefferson should have included information pertaining to these trips to Africa, language located right above to the signature block states: “Any individual who knowingly and willfully falsifies . . . this report may be subject to civil penalties and criminal sanctions.⁷⁵ Material misrepresentations are punishable by fines of up to \$11,000 and five years in jail.”⁷⁶

By deliberately failing to include the Botswana trips valued at \$102,000 on his financial disclosure forms, Rep. Jefferson may have violated criminal law and House rules.

⁷⁰ Id.

⁷¹ Id.

⁷² House Comm. on Standards of Official Conduct, House Ethics Manual, 110th Cong., 2d sess., p. 248.

⁷³ Id. at 259.

⁷⁴ Id.

⁷⁵ Jefferson, Financial Disclosure Statement for 2001.

⁷⁶ 18 U.S.C. § 1001, House Ethics Manual, p. 265.

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 and 2007 reports 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 8, 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, *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, *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 has her own lobbying firm, Hillscape Associates, with an address identical to that of Copeland

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, *Los Angeles Times*, June 10, 2006 (Exhibit 7).

²² Id.

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

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, *Wall Street Journal*, June 15, 2006 (Exhibit 12).

⁴⁹ Pae, Hamburger and Simon, *Los Angeles Times*, June 8, 2006.

⁵⁰ Jerry Kammer and Marcus Stern, Political Money From Lobbyist Flows to Lewis' Stepdaughter, *Copley News Service*, June 7, 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, *Los Angeles Times*, June 7, 2006.

⁵³ Kammer and Stern, *Copley News Service*, June 7, 2006.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Kammer and Stern, *Copley News Service*, June 7, 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 23, 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 23.

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 23.

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 23.

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 23 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 23, cl. 1.

⁶⁹ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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 23, 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 23, 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

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.

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

2007 Update

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

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

⁹⁴ Bolton, *The Hill*, Feb. 22, 2006.

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

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

⁹⁷ Comm. on House Administration, Committees’ Congressional Handbook, *Detailees*.

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 In 2007, Ms. Dangermond 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

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 3, April Quarterly Report, April 15, 2007, p. 14 (Exhibit 18).

¹⁰¹ Fed Spending Database, Contract to ESRI (FY2006), www.fedspending.org (Exhibit 19).

¹⁰² Lewis For Congress Committee, FEC Form 3, April Quarterly Report 2006, April 13, 2006, p. 5 (Exhibit 20).

¹⁰³ Lewis For Congress Committee, FEC Form 3, 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.

Legal Fees

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

2008 Update

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

Rep. Lewis remains under federal investigation regarding his relationship with lobbyist Bill Lowery and his firm, the now defunct Copeland, Lowery, Jacquez, Denton and White.¹⁰⁸ In October of 2007, as part of the investigation, Defense Appropriations Subcommittee staffer Greg Lankler was subpoenaed by a federal grand jury in Los Angeles.¹⁰⁹ Soon thereafter, the House counsel moved to quash the subpoena on the grounds that the request for documents and testimony was too broad.¹¹⁰ On October 18, 2007, Mr. Lankler sent a letter to Speaker Nancy Pelosi, stating that after consulting with the Office of General Counsel he had determined that the subpoena for his testimony was "not consistent with the rights and privileges of the House" and that the subpoena for documents requested records "not material and relevant."¹¹¹

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 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).

¹⁰⁸ Roxana Tiron and Jackie Kucinich, Lewis Offers Defense of Earmarks, *The Hill*, February 14, 2008 (Exhibit 31).

¹⁰⁹ Erica Werner, House Aid Subpoenaed in Investigation of California GOP Rep. Jerry Lewis, *Associated Press*, October 12, 2007 (Exhibit 32).

¹¹⁰ Alan K. Ota, Subpoena to be Resisted as Overly Broad, *Congressional Quarterly Today*, October 16, 2007 (Exhibit 33).

¹¹¹ Congressional Record-House, Communication From Staff Member of Committee On Appropriations, H11755, October 18, 2007 (Exhibit 34).

In 2007, Environmental Systems Research Institute Inc. (ESRI), a former client of Rep. Lewis' deputy staff director Jeffrey Shockey, was awarded a federal contract worth over \$55 million.¹¹² Thus far in 2008, ESRI has received contracts worth over \$4 million dollars¹¹³. Jack and Laura Dangermond have donated \$7,200 to Rep. Lewis' campaign thus far in 2008.¹¹⁴

Relationship to Brent Wilkes

In November of 2007, defense contractor Brent Wilkes was convicted by a federal jury on 13 counts of bribery, conspiracy, wire-fraud and money laundering.¹¹⁵ Mr. Wilkes subsequently was sentenced to 12 years in federal prison.¹¹⁶

Assistance to Stepdaughter

In February 2008, the FEC granted Small Business Tech PAC's request to shut down.¹¹⁷ The PAC had generated controversy when it was revealed that Rep. Lewis' stepdaughter, Julia Willis-Leon, was the PAC's director and had taken more than one-third of the PAC's proceeds in salary.¹¹⁸

¹¹² Fed Spending Database, Contracts to ESRI (FY 2007), www.fedspending.org (Exhibit 35).

¹¹³ Fed Spending Database, Contracts to ESRI (FY 2008), www.fedspending.org (Exhibit 36).

¹¹⁴ Lewis for Congress Committee, FEC Form 3, April Quarterly Report 2008, April 14, 2008, p. 5; Lewis for Congress Committee, FEC Form 3, July Quarterly Report 2008, July 15, 2008, pp. 9, 10 (Exhibit 37).

¹¹⁵ Greg Moran, Jury Finds Wilkes Guilty, *San Diego Union-Tribune*, November 6, 2007 (Exhibit 38).

¹¹⁶ Greg Moran, Wilkes Gets 12 Years in Prison for Bribery, *San Diego Union-Tribune*, February 20, 2008 (Exhibit 39).

¹¹⁷ Tory Newmyer and Matthew Murray, Money Matters, *Roll Call*, February 27, 2008 (Exhibit 40).

¹¹⁸ Id.

Legal Fees

Since the release of CREW's 2007 Beyond DeLay report, Rep. Lewis' campaign committee has spent \$198,392.82 in legal fees.¹¹⁹ In the past three years, Rep. Lewis' campaign committee has paid over \$1 million in legal fees.¹²⁰

¹¹⁹ Lewis for Congress Committee, FEC Form 3, April Quarterly Report 2008, April 14, 2008, pp. 30, 33; Lewis for Congress Committee, FEC Form 3, Pre-Primary Report 2008, May 19, 2008, p. 19; Lewis for Congress Committee, FEC Form 3, Year-End Report 2007, January 23, 2008, p. 22; Lewis for Congress Committee, FEC Form 3, October Quarterly Report 2007, October 15, 2007, pp. 26, 27, 31 (Exhibit 41).

¹²⁰ Matthew Murray, Weller, Lewis Spend Big on Legal Fees, *Roll Call*, January 28, 2008 (Exhibit 42).

REP. DANIEL LIPINSKI

Rep. Dan Lipinski (D-IL) is a second-term member of Congress representing Illinois' third congressional district. Rep. Lipinski's ethics issues stem from the outside employment of a top Washington D.C. congressional aide.

Jerome R. Hurckes

In January 2005, after serving as district director for former Rep. William Lipinski, Jerome "Jerry" Hurckes became chief of staff in the district office of Rep. Dan Lipinski, who replaced his father.¹ During the 2007 fiscal year, Mr. Hurckes earned \$110,779.97.²

Mr. Hurckes' personal financial disclosure statements indicate he is the president of Hurk Communications,³ which was paid \$1,000 by Rep. Dan Lipinski's campaign in 2006.⁴ In addition, according to the Illinois State Board of Elections, former Rep. William Lipinski's Illinois state PAC, All American Eagle,⁵ paid Mr. Hurckes \$11,250 from May 2006 to February 2008.⁶ On personal financial disclosure forms, Mr. Hurckes claims the PAC paid him \$6,000 in 2006⁷ and \$5,000 in 2007.⁸ Mr. Hurckes was also paid \$30,000 in both 2006 and 2007 for "consulting" for Bridgeview Bank.⁹

Since 1999, Mr. Hurckes has served as an elected member of the Village of Oak Lawn

¹ Legistorm Website, Jerome Hurckes, www.legistorm.com (Exhibit 1).

² Id.

³ Jerome Hurckes, Personal Financial Disclosure Statement for Calendar Year 2006, filed June 13, 2007 (Exhibit 2).

⁴ Dan Lipinski for Congress, FEC Form 3, July Quarterly Report 2006, July 15, 2007, p. 24 (Exhibit 3).

⁵ Bill Lipinski's All-American Eagle, Illinois State Board of Elections, available at: <http://www.elections.state.il.us/> (Exhibit 4).

⁶ Bill Lipinski's All-American Eagle, Expenditure List: Jerry Hurckes, Illinois State Board of Elections, available at: <http://www.elections.state.il.us/> (Exhibit 5).

⁷ Hurckes, Personal Financial Disclosure Statement for 2006.

⁸ Jerome Hurckes, Personal Financial Disclosure Statement for Calendar Year 2007, filed June 16, 2008 (Exhibit 6).

⁹ Hurckes, Personal Financial Disclosure Statement for 2006; Hurckes, Personal Financial Disclosure Statement for 2007.

Board of Trustees.¹⁰ In 2006, Mr. Hurckes was paid \$7,200 by the Board.¹¹ In that capacity he ran a state campaign account called Friends of Jerry Hurckes.¹² Both former Rep. William Lipinski's state PAC and the Dan Lipinski for Congress Committee have donated to Friends of Jerry Hurckes.¹³

Companies with ties to the Lipinskis have also taken an interest in Mr. Hurckes' local political career. Rep. Dan Lipinski serves on the House Transportation Committee,¹⁴ and companies with business in front of the committee, including CSX and Belt Railroad have donated to Mr. Hurckes' campaign committee.¹⁵ In 2005, UPS donated \$500 to Mr. Hurckes¹⁶ just two months before the company wrote a matching check to Rep. Dan Lipinski.¹⁷ Former Rep. William Lipinski's lobbying client,¹⁸ and leading Dan Lipinski donor BNSF¹⁹ also has donated to Mr. Hurckes' campaign.²⁰

In his capacity as a local elected official, Mr. Hurckes has claimed responsibility for

¹⁰ Oak Lawn Village Website, available at: www.oaklawn-il.gov/Elected-Officials/District--1-Jerry-Hurckes.aspx (Exhibit 7).

¹¹ Hurckes, Personal Financial Disclosure Statement for 2006.

¹² Friends of Hurckes, Illinois State Board of Elections, available at: <http://www.elections.state.il.us/> (Exhibit 8).

¹³ Id.

¹⁴ Press Release, Office of Representative Dan Lipinski, Congressman Dan Lipinski 110th Congress Committee Assignments, Dec. 12, 2006 (Exhibit 9).

¹⁵ Friends of Hurckes, Illinois State Board of Elections D-2 Semiannual Report, 1/1/2007-6/30/2007, available at: <http://www.elections.state.il.us/> (Exhibit 10)

¹⁶ Friends of Hurckes, Illinois State Board of Elections D-2 Semiannual Report, 1/1/2005-6/30/2005, available at: <http://www.elections.state.il.us/> (Exhibit 11).

¹⁷ United Parcel Service Inc. PAC, FEC Form 3, July Quarterly Report 2006, Sept. 19, 2005, p. 323 (Exhibit 12).

¹⁸ William O. Lipinski, Lobbying Registration 2007, Secretary of the Senate, Office of Public Record (Exhibit 13).

¹⁹ The Center for Responsive Politics, Daniel Lipinski: Top Contributors, Career, www.opensecrets.org (Exhibit 14).

²⁰ Friends of Hurckes, Illinois State Board of Elections D-2 Semiannual Report, 1/1/2005-6/30/2005, available at: <http://www.elections.state.il.us/>

bringing federal funds to Oak Lawn.²¹ During an Oak Lawn board meeting in March 2008, Mr. Hurckes claimed that the village did not need to hire a lobbyist because he served as a de facto lobbyist.²² Mr. Hurckes said that he was "responsible for helping secure over \$4 million for the Village of Oak Lawn ... responsible for helping obtain the funding for the Oak Lawn Children Museum ... [and] responsible for funding for emergency light systems"²³ Mr. Hurckes is not a registered federal lobbyist.

Outside Employment

The outside income restrictions were created to attempt to avoid any possible conflict between the narrow interests of private employers and the broader interests of the general public.²⁴ The Bipartisan Task Force on Ethics explained that the restrictions had three purposes: 1) substantial payments for rendering personal services to outside organizations presents a significant and avoidable potential for a conflict of interest; 2) substantial earnings from other employment is inconsistent with the concept that being a member of Congress or senior staffer is a full-time job; and 3) substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.²⁵

House ethics rules limit outside earned income of "senior staff," defined as anyone paid at an annual rate of 120% of the basic rate of pay of a GS-15 for over 90 days.²⁶ Mr. Hurckes, who was being paid at a rate of about \$110,779.97 per year, is not bound by this limitation, though the top staff member in a member's district office would generally be considered a senior staff member.

Given that Mr. Hurckes is the most highly paid staff member in Rep. Lipinski's office, that his position is a full-time job and is generally considered a "senior staff" position, it is difficult to imagine when he has time to engage in other activities. The fact that Mr. Hurckes' salary is just under the figure that would make him "senior staff" suggests that Rep. Lipinski is paying Mr. Hurckes a salary under this limit precisely so that he can earn a substantial outside income. This creates exactly the sort of appearance of impropriety contemplated by the

²¹ John Stanton, Ill. Aide Claims Earmarks Credit, *Roll Call*, March 24, 2007 (Exhibit 15).

²² Id.

²³ Id.

²⁴ Committee on Standards of Official Conduct, House Ethics Manual, 110th Cong., 2d sess., p. 213.

²⁵ Id.; *citing* House Bipartisan Task Force on Ethics, Report on H.R. 3660, 101st Cong., 1st Sess. 12 (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9253, H9256 (daily ed. Nov. 21, 1989).

²⁶ House Ethics Manual, p. 214.

Bipartisan Ethics Task Force. As a result, the committee ought to investigate whether Rep. Lipinski and Mr. Hurckes are attempting to end-run the outside income restrictions.

In addition, beyond the limits placed on senior staff, House rules prohibit all employees from using their official position for personal gain, including compensation for outside employment.²⁷ House rule 23, clause 3 states that an employee may not receive compensation, “the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.”²⁸ Similarly, the Code of Ethics for Government Service, which applies to House members and employees, provides that a “federal official should never ‘accept benefits under circumstances which might be construed by reasonable persons as influencing the performance of official duties.’”²⁹ In no event may a member or employee participate in lobbying or advising on lobbying of either Congress or the executive branch on behalf of any private organization, even if uncompensated, as this would conflict with general obligations to the public.³⁰

In addition, 18 U.S.C. § 1301(a) provides that official funds may be used only for the purposes appropriated. This means that House resources may be used only to conduct official business of the House and may not be used “to perform or in furtherance of any outside employment.”³¹

While no House rule absolutely prohibits a House employee from holding a local elected or appointed office while remaining on the House payroll, employees must “avoid any undertaking inconsistent with congressional responsibilities.”³² Senior staff are generally prohibited from receiving compensation for serving as a local government official, but regardless of the rate of pay, employees are barred from using House resources to perform the duties of their local office.³³ Moreover, employees are prohibited from using their positions in the House to provide any special treatment to constituents and should discourage any suggestion that constituents will receive preferential treatment from the employee’s congressional office.³⁴

By serving as a member of the Village of Oak Lawn Board of Trustees and admitting that he has been the Board’s “defacto lobbyist,” Mr. Hurckes is violating the prohibition against

²⁷ House Ethics Manual, p. 186.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 187.

³¹ House Ethics Manual, p. 197.

³² Id. at 204.

³³ Id.

³⁴ Id.

congressional staff serving as lobbyists. Mr. Hurckes also likely violated the prohibition against using House resources to perform the duties of his local office. And, by telling the Board of Oak Lawn that it did not need to hire a lobbyist because he was handling the city's congressional issues and by stating that he had helped secure funding for projects in Oak Lawn, Mr. Hurckes clearly used his position in the House to provide special treatment to his constituents and encouraged the notion that his constituents would receive preferential treatment from Rep. Lipinski's congressional office. Finally, by accepting money for his local electoral campaign from companies with interests before Rep. Lipinski, Mr. Hurckes is using his position as a congressional staff member to accept benefits under circumstances which might be construed by reasonable persons as influencing the performance of official duties in violation of House rules.

In addition, the \$60,000 in consulting fees Mr. Hurckes received from Bridgeview Bank may also violate House rules, depending on the services Mr. Hurckes provided. The House Ethics Committee should consider whether Mr. Hurckes received excessive compensation from the bank and whether these consulting fees pose any conflicts of interest with Mr. Hurckes' position as a congressional staff member.

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 an FBI investigation into 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 and 2007 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, *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 23

Rule 23 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 23, cl. 1.

¹⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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 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 26

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 26.

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

³⁴ House Rule 26, 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, *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

California Land Deals

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 Examining Video in Miller Land Probe, *San Gabriel Valley Tribune*, January 30, 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 23, 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.

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

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ House Ethics Manual, pp. 267-268, citing United States v. Rostenkowski, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh'g denied*, 68 F.3d 489 (D.C. Cir. 1995); United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

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.

2008 Update

Disputing a January 2007 *Los Angeles Times* article, Rep. Miller told *The Hill* newspaper in September 2007 that he is not under a FBI investigation.⁵⁵ Aggressively denying any wrongdoing in the 2002 land transaction, Rep. Miller claimed he is being unfairly targeted by angry ex-employees, Democrats and the media.⁵⁶

O.C. Tollway

In 2005, Rep. Miller earmarked \$8 million for a controversial highway improvement plan that would extend the Foothill South toll road.⁵⁷ Since 2000, Rep. Miller has held \$20,000 in bonds with the Foothill/Eastern Transportation Corridor Agency, which oversees the tollway expansion.⁵⁸ The bonds pay investors a fixed rate and are repaid by drivers' tolls.⁵⁹ Currently, costs are exceeding income on the tollway. If this continues, the tollway might default on the bonds, curtailing interest payments and making the bonds hard to sell.⁶⁰ The California Coastal Commission has voiced objections to the project because it would cut through San Onofre State Beach park, threatening endangered species and disrupting a popular nearby campground.⁶¹ Rep.

⁵⁵ Bob Cusack and Susan Crabtree, Rep. Miller Responds to Critics, Says He Is Not Under FBI Scrutiny, *The Hill*, September 5, 2007 (Exhibit 10).

⁵⁶ Id.

⁵⁷ Morgan Cook, Congressman Has Financial Stake in O.C. Tollway, *Orange County Register*, July 15, 2008 (Exhibit 11).

⁵⁸ Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2000, Filed May 15, 2001; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2001, Filed May 8, 2002; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2002, Filed May 15, 2003; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2003, Filed May 11, 2004; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2004, Filed May 16, 2005; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2005, Filed May 15, 2006; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2006, Filed May 8, 2007; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2007, Filed May 14, 2008 (Exhibit 12).

⁵⁹ Cook, *Orange County Register*, July 15, 2008.

⁶⁰ Id.

⁶¹ Id.

Miller and others sent a letter to the Coastal Commission in February 2008, advocating the extension, but the commission rejected the project. Rep. Miller and others then wrote to the Secretary of Commerce asking him to overturn the commission's decision.⁶²

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.”⁶³ By using his position to earmark funds for a toll road in which he has purchased bonds, Rep. Miller may have 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.⁶⁴ To do so “would raise the appearance of undue influence or breach of the public trust.” By using his position as a member of Congress to advocate for a road in which he has a financial interest, Rep. Miller may have violated this prohibition.

⁶² Id.

⁶³ 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.

⁶⁴ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

REP. ALAN B. MOLLOHAN

Rep. Alan B. Mollohan (D-WV) is a 13th-term member of Congress, representing West Virginia's first 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 and 2007 reports on congressional corruption.

Earmarking of Funds for His Personal Benefit

Over the last fourteen years, 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 non-profit organizations that Rep. Mollohan created, that were staffed by close associates and that were the recipients of the largest earmarks from Rep. Mollohan.²

The non-profits included: 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 were run by friends of Rep. Mollohan who contributed 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 non-profit 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 received subcontracts through these non-profits, such as

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

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

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

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

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

Institute for Scientific Research

Launched by Rep. Mollohan in 1990, the Institute for Scientific Research (ISR) conducted scientific and software projects for federal agencies.⁶ Due to Rep. Mollohan's efforts, ISR won \$108 million in earmarks since 1995.⁷ A majority of ISR's earmarked funds were used to construct the organization's new headquarters even though from the outset ISR was 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 In 2006, ISR announced its intention to merge with the West Virginia High Technology Consortium Foundation.¹⁰

West Virginia High Technology Consortium Foundation

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

WVHTCF was run by a network of Rep. Mollohan's friends. Jim Estee, a former head of ISR,¹⁴ serves as the foundation's President and CEO.¹⁵ Jack Carpenter is the foundation's vice

⁵ Id.

⁶ Id.

⁷ Id.

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

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

¹⁰ Research Firm Looking for Tenants for New Building, *Associated Press*, May 22, 2006 (Exhibit 4).

¹¹ Bowen, *Dominion Post*, May 28, 2006.

¹² Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

¹³ Bowen, *Dominion Post*, May 28, 2006.

¹⁴ Wilke, *Wall Street Journal*, Apr. 7, 2006.

¹⁵ West Virginia High Technology Consortium Foundation website: <http://www.wvhtf.org/about/leadership/> (Exhibit 5).

president as well as chairman of another Mollohan-created foundation, MountainMade.¹⁶ Raymond Oliverio was formerly the foundation's executive vice president; he also was the treasurer of the Alan H. Mollohan Innovation Center.¹⁷ Rep. Mollohan's wife Barbara was once on WVHTCF's board of directors.¹⁸

Canaan Valley Institute

The Canaan Valley Institute (CVI), also launched by Rep. Mollohan, worked on stream restoration and wastewater treatment.¹⁹ In 2006 CVI was building a \$33 million headquarters, on 3,028 acres that it bought with earmarks secured by Rep. Mollohan.²⁰ Having received \$28 million in federal funds since 1995,²¹ CVI relied on federal earmarks for 97% of its funding.²²

CVI was housed in the office building of a fourth Mollohan-created non-profit, Vandalia Heritage Foundation. CVI's \$5,100 monthly rent, paid to Vandalia, was covered by earmarks from the Environmental Protection Agency and the National Oceanic Atmospheric Administration.²³

Vandalia Heritage Foundation

Founded in 1998, Vandalia Heritage Foundation restores historic buildings and invests in devalued property.²⁴ Relying on earmarks for 92% of its funding, it has received \$31.5 million in federal grants since 1999.²⁵ Vandalia once coordinated construction of ISR's new building.²⁶

¹⁶ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

²¹ Bowen, *Dominion Post*, May 28, 2006.

²² Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

²³ Id.

²⁴ Wilke, *Wall Street Journal*, Apr. 7, 2006.

²⁵ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

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

Its funds have decreased since Rep. Mollohan left the subcommittee that appropriates Housing and Urban Development money.²⁷

Since 2000, Vandalia Heritage Foundation has been run by Laura Kurtz Kuhns. A former appropriations staffer in Rep. Mollohan's office, Ms. Kuhns was a key player in Rep. Mollohan's effort to earmark funds for West Virginia and was also the Congressman's investment partner.²⁸

In addition to Vandalia, Ms. Kuhns served on the board of three other non-profits funded via earmarks. These include a fifth Mollohan-created foundation, MountainMade, ISR and the National Housing Development Corporation (NHDC), the only out-of-state non-profit supported by Rep. Mollohan.²⁹ NHDC, based in California, received \$31 million in earmarks from 2001 to 2006.³⁰

MountainMade Foundation

Created in 2000, MountainMade Foundation is a federally funded non-profit dedicated to promoting West Virginia crafts.³¹ The smallest of the non-profits funded by Rep. Mollohan, MountainMade has received \$3.3 million in earmarks since 1995.³²

MountainMade is housed on the first floor of the Vandalia Heritage Foundation's building and used earmarks from the Small Business Administration to pay Vandalia its monthly rent of over \$5,166.67.³³

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

²⁷ Wilke, *Wall Street Journal*, Apr. 7, 2006.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Wilke, *Wall Street Journal*, Apr. 7, 2006.

³² Bowen, *Dominion Post*, May 28, 2006.

³³ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

influenced in the performance of an official act.³⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁵

If Rep. Mollohan accepted campaign donations as well as donations to his family foundation in direct exchange for earmarking federal funds to the non-profits 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 of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³⁶ By using his position as a member of Congress to financially benefit non-profit 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.³⁷ 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.³⁸

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

³⁴ 18 U.S.C. § 201(b)(2)(A).

³⁵ 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).

³⁶ 18 U.S.C. § 1341.

³⁷ 18 U.S.C. § 201(c)(1)(B).

³⁸ 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.³⁹

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.”⁴⁰ House Rule 23, 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. 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 23.

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.”⁴¹ 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,

³⁹ *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).

⁴⁰ 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.

⁴¹ 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.

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.”⁴²

By funneling federal funds to non-profits 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 23 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.”⁴³ This ethics standard is considered to be “the most comprehensive provision” of the code.⁴⁴ 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.⁴⁵ 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,⁴⁶ making false

⁴² Id.

⁴³ Rule 23, cl. 1.

⁴⁴ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

⁴⁵ 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).

⁴⁶ 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,⁴⁷ criminal convictions for bribery,⁴⁸ or accepting illegal gratuities,⁴⁹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵⁰

Rep. Mollohan apparently accepted campaign contributions in return for legislative favors that financially benefited campaign contributors and non-profits that he established. Accepting anything of value in exchange for official action does not reflect creditably on the House and, therefore, violates House Rule 23, clause 1.

Trip to Bilboa, Spain

In June 2004, Rep. Mollohan, his wife, and two top aides took a five-day trip to Bilboa, Spain. The trip, arranged by the West Virginia High Technology Consortium, cost over \$36,000, and was paid for by a group of government contractors to whom Rep. Mollohan funneled more than \$250 million in earmarked funds.⁵¹ Disclosure forms list the sponsor of the Spain trip as the “West Virginia (WV)-01 Trade Delegation”⁵² which, according to Rep. Mollohan’s office, is an ad hoc group of 19 government contractors and West Virginia non-profits.⁵³ Officials with the

⁴⁷ 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).

⁴⁸ 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)).

⁴⁹ 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).

⁵⁰ 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).

⁵¹ John Bresnahan, W.Va. Firms Footed Mollohan Trip, *Roll Call*, May 8, 2006 (Exhibit 6).

⁵² Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed July 23, 2004 (Exhibit 7).

⁵³ Bresnahan, *Roll Call*, May 8, 2006.

non-profit groups have donated nearly \$400,000 to Rep. Mollohan's re-election campaigns from 1997 through 2006.⁵⁴

Representatives from TMC Technologies, a West Virginia high-tech firm, also accompanied Rep. Mollohan on his trip to Spain.⁵⁵ 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."⁵⁶ In 2004, TMC gave \$5,000 to Rep. Mollohan's foundation.⁵⁷ 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 \$20,095.⁵⁸ A month before the trip, TMC received a \$5 million contract from the National Oceanic and Atmospheric Administration as a result of an earmark from Rep. Mollohan.⁵⁹ 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.⁶⁰

A representative from FMW Composite Systems also accompanied Rep. Mollohan on the Spain trip.⁶¹ FMW's Chief Executive Officer, Dale McBride, is a life-long friend of Rep. Mollohan and in May 2005, the two purchased a 300-acre farm together in West Virginia.⁶² In December 2005, FMW won a \$2.1 million NASA contract from a program funded through a Rep. Mollohan earmark.⁶³

Azimuth, Inc., another West Virginia company that provides electronic and software engineering support services, also helped underwrite the Spain trip.⁶⁴ Azimuth won a \$20

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Michael Forsythe, Mollohan Helped Steer U.S. Contracts to Family-Charity Donors, *Bloomberg*, June 22, 2006 (Exhibit 8).

⁵⁸ Id.

⁵⁹ Bresnahan, *Roll Call*, May 8, 2006.

⁶⁰ John Bresnahan, Mollohan Got \$23K From MZM, *Roll Call*, December 8, 2005 (Exhibit 9).

⁶¹ Bresnahan, *Roll Call*, May 8, 2006.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

million contract from the Department of Homeland Security in 2006⁶⁵ and its employees gave \$12,600 during the 2006 cycle and \$16,000 in the 2004 cycle to Rep. Mollohan's campaign committee.⁶⁶

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.⁶⁷ 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 performance or nonperformance of the individual's official duties.⁶⁸

⁶⁵ Bresnahan, *Roll Call*, May 8, 2006.

⁶⁶ Alan Mollohan for Congress, FEC Form 3, Mid-Year Report 1998, July 30, 1998, p. 2; Alan Mollohan for Congress, FEC Form 3, Year-End Report 1998, January 26, 1999, p. 1; Alan Mollohan for Congress, FEC Form 3, Year-End Report 2001, January 23, 2002, pp. 43, 48; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2002, April 5, 2002, p.12; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2004, April 14, 2004 pp. 29, 63, 64, 79; Alan Mollohan for Congress, FEC Form 3, July Quarterly 2005, July 8, 2005 p. 31; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2006, April 10, 2006, pp. 56, 57, 73 (Exhibit 10).

⁶⁷ 5 U.S.C. § 7353.

⁶⁸ Id. (*emphasis added*).

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 23, 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 23.

The financing for the trip may also implicate House Rule 23. 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.⁶⁹

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.”⁷⁰

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 non-profit entities created by Rep. Mollohan that sponsored the trip have any connection to Bilboa, 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.

⁶⁹ 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).

⁷⁰ *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, functions as a third conduit for donations from government contractors and executives of non-profit organizations to which Rep. Mollohan has steered federal funds.⁷¹ The foundation has held an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, West Virginia – a top-100 course according to *Golf Magazine*.⁷² The tournament received \$455,000 in contributions in 2003, and its donors included at least two of Rep. Mollohan's federally funded non-profits, ISR and Vandalia.⁷³ Additionally, the West Virginia High Technology Consortium Foundation provides staff and office services to the foundation.⁷⁴ This staff included Raymond Oliverio who was formerly the WVHTCF's executive vice president, treasurer of the Alan H. Mollohan Innovation Center⁷⁵ and treasurer of the Robert H. Mollohan Family Charitable Foundation until at least 2006.⁷⁶

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.⁷⁷ 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.⁷⁸

The foundation had a total donor list of 43 companies, including nine of the top 10 contributors to Rep. Mollohan's reelection campaign in 2004.⁷⁹

⁷¹ Wilke, *Wall Street Journal*, Apr. 7, 2006.

⁷² Gary Gaylean, Golf Magazine's Ranking of the Top Courses in the U.S. For 2003, *Golf Magazine*, August 11, 2003 (Exhibit 11).

⁷³ Id.

⁷⁴ Id.

⁷⁵ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

⁷⁶ Robert H. Mollohan Family Charitable Foundation, Inc., 2006 IRS Form 990, filed May 14, 2007 (Exhibit 12).

⁷⁷ Forsythe, *Bloomberg*, June 22, 2006.

⁷⁸ Id.

⁷⁹ Id.

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

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 23.

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 owned.⁸⁰ According to the non-profit 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.⁸¹ Those forms showed 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 2004.⁸² As of 2005, Rep.

⁸⁰ Rudoren, Johnston and Pilhofer, *New York Times*, Apr. 8, 2006.

⁸¹ Id.

⁸² Id.

Mollohan's reported personal assets were worth at least \$8 million and his liabilities were in excess of \$3.43 million.⁸³ Rep. Mollohan credited part of this increase in assets to a sizeable inheritance from his father's estate.⁸⁴ In 2006 Mollohan showed at least \$5.9 million in assets earning at least \$694,700 with at least \$4.4 million in liabilities on personal financial disclosures.⁸⁵ The 2007 forms showed assets totaling at least \$5.88 million which earned \$103,711 and liabilities of at least \$2 million.⁸⁶

Rep. Mollohan's real estate holdings have included 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.⁸⁷ Within the next seven years, they added 10 units,⁸⁸ and between 1999 and 2003, The Remington increased in value by more than 9,000%.⁸⁹ The condos were then valued at \$8 million.⁹⁰

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.⁹¹ 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 in 2006.⁹²

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

⁸³ John Bresnahan, Mollohan Made \$1M-Plus in Real Estate in 2005, *Roll Call*, June 14, 2006 (Exhibit 13).

⁸⁴ Id.

⁸⁵ Rep. Alan Mollohan, Personal Financial Disclosure Statement For Calendar Year 2006, filed May 17, 2007 (Exhibit 14).

⁸⁶ Rep. Alan Mollohan, Personal Financial Disclosure Statement For Calendar Year 2007, filed May 15, 2008 (Exhibit 15).

⁸⁷ Eric Bowen, Mollohan Relative Has Past in Government Contracting; 2 Jarvis Companies Brought in \$86M in Fed Contracts, *Dominion Post*, June 25, 2006 (Exhibit 16).

⁸⁸ Id.

⁸⁹ Bresnahan, *Roll Call*, June 14, 2006.

⁹⁰ Jodi Rudoren and Aron Pilhofer, Congressman's Condo Deal Is Examined, *New York Times*, May 17, 2006 (Exhibit 17).

⁹¹ Wilke, *Wall Street Journal*, Apr. 7, 2006.

⁹² Id.

in West Virginia.⁹³ All of these real estate deals are currently under scrutiny by the U.S. Department of Justice.⁹⁴

In June 2006, in reaction to NLPC's complaint, Rep. Mollohan filed two dozen corrections to his past six financial disclosure forms.⁹⁵

18 U.S.C. § 1001

Federal law prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”⁹⁶ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”⁹⁷

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.”⁹⁸

Rep. Mollohan's failure to include all of his assets on his financial disclosure forms violates House rules.

⁹³ *Id.*; Bresnahan, *Roll Call*, May 8, 2006.

⁹⁴ Rudoren and Pilhofer, *New York Times*, May 17, 2006.

⁹⁵ Eric Bowen, Mollohan Fixes Finance Reports: Amendments Correct ‘Handful of Mistakes’, *Dominion Post*, June 14, 2006 (Exhibit 18); *see also* Letter from Rep. Alan Mollohan to Clerk of the House, June 13, 2006 (Exhibit 19).

⁹⁶ 18 U.S.C. § 1001(a)(2).

⁹⁷ *Id.* at § 1001(c)(2).

⁹⁸ House Comm. On Standards of Official Conduct, Assets and Unearned Income, Financial Disclosure Instruction Booklet.

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."⁹⁹

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.¹⁰⁰

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.¹⁰¹

⁹⁹ 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).

¹⁰⁰ 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)).

¹⁰¹ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

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.¹⁰²

The FBI has subpoenaed financial records from the non-profit organizations that have benefitted from federal funding steered to them by Rep. Mollohan.¹⁰³ In addition, at least one witness has been subpoenaed to testify about Rep. Mollohan's finances before a grand jury.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ As required by House rules, Rep. Mollohan certified that neither he nor his spouse has a financial interest in the project.¹⁰⁷ 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.¹⁰⁸

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,

¹⁰² Andrew Taylor, Congressman Recuses Himself, *Associated Press*, January 10, 2007 (Exhibit 20).

¹⁰³ Id.

¹⁰⁴ Beth Gorczyca Ryan, Possible Subpoenas Sent in Mollohan Issue, *State Journal*, March 22, 2007 (Exhibit 21).

¹⁰⁵ Paul Singer, Mollohan Earmarks Nearby Land, *Roll Call*, June 28, 2007 (Exhibit 22).

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

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.

2008 Update

Canaan Valley Institute

In 2007, as a result of mounting media pressure, Rep. Mollohan stripped all CVI related earmarks out of the FY 2007 Agriculture Bill.¹⁰⁹

Trip to Bilbao, Spain

Rep. Mollohan has received \$12,500 from Azimuth employees in the 2008 election cycle through June 2008, and now has taken at least \$46,000 in total over his entire career.¹¹⁰

Relationship with ProLogic

ProLogic, a company that makes software for fighter jets, is currently under FBI investigation for using federal funds for profit.¹¹¹ Rep. Mollohan used federal funds to set up a business center that got ProLogic started and has earmarked for the company,¹¹² which has offices at the same address as the West Virginia High Technology Consortium Foundation.¹¹³ Since 1998, Rep. Mollohan has received at least \$26,000 in campaign donations from ProLogic

¹⁰⁹ Susan Crabtree, GOP Complains as Mollohan Earmarks Stripped From Bill, *The Hill*, August 3, 2007 (Exhibit 23).

¹¹⁰ Alan Mollohan for Congress, FEC Form 3, Mid-Year Report 1998, July 30, 1998, p. 2; Alan Mollohan for Congress, FEC Form 3, Year-End Report 1998, January 26, 1999, p. 1; Alan Mollohan for Congress, FEC Form 3, Year-End Report 2001, January 23, 2002, pp. 43, 48; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2002, April 5, 2002, p.12; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2004, April 14, 2004 pp. 29, 63, 64, 79; Alan Mollohan for Congress, FEC Form 3, July Quarterly 2005, July 8, 2005 p. 31; Alan Mollohan for Congress, FEC Form 3, April Quarterly 2006, April 10, 2006, pp. 56, 57, 73; (*see* Exhibit 10); Alan Mollohan for Congress, FEC Form 3, October Quarterly 2007, October 11, 2007 pp. 28, 35; Alan Mollohan for Congress, FEC Form 3, July Quarterly 2008, July 14, 2008, p. 7 (Exhibit 24).

¹¹¹ Sharyl Attkisson, The "Pros" Of The Earmark Game, *CBS News*, January 11, 2008 (Exhibit 25).

¹¹² Id.

¹¹³ ProLogic Website: <http://www.prologic-inc.com> (Exhibit 26).

employees¹¹⁴ and the company was one of the contractors that sponsored Rep. Mollohan's trip to Balboa Spain.¹¹⁵

A ProLogic spokesman said that Rep. Mollohan did not earmark for the company in fiscal year 2007 or 2008¹¹⁶ though in FY 2007 the company received over \$55 million dollars in federal contracts, of which at least \$24 million was allocated to projects in Rep. Mollohan's district.¹¹⁷

Federal Investigation

Mollohan has claimed that he has not been informed by the Justice Department that he is the target of an investigation.¹¹⁸ Nevertheless, he recused himself from a March 2008 hearing at which FBI Director Robert Mueller testified because of the ongoing investigation.¹¹⁹

¹¹⁴ Alan Mollohan for Congress, FEC Form 3, October Quarterly Report 1998, October 13, 1998, p. 1; Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2000, April 10, 2000, p.1; Alan Mollohan for Congress, FEC Form 3, July Quarterly Report 2000, July 10, 2000, p. 2; Alan Mollohan for Congress, FEC Form 3, October Quarterly Report 2000, October 12, 2000, p. 6; Alan Mollohan for Congress, FEC Form 3, Mid-Year Report 2001, July 17, 2001, p.17; Alan Mollohan for Congress, FEC Form 3, Year End Report 2001, January 23, 2002, pp. 39, 50, 56; Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2004, April 14, 2004, pp. 59, 84, 100; Alan Mollohan for Congress, FEC Form 3, July Quarterly Report 2005, July 8, 2005, p. 60; Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2006, April 10, 2006, pp. 33, 42, 43, 76, 87 (Exhibit 27).

¹¹⁵ Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed on July 23, 2004 (Exhibit 28).

¹¹⁶ Bill Byrd, ProLogic 'Believes it Has Acted Responsibly', *Times West Virginian*, January 25, 2008 (Exhibit 29).

¹¹⁷ Fed Spending Database, Contracts to ProLogic Inc. (FY 2007), www.FedSpending.org (Exhibit 30).

¹¹⁸ Kate Ackley, Rachel Van Dongen and Elizabeth Brotherton, Morning Business, *Roll Call*, October 16, 2007 (Exhibit 31).

¹¹⁹ Andrew Noyes, FBI Director Grilled On Use of Increase in Funding Level, *Congress Daily*, April 1, 2008 (Exhibit 32).

REP. TIMOTHY F. MURPHY

Rep. Timothy F. Murphy (R-PA) is a fourth-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 14, 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 opened an investigation into whether Rep. Murphy's legislative staff members performed campaign work on government time and interviewed some of his former staffers.⁸ Rep. Murphy's FEC filings show that through mid July 2007, his campaign committee 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, April 10, 2007, p. 72; Tim Murphy for Congress, FEC Form 3, July Quarterly Report 2007, July 13, 2007, p. 55 (Exhibit 4).

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 23, 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.

2008 Update

Since June 2007, Rep. Murphy has paid an additional \$37,180.34 in legal fees.²²

²¹ House Ethics Manual, pp. 267-268, citing United States v. Rostenkowski, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh’g denied*, 68 F.3d 489 (D.C. Cir. 1995); United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

²² Tim Murphy for Congress, FEC Form 3, October Quarterly Report 2007, October 12, 2007, p. 88; Tim Murphy for Congress, FEC Form 3, Year End Report 2007, January 28, 2008 pp. 60, 62, 66, 68, 72; Tim Murphy for Congress, FEC Form 3, Pre-Primary Report 2008, April 18, 2008 pp. 130, 157 (Exhibit 5).

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 Rep. Murtha was included in CREW's 2006 and 2007 reports.

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 a 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, *Washington Post*, November 15, 2006 (Exhibit 2).

³ Id.

⁴ The Center for Responsive Politics, John P. Murtha: Top Contributors, 2006 election cycle, www.opensecrets.org (Exhibit 3).

⁵ The Center for Responsive Politics, John P. Murtha: Top Contributors, 2004 election cycle, www.opensecrets.org (Exhibit 4).

⁶ The Center for Responsive Politics, John P. Murtha: Top Contributors, 2002 election cycle, www.opensecrets.org (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 The Center for Responsive Politics, John P. Murtha: Top Contributors, 2006 election cycle, www.opensecrets.org .

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, *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, *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 23 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 23, clause 1.

⁵⁰ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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 23, 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 23, 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 21.

Rule 21, 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. Tiahart's committee vote to kill the NDIC violate Rule 23, clause 16 and do not reflect creditably on the House.

2008 Update

PMA Group

PMA clients have continued to donate and receive federal funding. The Fiscal Year 2008 Defense Appropriations Bill steered at least \$100.5 million to PMA clients.⁶⁸ The bill included 36 projects for 24 of their clients.⁶⁹ So far in the 2008 cycle, 10 of Rep. Murtha's top 20 donors are PMA clients.⁷⁰ Those PMA clients, the PMA Group itself, as well as other PMA clients including, Conemaugh Health Systems, Windber Research Institute and L. Robert Kimball have

⁶⁸ Tory Newmyer, Ample Earmarks Aid PMA Clients, *Roll Call*, September 17, 2007 (Exhibit 41).

⁶⁹ Id.

⁷⁰ Center for Responsive Politics, John P. Murtha: Top Contributors, 2008 election cycle, www.opensecrets.org ; The PMA Group, Lobbying Disclosures, Second Quarter 2008, Secretary of the Senate, Office of Public Record (Exhibit 42).

all donated a combined \$190,880 to Rep. Murtha's campaign committee and PAC since the second quarter of 2007.⁷¹

Concurrent Technologies Corporation

Concurrent Technologies Corporation (CTC) employees and executives have donated \$9,050 to Rep. Murtha's campaign committee⁷² and \$2,000 to his PAC since the second quarter of 2007.⁷³ According to CTC's 2006 IRS 990 form, the non-profit received \$225,589,223 in funding from the federal government.⁷⁴ CTC paid lobbying firm the PMA Group \$456,349⁷⁵ for consulting but claimed lobbying expenditures of \$316,892.⁷⁶ Daniel DeVos, the president and chief executive officer, received compensation of \$638,816; John Pursley, Jr., the executive vice president, received \$519,131; Michael Katz, senior vice president and chief operating officer, received \$454,254; Edward Sheehan, Jr., senior vice president and chief financial officer,

⁷¹ See Murtha for Congress Committee, FEC Form 3 Reports, 2007-2008, (pages listing contributions attached; 21st Century Systems Inc PAC, FEC Form 3, Mid-Year Report 2007, July 30, 2007, pp. 15-17; Radix Technologies Inc PAC (Argon St), FEC Form 3, Year-End Report 2007, April 2, 2008, p. 1; General Dynamics Voluntary Political Contribution Plan, FEC Form 3, October Monthly Report 2007, October 9, 2007, p. 193; General Dynamics Voluntary Political Contribution Plan, FEC Form 3, March Monthly Report 2008, March 14, 2008, pp. 33, 34; General Dynamics Voluntary Political Contribution Plan, FEC Form 3, April Monthly Report 2008, April 10, 2008, p. 78; Lockheed Martin Employees PAC, FEC Form 3, April Monthly Report 2007, April 20, 2007, p. 149; Lockheed Martin Employees PAC, FEC Form 3, November Monthly Report 2007, November 20, 2007, p. 457; Lockheed Martin Employees PAC, FEC Form 3, April Monthly Report 2008, April 17, 2008, pp. 140, 153; Majority PAC, FEC Form 3, April Quarterly Report 2007, April 5, 2007, p. 6; Majority PAC, FEC Form 3, Year-End Report 2007, January 26, 2008, p. 6; Majority PAC, FEC Form 3, April Quarterly Report 2008, July 10, 2008, pp. 6, 15 (Exhibit 43).

⁷² Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2007, October 11, 2007, pp. 6, 8, 10; Murtha for Congress Committee, FEC Form 3, Year-End Report 2007, July 25, 2008, pp. 64-66; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 26, 36, 83, 89 (Exhibit 44).

⁷³ Majority PAC, FEC Form 3, April Quarterly Report 2007, April 5, 2007, p. 21; Majority PAC, FEC Form 3, April Quarterly Report 2008, July 10, 2008, p. 21 (Exhibit 45).

⁷⁴ Concurrent Technologies Corporation, 2006 Tax Form 990, filed Nov. 15, 2007 (Exhibit 46).

⁷⁵ Id.

⁷⁶ Id.

received \$442,330; and 14 other top compensated employees received between \$222,350 and \$392,613.⁷⁷

Critics of CTC have charged that earmarked federal funds have resulted in few new developments.⁷⁸ A Pentagon inspector general audit found that CTC subsidiary, the National Defense Center for Environmental Excellence, had demonstrated 63 technologies between 1990 and 2000, of which only a third were transferred over to the Defense Department,⁷⁹ and of those only one technology has been used at more than one site.⁸⁰ In that ten year period the center received \$212 million in appropriations.⁸¹ A former CTC director characterized much of the non-profit's work as never getting off the planning table.⁸²

Although, CTC continues to maintain a close relationship with Rep. Murtha, the non-profit has built other relationships on the Hill.⁸³ It has opened offices in both Democratic and Republican districts leading to more sources of federal funding.⁸⁴ Congress has earmarked at least \$226 million for CTC in the past four years.⁸⁵

Another CTC subsidiary to raise scrutiny is the non-profit Commonwealth Research Institute (CRI). In the fall of 2007, it was revealed that CRI hired a civilian Air Force employee for two months while the official awaited White House approval for his appointment.⁸⁶ The employee, Charles Riechers, testified before the Senate Armed Service Committee that while

⁷⁷ Id.

⁷⁸ Robert O'Harrow Jr., A Contractor, Charity and Magnet for Federal Earmarks, *Washington Post*, November 2, 2007 (Exhibit 47).

⁷⁹ OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF DEFENSE: AUDIT ON IMPLEMENTATION OF NATIONAL DEFENSE CENTER FOR ENVIRONMENTAL EXCELLENCE PROJECTS, REPORT NO. D-2001-105 [hereinafter IG AUDIT ON NATIONAL DEFENSE CENTER FOR ENVIRONMENTAL EXCELLENCE] at 1 (April 25, 2001) (Exhibit 48).

⁸⁰ O'Harrow, *Washington Post*, Nov. 2, 2007.

⁸¹ IG AUDIT ON NATIONAL DEFENSE CENTER FOR ENVIRONMENTAL EXCELLENCE.

⁸² O'Harrow, *Washington Post*, Nov. 2, 2007.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Robert O'Harrow Jr., Air Force Told to Detail No-Work Deal, *Washington Post*, October 6, 2007 (Exhibit 49).

being paid a salary of \$13,400 a month by CRI he did not actually do any work for the group.⁸⁷ In fact, Mr. Riechers was hired as a senior technical advisor before he had even met CRI executives.⁸⁸

In April of 2008, the FBI and the Pentagon Defense Criminal Investigation Service issued subpoenas seeking information regarding contracts awarded to CRI and its parent company CTC.⁸⁹ Investigators are seeking information about seven contracts,⁹⁰ four of which were awarded to CTC over several weeks in May and June 2002 and worth up to \$130 million.⁹¹ Investigators also seek information regarding a 2002 CRI deal worth \$10 million and a 2006 no-bid contract worth up to \$45 million.⁹² Investigators retrieved computers and contracting records to investigate whether an Air Force contract with CRI was properly awarded.⁹³ All contracts were issued by the Department of the Interior's National Business Center, other audits have found that the department has issued contracts without competition or checks to determine if prices were reasonable.⁹⁴ The Defense Department's inspector general's office is also investigating the relationship between the Air Force and CRI.⁹⁵

Additionally, last December, Sen. Charles Grassley began an inquiry into why CTC has been considered a tax exempt charity.⁹⁶

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Robert O'Harrow Jr., Pentagon, FBI Probing Air Force Contracts, *Washington Post*, April 18, 2008 (Exhibit 50)

⁹⁰ Robert O'Harrow Jr., Government Probes at Least 7 Defense Contracts for Charity, *Washington Post*, June 7, 2008 (Exhibit 51).

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ O'Harrow *Washington Post*, June 7, 2008.

⁹⁵ Id.

⁹⁶ Robert O'Harrow Jr., Murtha Backed Center of Little Use to Pentagon, *Washington Post*, December 30, 2007 (Exhibit 52).

ProLogic Earmarks

Rep. Murtha has also earmarked for ProLogic, Inc., a small software company under federal investigation for allegedly diverting federal funds to develop software for commercial sale.⁹⁷ Despite the federal probe investigating the abuse of taxpayer money, Rep. Murtha inserted a \$2.4 million earmark for the company for fiscal year 2008.⁹⁸ Since 2002, executives and spouses of ProLogic have donated \$42,900 to Rep. Murtha's campaign committee,⁹⁹ and \$10,000 to Rep. Murtha's PAC.¹⁰⁰ Additionally, ProLogic's PAC has donated \$18,000 to both Rep. Murtha's campaign committee and PAC.¹⁰¹ ProLogic is a PMA client.¹⁰²

Other Earmarks

Companies that received earmarks in the Fiscal Year 2008 Defense Appropriation Bill have continued to donate to Rep. Murtha's campaign committee and PAC. Among them, Advanced Acoustic Concepts, Conemaugh Health Systems, DRS Technologies, L. Robert

⁹⁷ John R. Wilke, How Lawmaker Rebuilt Hometown On Earmarks, *Wall Street Journal*, October 30, 2007 (Exhibit 53).

⁹⁸ Sharyl Attkisson, Follow the Money, *CBS News*, January 11, 2008 (Exhibit 54).

⁹⁹ Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2002, July 10, 2002, pp. 118, 119; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2002, October 2, 2002, pp. 90, 91, 155; Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2003, September 15, 2003, pp. 27, 56; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2004, July 7, 2004, pp. 69, 154; Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2005, August 31, 2005, pp. 70, 154, 157; Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2006, pp. 59, 122, 123; Murtha for Congress Committee, FEC Form 3, April Quarterly Report 2007, September 13, 2007, pp. 23, 32, 81, 82 (Exhibit 55).

¹⁰⁰ Majority PAC, FEC Form 3, October Quarterly Report 2006, October 12, 2006, p. 8; Majority PAC, FEC Form 3, April Quarterly Report 2007, April 5, 2007, p. 6 (Exhibit 56).

¹⁰¹ ProLogic Inc PAC, FEC Form 3, March Monthly Report 2004, March 4, 2004, p. 8; ProLogic Inc PAC, FEC Form 3, July Monthly Report 2005, March 1, 2006, p. 9; ProLogic Inc PAC, FEC Form 3, June Monthly Report 2006, June 19, 2006, p. 12; ProLogic Inc PAC, FEC Form 3, September Monthly Report 2006, September 19, 2006, p. 15; ProLogic Inc PAC, FEC Form 3, April Monthly Report 2007, April 18, 2007, p. 12 (Exhibit 57).

¹⁰² PMA Group, Lobbying Reports Second Quarter 2008, Secretary of the Senate, Office of Public Record (Exhibit 58).

Kimball, MTS Technologies, and Windber Research Institute, have also retained the services of the PMA Group.¹⁰³

Executives of Advanced Acoustic Concepts have donated \$28,500 to Rep. Murtha's campaign committee since 2002.¹⁰⁴ In addition, Advanced Acoustic Concepts' corporate PAC has donated \$40,000 to Rep. Murtha since 2003.¹⁰⁵

Employees of Conemaugh Health Systems have donated \$6,000 to Rep. Murtha since the second quarter of 2007.¹⁰⁶

Executives of DRS have donated \$16,700 since the second quarter of 2007 to Rep. Murtha's campaign committee.¹⁰⁷ Additionally, DRS's corporate PAC has donated

¹⁰³ PMA Group, Lobbying Reports Second Quarter 2008, Secretary of the Senate, Office of Public Record (Exhibit 59).

¹⁰⁴ Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2002, October 2, 2002, pp. 34, 35, 135, 136, 247, 248; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2004, July 7, 2004, pp. 25, 108, 109, 199; Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2005, August 31, 2005, pp. 27, 111, 161, 193, 194; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, p. 17 (Exhibit 60).

¹⁰⁵ Advanced Acoustic Concepts PAC, FEC Form 3, Year-End Report 2003, February 6, 2004, p. 2; Advanced Acoustic Concepts PAC, FEC Form 3, April Quarterly Report 2004, April 14, 2004, p. 40; Advanced Acoustic Concepts PAC, FEC Form 3, Mid-Year Report 2005, July 20, 2005, p. 177; Advanced Acoustic Concepts PAC, FEC Form 3, Mid-Year Report 2007, July 31, 2007, pp. 178, 179; Advanced Acoustic Concepts PAC, FEC Form 3, Year-End Report 2007, April 15, 2008, p. 206; Advanced Acoustic Concepts PAC, FEC Form 3, April Quarterly Report 2008, April 15, 2008, p. 26 (Exhibit 61).

¹⁰⁶ Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2007, October 11, 2007, pp. 5, 6, 8; Murtha for Congress Committee, FEC Form 3, Year-End Report 2007, July 25, 2008, p. 18; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 8, 59 (Exhibit 62).

¹⁰⁷ Murtha for Congress Committee, FEC Form 3, April Quarterly Report 2007, September 13, 2007, p. 109; Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2007, October 11, 2007, pp. 15, 23; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 11, 13, 35, 37, 42, 66, 87, 92, 93, 106, 108; Murtha for Congress Committee, FEC Form 3, July Quarterly Report 2008, July 11, 2008, pp. 12, 21, 33 (Exhibit 63).

\$10,000 to Rep. Murtha's campaign committee¹⁰⁸ and \$10,000 to his PAC since the third quarter of 2007.¹⁰⁹

Executives of L. Robert Kimball and Associates have donated \$3,500 to Rep. Murtha's campaign committee since the third quarter of 2007.¹¹⁰

Executives of MTS Technologies have donated \$7,100 to Rep. Murtha's campaign committee since the second quarter 2007.¹¹¹

Employees and executives of former Windber Research Institute, have donated \$5,480 to Rep. Murtha's campaign committee since the third quarter of 2007.¹¹²

Employees of Kuchera Defense have donated \$11,500 since the second quarter of 2007 to Rep. Murtha campaign committee.¹¹³ Additionally, in 2008, William Kuchera President of Kuchera Defense Systems donated \$1,000 to Rep. Murtha's PAC.¹¹⁴

¹⁰⁸ DRS Technologies Inc. Good Government Fund, FEC Form 3, Mid-Year Report 2007, January 28, 2008, p. 73; DRS Technologies Inc. Good Government Fund, FEC Form 3, March Monthly Report 2008, March 19, 2008, p. 27 (Exhibit 64).

¹⁰⁹ DRS Technologies Inc. Good Government Fund, FEC Form 3, Mid-Year Report 2007, January 28, 2008, p. 58; DRS Technologies Inc. Good Government Fund, FEC Form 3, March Monthly Report 2008, March 19, 2008, p. 22 (Exhibit 65).

¹¹⁰ Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2008, October 11, 2007, p. 13; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 54, 55 (Exhibit 66).

¹¹¹ Murtha for Congress Committee, FEC Form 3, Year-End Report 2007, July 25, 2008, pp. 53, 70, 75; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 78, 107 (Exhibit 67).

¹¹² Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2007, October 11, 2007, pp. 12, 20; Murtha for Congress Committee, FEC Form 3, Year-End Report 2007, July 25, 2008, pp. 30-32, 49; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, pp. 30, 31, 50 (Exhibit 68).

¹¹³ Murtha for Congress Committee, FEC Form 3, Year-End Report 2007, July 25, 2008, pp. 38, 64 (Exhibit 69).

¹¹⁴ Majority PAC, FEC Form 3, April Quarterly Report 2008, July 10, 2008, p. 15 (Exhibit 70).

REP. STEVE PEARCE

Rep. Steve Pearce (R-NM), is a third-term member of Congress representing the second 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. Rep. Pearce was included in CREW's 2007 congressional corruption report.

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 The value of the stock at the time was \$5.2 million.⁴ During an October 29, 2003 conference call, however, the President of Key Energy said Lea Fishing Tools was purchased for \$12 million.⁵ Rep. Pearce failed to report the transaction on his 2003 financial disclosure report,⁶ and the \$6.8 million discrepancy remains unresolved. In the 2003 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.⁷ 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.⁸ 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

¹ Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2002, filed May 15, 2003 (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 Id.

⁵ Key Energy Services, Earnings Conference Call, Q3 2003, October, 29, 2003 (Exhibit 4).

⁶ Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2003, filed May 12, 2004 (Exhibit 5).

⁷ Id. pp. 2, 6.

⁸ 5 U.S.C. app. 4, § 104.

federal crime.⁹ 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.¹⁰

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.¹¹

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.¹² "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."¹³

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.¹⁴ Rep. Pearce, however, contended that drilling in the area would keep natural gas prices level and create jobs,

⁹ 18 U.S.C. § 1001.

¹⁰ Financial Disclosure Instruction Booklet, Form A, Failure to File or Falsifying Disclosure Statements.

¹¹ Instruction Booklet, Transactions.

¹² Id.

¹³ Id.

¹⁴ The Environmental Working Group, Who Owns The West? (Exhibit 6); Michael Coleman, Pearce Otero Mesa Stand Earns Environmental Ire, *Albuquerque Journal*, October 19, 2003 (Exhibit 7).

thereby stimulating the state's economy.¹⁵ Initially, the BLM expressed concern about opening the area, arguing that drilling would both directly and indirectly destruct the habitat for wildlife.¹⁶ Between 2000 and 2003, however, BLM weakened protections for the area and proposed a plan that would open nearly 1.4 million acres to drilling.¹⁷ The change in policy coincided with the largest lease holder in the Otero Mesa, Yates Petroleum, donating over \$230,000 to the GOP over the preceding three election cycles.¹⁸ Also in 2001, Yates' former lobbyist, J. Steven Griles, took the Deputy Secretary post at the Department of the Interior.¹⁹

Not coincidentally, Yates Petroleum has been the single largest donor to Rep. Pearce's campaign committees since 2002 with \$53,190 in donations through June 2008.²⁰ Individually, members of the Yates family have contributed \$78,379.99 to Rep. Pearce since he first ran for office in 2002 to 2006.²¹

¹⁵ Id.

¹⁶ The Environmental Working Group, Who Owns the West?.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ The Center for Responsive Politics, Steve Pearce: Top Contributors, 2002-2008 Election Cycles, www.opensecrets.org (Exhibit 8).

²¹ Stevan E. Pearce for Congress, FEC Form 3, Pre-Primary Report 2002, May 23, 2002, pp. 31-32; Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2002, July 15, 2002, pp. 57-59; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2002, February 19, 2003, pp. 77, 145, 156, 158, 159; Stevan E. Pearce for Congress, FEC Form 3, Pre-General Report 2002, April 11, 2003, pp. 48-50; Stevan E. Pearce for Congress, FEC Form 3, April Quarterly Report 2003, April 15, 2003, p. 45; Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2003, July 15, 2003, p. 21-22; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2003, October 15, 2003, p. 35; Stevan E. Pearce for Congress, FEC Form 3, April Quarterly Report 2004 Amend, September 9, 2004, pp. 96-99; Stevan E. Pearce for Congress, FEC Form 3, Post-General Report 2004, December 2, 2004, pp. 46-47; Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2005 Amend, November 24, 2005, p. 50; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2005, October 15, 2005, pp. 49-50; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2005 Amend, April 9, 2007, p. 50; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2005 Amend, February 28, 2006, p. 51; Stevan E. Pearce for Congress, FEC Form 3, Year-End Report 2005, January 31, 2006, p. 28; Stevan E. Pearce for Congress, FEC Form 3, Pre-Primary Report 2006, May 25, 2006, pp. 28-30; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2006, October 15, 2006, p. 129; Stevan E. Pearce for Congress, FEC Form 3, April Quarterly Report 2007 Amend, May 1, 2007, pp. 44-45 (Exhibit 9).

Similarly, Chase Petroleum holds 21 leases in Otero County²² and members of the Chase family donated \$51,200 to Rep. Pearce's committees from 2002 to 2006.²³ In addition, Marbob Energy holds 89 drilling leases²⁴ and its employees contributed \$29,600 to Rep. Pearce through 2006.²⁵

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.²⁶ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.²⁷

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

²² The Environmental Working Group, Who Owns The West?

²³ Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2002, July 15, 2002, pp. 12-15; Stevan E. Pearce for Congress, FEC Form 3, Pre-General Report 2002, April 11, 2003, pp. 10, 11; Stevan E. Pearce for Congress, FEC Form 3, October Quarterly Report 2002, October 15, 2003, p. 10; Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2004, September 9, 2004, pp. 15, 16; Stevan E. Pearce for Congress, FEC Form 3, Year-End Report 2005, January 31, 2006, pp. 8, 9; Stevan E. Pearce for Congress, FEC Form 3, Pre-Primary Report 2006, April 10, 2007, pp. 8, 9; Stevan E. Pearce for Congress, FEC Form 3, Pre-Primary Report 2006, August 14, 2006, p. 10; Stevan E. Pearce for Congress, FEC Form 3, July Quarterly Report 2007, July 12, 2007, p. 33, 34 (Exhibit 10).

²⁴ The Environmental Working Group, Who Owns The West?.

²⁵ Pearce for Congress, FEC Form 3, April Quarterly Report 2004 Amend, September 9, 2004, pp. 18-20, 36, 37, 63, 64; Pearce for Congress, FEC Form 3, July Quarterly Report 2004, July 15, 2005, pp. 14, 21, 36; Pearce for Congress, FEC Form 3, Pre-Primary Report 2006, May 25, 2006, pp. 8, 21, 22, 27, 35 (Exhibit 11).

²⁶ 18 U.S.C. § 201(b)(2)(A).

²⁷ 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.²⁸ 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.²⁹ 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.³⁰

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.³¹

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.”³² House Rule 23, clause 3, similarly provides:

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

²⁸ 18 U.S.C. §1341.

²⁹ 18 U.S.C. § 201(c)(1)(B).

³⁰ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

³¹ *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).

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.

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 23.

Conduct Not Reflecting Creditably on the House

In addition, Rule 23 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

³³ Rule 23, cl. 1.

³⁴ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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

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 23, clause 1.

2008 Update

Lea Fishing Tools, Inc.

In response to CREW's 2007 *Beyond DeLay* report, Rep. Pearce issued a press release in September 2007 claiming to have submitted a letter to the House Committee on Standards and Official Conduct to "confirm my financial disclosure statement." The release states, "If a mistake was made on the disclosure form, I would act to clear it up immediately." Rep. Pearce did not, however, address CREW's allegations directly and did not make a copy of the letter public.⁴¹ The House Committee on Standards and Official Conduct has not published a response to Rep. Pearce's query on the committee's website and Rep. Pearce has not amended his past financial disclosure statements.

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 Press Release, Office of Representative Steve Pearce, Partisan Attack Group Makes Wild Claims, September 21, 2007 (Exhibit 12).

On financial disclosure forms from calendar years 2004 to 2007 Rep. Pearce continues to report \$5-\$25 million in assets from Trinity Industries.⁴² He has not filed any financial disclosure amendments.⁴³

Otera Mesa

Thus far in the 2008 election cycle, the Yates family has contributed \$31,681.55 to Rep. Pearce,⁴⁴ the Chase family has donated \$9,450.⁴⁵ Since October 2007, Marbob Energy employees have contributed an additional \$9,600.⁴⁶

⁴² Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2004, filed May 13, 2005; Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2005, filed May 15, 2006; Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2006, filed May 9, 2007; Rep. Stevan E. Pearce, Financial Disclosure Statement for Calender Year 2007, filed June 11, 2008 (Exhibit 13).

⁴³ Id.

⁴⁴ Steven Pearce for Congress, FEC Form 3, October Quarterly Report 2005 Amend, March 21, 2008, p. 93; Steven Pearce for Congress, FEC Form 3, Year-End Report 2007, January 30, 2008, p. 12-14, 42; People for Pearce FEC Form 3, Year-End Report 2007, January 30, 2008, p. 124, 125; People for Pearce, FEC Form 3, April Quarterly Report 2008, April 14, 2008, pp. 101, 164, 231-234; People for Pearce, FEC Form 3, Pre-Primary Report 2008, May 21, 2008, pp. 222, 223 (Exhibit 14).

⁴⁵ People for Pearce, FEC Form 3, Year-End Report 2007, January 30, 2008, p. 23, 24; People for Pearce, Pre-Primary Report 2008, May 21, 2008, p. 37 (Exhibit 15).

⁴⁶ People for Pearce, FEC Form 3, Year-End Report 2007, January 30, 2008, p. 22, 45, 78; People for Pearce, FEC Form 3, April Quarterly 2008, April 14, 2008, p. 132 (Exhibit 16).

REP. CHARLES RANGEL

Representative Charles Rangel (D-NY) is a 15th-term member of the House of Representatives representing New York's 15th district. Rep. Rangel's ethics issues stem from leasing rent controlled apartments, improperly using congressional stationary and failing to report rental income from a vacation property.

Improper Rental Arrangement

Rep. Rangel rented three adjacent apartments at Lenox Terrace, an apartment building in New York City owned by the Olnick Organization, which he uses as his residence.¹ Rep. Rangel paid a total monthly rent of \$3,264 for the three units: \$1,329 for a two bedroom unit, \$1,329 for a one-bedroom unit, and \$606 for a studio.² For new tenants, such apartments would rent for approximately \$2,600, \$1,865, and \$1,300, respectively, for a total of \$5,765.³ In addition, Rep. Rangel's campaign committee and political action committee jointly rented another one-bedroom apartment in the building for office use at a cost of \$630 a month.⁴

Rent-stabilized apartments are common in New York, but under state and city rent regulations, tenants can continue renewing leases in such apartments only as long as the apartments are used as their primary residences.⁵ Landlords routinely require tenants who have more than one rent-stabilized apartments to give up additional units.⁶

After public outcry following news reports of Rep. Rangel's rental agreements, Rep. Rangel decided to move the campaign committee and political action committee out of the Lenox Terrace apartment.⁷ He insists, however, that his arrangement as to the other three apartments is fair and legal.⁸

¹ David Kocieniewski, For Rangel, Four Rent-Stabilized Apartments, *New York Times*, July 11, 2008 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Kocieniewski, *New York Times*, Jul. 11, 2008.

⁶ Id.

⁷ Raymond Hernandez and David Kocieniewski, Rangel to Relinquish Apartment Used as Office, *New York Times*, July 15, 2008 (Exhibit 2).

⁸ David Kocieniewski, Rangel Calls Rent Bargain Legal and Fair, *New York Times*, July 12, 2008 (Exhibit 3).

Violation of Federal Election Law

Renting a rent-stabilized apartment for use as an office by campaign and political action committees raises federal election law issues because the committees did not pay fair market rent. The difference between the fair market value of the apartment, \$1,700,⁹ and the rent actually paid by Rep. Rangel's campaign committee and political action committee for the apartment, \$630, is approximately \$1,070 per month. Therefore, the \$1,070 might be considered an in-kind contribution made by the owners of Lenox Terrace, the Olnick Organization. Neither the campaign committee nor the political action committee reported receiving such in-kind contributions, in violation of 2 U.S.C. § 434(b)(3)(A). In addition, given that Rep. Rangel's campaign and political action committees rented the apartment at below market rates for many years, they likely received excessive in-kind contributions in violation of 2 U.S.C. § 441a(a)(1)(A). Finally, if the Olnick Organization is a corporation, the campaign and political action committees may have received illegal corporation contributions in violation of 2 U.S.C. § 441b.

The National Legal and Policy Center filed a complaint with the Federal Election Commission regarding this matter¹⁰ and, Rep. Rangel himself sent a letter to the Federal Election Commission asking for a review of this matter.¹¹

Gift Rule Violation

Rule 25, clause 5(1)(A)(I) of the House rules states that "a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause."¹² The rules define "gift" to mean "a 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."¹³

⁹ Hernandez and Kocieniewski, *New York Times*, Jul. 15, 2008.

¹⁰ Complaint filed by National Legal and Policy Center, July 14, 2008 (Exhibit 4).

¹¹ Letter from Rep. Charles B. Rangel to Donald McGahn, Chairman, Federal Election Commission, July 21, 2008 (Exhibit 5).

¹² Rules of the House of Representatives, 110th Congress, p. 41.

¹³ House Rule 25, clause 5 (a)(2)(A).

Rep. Rangel has pointed out that two of the three apartments he leases as a primary residence were combined before he occupied them in 1988.¹⁴ The third, however, is an entirely separate unit adjacent to the others, which Rep. Rangel has rented -- presumably under a separate lease -- since approximately 1998.¹⁵ Rep. Rangel has rented the fourth apartment since 1996 for use as a campaign office, but states that he has always paid the maximum lawful rent and that the landlord has never petitioned the State of New York for a higher rent nor asked the congressman to vacate the apartment.¹⁶

Rep. Rangel's renting four apartments at below-market rates raise several questions. First, while New York law permits an individual to rent a single rent-stabilized apartment as long as that apartment is the person's primary residence, it is not clear that the law permits an individual to rent several such apartments and, by combining them, claim all as a primary residence. Moreover, even if the law is unclear on this point if, in fact, it is not the custom of the Olnick Organization to permit such rental agreements but it has made an exception for Rep. Rangel, this would violate the House gifts rule because Rep. Rangel has received a benefit not available to the general public. Finally, the difference between what Rep. Rangel has paid in rent and the fair market value of the apartments might constitute a gift. By paying \$3,894 monthly in 2007 for the four apartments, when the current market rate is between \$7,465 and \$8,125,¹⁷ in 2007 alone, Rep. Rangel may have received a gift of between \$3,571 and \$4,231 each month.

Because lodging clearly falls within the House's definition of "gift," by failing to pay fair-market rent on apartments, Rep. Rangel may have violated the House gifts rule.

Improper Use of Congressional Stationary

Beginning in 2005, Rep. Rangel solicited funds for the Charles B. Rangel Center for Public Service at the City College of New York using his official congressional letterhead.¹⁸ Rep. Rangel confirmed that he sent at least 150 letters on the stationary to individuals and

¹⁴ Letter from Rep. Charles B. Rangel to Stephanie Tubbs Jones, Chair, Committee on Standards of Official Conduct, July 24, 2008 (Exhibit 6).

¹⁵ Id.

¹⁶ Id.

¹⁷ Kocieniewski, *New York Times*, Jul. 11, 2008. Excluding the apartment rented to the campaign and political action committees for \$630 per month, Rep. Rangel's rent drops to \$3,264 per month, which would still constitutes a savings of between \$2,501 and \$3,161.

¹⁸ Christopher Lee, Rangel's Pet Cause Bears His Own Name, *Washington Post*, July 15, 2008 (Exhibit 7).

foundations asking for support for the center.¹⁹ Officials at the City College acknowledge that Rep. Rangel has assisted them in raising funds for the center.²⁰

Unauthorized Use of Letterhead

House Rule 23, clause 11 provides that

A Member . . . may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words “Congress of the United States,” “House of Representatives,” or “official business,” or any combination of words thereof, on any letterhead or envelope.²¹

The primary purpose of this clause is to prohibit members from allowing outside organizations to use congressional stationery to solicit contributions in a direct mail appeal because the use of letterhead conveys the impression that the solicitation is endorsed by the Congress.²² The rule prohibits the use of congressional letterhead for any mailing paid for with non-appropriated funds.²³

In a letter to the House ethics committee, Rep. Rangel has claimed that because none of the letters he sent on behalf of City College expressly solicited funds, but rather sought meetings to discuss funding of the Rangel Center, they did not violate rule 23, clause 11.²⁴ The advisory opinion specifically states, however, “it would be a violation of the spirit of that rule if a Member authorized a non-House group to use letterhead that did not contain the words prohibited by clause 11, but which was designed to convey the impression that it is an official communication from Congress.”²⁵

Because Rep. Rangel sent letters on behalf of the Rangel Center at City College of New York on official letterhead – whether or not those letters include overt solicitations of funds – the

¹⁹ Id.

²⁰ Christopher Lee, Rangel Acknowledges Seeking Gifts, *Washington Post*, July 24, 2008 (Exhibit 8).

²¹ Committee on Standards of Official Conduct, Advisory Opinion No. 5, House Ethics Manual, p. 372.

²² Id.

²³ Id.

²⁴ Letter from Rep. Charles B. Rangel to Stephanie Tubbs Jones, Chair, House Committee on Standards of Official Conduct, July 22, 2008 (Exhibit 9).

²⁵ Advisory Opinion No. 5.

letters appear to be official communications from Congress and as such, violate rule 23, clause 11.

On July 31, 2008, the ethics committee announced that, based on Rep. Rangel's requests, the House ethics committee would review both Rep. Rangel's rental arrangements and his use of congressional letterhead on behalf of the Rangel Center.²⁶

Dominican Republic Villa

Rep. Rangel owns a beachfront villa on a Dominican Republic resort.²⁷ The three bedroom villa rents for between \$500 and \$1,100 a night.²⁸ Typically, owners of these villas receive 80% of the rental income.²⁹ Although a reservations manager at the resort told a reporter that Rep. Rangel's villa is generally booked solid in the high season of December 15 through April 15,³⁰ Rep. Rangel did not declare any rental income on his personal financial disclosure forms for the calendar years 2006 and 2007,³¹ nor for the years 1996 through 2000.³² He did, however, declare rental income on some financial disclosure reports.³³

Although when first questioned by the media, Rep. Rangel stated that he did not receive any rental income on the property in 2006 or 2007,³⁴ after reviewing the matter further, Rep.

²⁶ Statement of the Chairwoman and Ranking Member of the Committee on Standards of Official Conduct, July 31, 2008 (Exhibit 10).

²⁷ Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2007, filed May 14, 2008, p. 3 (Exhibit 11).

²⁸ Isabel Vincent and Susan Edelman, Tricky Charlie's Carib 'Hideaway', *New York Post*, August 31, 2008 (Exhibit 12).

²⁹ Id.

³⁰ Id.

³¹ *See* Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2007, filed May 14, 2008, p. 3; Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2006, filed June 15, 2007, p. 2 (Exhibit 13).

³² David Kocieniewski, House Chairman Failed to Report \$75,000 in Income, *New York Times*, September 5, 2008 (Exhibit 14).

³³ *See i.e.*, Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2005, filed May 12, 2006, p. 2; Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2004, filed June 15, 2005, p. 2; Rep. Charles Rangel, Financial Disclosure Statement for Calendar Year 2003, filed May 13, 2004, p. 2 (Exhibit 15).

³⁴ Vincent and Edelman, *New York Post*, Aug. 31, 2008.

Rangel's lawyer reported that since 1988, Rep. Rangel has earned over \$75,000 in rental income from the property.³⁵ Records indicate that Rep. Rangel's rental profits varied from year to year and, according to the congressman's lawyer, the money was never sent to the Rangels directly, but was used to pay the mortgage and other costs related to the property.³⁶ Rep. Rangel has asked his accountant to review all the records relating to the villa and, pursuant to the accountant's recommendations, will likely file amendments to his tax returns and personal financial disclosure forms.

In 1988, when Rep. Rangel purchased the villa for \$82,750, a mortgage loan was extended to him by the company developing the resort.³⁷ The loan was to be paid back over seven years at a rate of 10.5%, but in 1990 the interest was waived for seven early investors including Rep. Rangel because the resort was generating less income than projected.³⁸ The loan remained interest-free until Rep. Rangel paid it off in 2003, but Rep. Rangel has claimed he was unaware that he was not paying interest on the mortgage.³⁹

Improper Reporting on Personal Financial Disclosure Forms

Federal law prohibits members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"⁴⁰ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁴¹ In addition, members of Congress must disclose all rental property.⁴² 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."⁴³

³⁵ Kocieniewski, *New York Times*, Sept. 5, 2008.

³⁶ Id.

³⁷ David Kocieniewski and David M. Halbfinger, Interest Was Waived for Rangel on Loan for Villa, *New York Times*, September 6, 2008.

³⁸ Id.

³⁹ Id.

⁴⁰ 18 U.S.C. § 1001(a)(2).

⁴¹ Id. at § 1001(c)(2).

⁴² 5 U.S.C. app. 4 § 101(a)(1)(B).

⁴³ House Comm. On Standards of Official Conduct, Assets and Unearned Income, Financial Disclosure Instruction Booklet.

Because Rep. Rangel has earned over \$75,000 in rental income from the Dominican Republic property, but failed to report all of that income on his personal financial disclosure forms, the Committee on Standards of Official Conduct should require Rep. Rangel to amend his reports and, if Rep. Rangel's misstatements appear intentional rather than accidental, take appropriate disciplinary action.

Gifts Rule Violation

Rule 25, clause 5(1)(A)(I) of the House rules states that "a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause."⁴⁴ The rules define "gift" to mean "a 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."⁴⁵

Rule 25, clause 5(a)(3)(R)(v) allows Members, officers, and employees to accept opportunities and benefits that are available to a wide group, specifically providing that they may accept "loans from banks and other financial institutions on terms generally available to the public."⁴⁶

If Rep. Rangel was treated the same as all other early investors in the Punta Cana resort, there is no violation of the gifts rule. If, however, the interest on Rep. Rangel's loan to purchase the villa was waived because he was a member of Congress, he may have received an improper gift in violation of House rules.

⁴⁴ Rules of the House of Representatives, 110th Congress, p. 41.

⁴⁵ House Rule 25, clause 5 (a)(2)(A).

⁴⁶ House Rules, p. 42.

REP. RICK RENZI

Rep. Rick Renzi (R-AZ) is a third-term member of Congress, representing Arizona's first congressional district. Rep. Renzi's ethics issues stem from misusing his position on the House Resources Committee to force a company to purchase land from his business partner for his personal financial benefit and misappropriating insurance premiums and diverting the money into his campaign account. Rep. Renzi was included in CREW's 2005, 2006 and 2007 congressional corruption reports. As a result of the investigation, in August 2007 he announced that he would be retiring at the end of his current term.¹ He was indicted by the U.S. Attorney for the District of Arizona on February 21, 2008 in 35 counts including conspiracy, wire fraud, money laundering, extortion and insurance fraud.²

Federal Indictment

Federal Land Swap

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.³ In 2005, mining company Resolution Copper sought to mine for copper in Superior, Arizona.⁴ 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.⁵ 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.⁶

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.⁷ 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

¹ Reid Wilson, Arizona GOP Relieved that Congressman Rick Renzi Not Running for Re-election, *Arizona Capitol Times*, August 31, 2007 (Exhibit 1).

² United States v. Richard G. Renzi, Criminal No. 4:08CR00212-CKJ-BPV (D. Ariz.), Indictment (hereinafter "Indictment") (Exhibit 2).

³ John Wilke, Land Swap Plan Causes Trouble For Congressman, *Wall Street Journal*, April 21, 2007 (Exhibit 3).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Wilke, *Wall Street Journal*, Apr. 21, 2007.

the swap got through the Natural Resources Committee.⁸ Ultimately, Petrified Forest paid \$2.6 million for Mr. Sandlin's land and gave him a note for an additional \$2 million.⁹ After the group purchased the alfalfa field, however, Resolution Copper complained that Petrified Forest had received priority treatment and Rep. Renzi dropped his support for the land swap.¹⁰

Rep. Renzi's former chief of staff resigned over the deal and has cooperated with the FBI, as have executives of Resolution Copper and the Petrified Forest Group.¹¹

The federal indictment explains that from 2001 to June 2003, Rep. Renzi co-owned a real estate development company in Kingman, Arizona with Mr. Sandlin. In 2003, Mr. Sandlin bought out Rep. Renzi for \$200,000 in cash and an \$800,000 promissory note, but by January 2005, Mr. Sandlin still owed Rep. Renzi \$700,000 on the note.¹² Throughout the negotiations, Rep. Renzi never disclosed to either Resolution Copper or the Petrified Forest Group his business relationship with Mr. Sandlin or the fact that he owed him money.¹³

After receiving the land contract, through a series of transactions, Mr. Sandlin paid Rep. Renzi \$733,000 all of which was concealed from Resolution Copper and Petrified Forest.¹⁴ In addition, Rep. Renzi omitted both the money owed to him by Mr. Sandlin and the \$733,000 payment by Mr. Sandlin from his 2005 financial disclosure forms.¹⁵

On the same day Mr. Sandlin received the first payment from the Petrified Forest Group, he wrote a \$200,000 check to a wine company owned by Rep. Renzi.¹⁶ A few days later, the wine company was sold to Rep. Renzi's father.¹⁷ 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.¹⁸ This explanation is contradicted, however, by the fact that Rep. Renzi failed

⁸ Id.

⁹ Indictment, ¶ 23.

¹⁰ Wilke, *Wall Street Journal*, Apr. 21, 2007.

¹¹ Id.

¹² Indictment, ¶ 5.

¹³ Id., ¶¶ 25(d), 26(1).

¹⁴ Id., ¶¶ 24, 25.

¹⁵ Id., ¶ 25 (bb).

¹⁶ Indictment, ¶ 26(q).

¹⁷ Wilke, *Wall Street Journal*, Apr. 21, 2007.

¹⁸ Id.

to report the payment on his 2005 financial disclosure form¹⁹ and the debt bore no relation to the wine company business.²⁰

Honest Services Wire 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.

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 and by using interstate wires for that purpose, the United States has alleged that in a conspiracy with Mr. Sandlin, Rep. Renzi deprived his constituents, the House of Representatives and the United States of his honest services in violation of 18 U.S.C. §§ 1343 and 1346.²¹

Money Laundering

Federal law prohibits the transfer of proceeds of some form of illegal activity through interstate commerce in order to disguise the nature, location, source, ownership and control of those proceeds. By using corporate entities, even though the debt was owed personally by Mr. Sandlin to Rep. Renzi, and by using the services of escrow companies to distribute proceeds, making the transactions more difficult to trace for authorities, the United States has alleged that, in a conspiracy with Mr. Sandlin, Rep. Renzi engaged in money laundering in violation of 18 U.S.C. § 1956(h).²²

Concealment Money Laundering

Federal law prohibits transferring the proceeds from some unlawful activity in a manner intended to conceal or disguise the nature, location, source, ownership or control of those proceeds. By having Mr. Sandlin write a \$200,000 check to Renzi Vino to disguise the nature of the payment, the United States has alleged that, in a conspiracy with Mr. Sandlin, Rep. Renzi engaged in concealment money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(I).²³

¹⁹ Rep. Rick Renzi, Personal Financial Disclosure Statement For Calender Year 2005, filed May 15, 2006 (Exhibit 4).

²⁰ Alexander Bolton, Renzi Didn't Reveal \$200K, *The Hill*, April 25, 2007 (Exhibit 5).

²¹ Indictment, ¶¶ 27-31.

²² Id., ¶¶ 32-43.

²³ Id., ¶¶ 44-45.

Transactions in Criminally Derived Funds

Federal law prohibits knowingly causing another to engage in the wire transfer of proceeds of unlawful activity. By causing numerous transfers to be made to cover up unlawful activity, the United States has alleged that, in a conspiracy with Mr. Sandlin, Rep. Renzi violated 18 U.S.C. § 1957.²⁴

Extortion under Color of Official Right

Federal law prohibits a government official from using his position to attempt to obtain without consent money not due that official. By using his official position to attempt to coerce Resolution Copper and by coercing the Petrified Forest Group to purchase land from Mr. Sandlin, the United States has alleged that, in a conspiracy with Mr. Sandlin, Rep. Renzi violated 18 U.S.C. § 1951.²⁵

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.²⁶ 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.²⁷ 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.²⁸

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

²⁴ Id., ¶¶ 46-47.

²⁵ Id., ¶¶ 48-51.

²⁶ 5 U.S.C. app. 4, § 104.

²⁷ 18 U.S.C. § 1001.

²⁸ Financial Disclosure Instruction Booklet, Form A, Failure to File or Falsifying Disclosure Statements.

(B) in stocks, bonds, commodities futures, and other forms of securities.²⁹

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.³⁰

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."³¹ 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."³²

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

²⁹ Instruction Booklet, Transactions.

³⁰ Id.

³¹ 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.

³² Id.

the performance” of his official duties.³³ To do so “would raise the appearance of undue influence or breach of the public trust.”³⁴

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, 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 23, 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 23 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.”³⁶ This ethics standard is considered to be “the most comprehensive provision” of the code.³⁷ 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

³³ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

³⁴ Id.

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.

³⁶ Rule 23, cl. 1.

³⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

that reflect on “Congress as a whole,” and that might otherwise go unpunished.³⁸ 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,³⁹ making false statements to the committee,⁴⁰ criminal convictions for bribery,⁴¹ or accepting illegal gratuities,⁴² and accepting gifts from persons with interest in legislation in violation of the gift rule.⁴³

By offering to push a land swap deal through Congress that financially benefitted his former business partner and himself, Rep. Renzi engaged in conduct that does not reflect creditably on the House.

Insurance Fraud

Rep. Renzi ran Renzi and Company, a company licensed in Virginia and Arizona, which obtained property and liability insurance coverage for clients.⁴⁴ The company contracted with an insurance broker in New York, North Island Facilities, Ltd. (“NIF”), which, in turn, contracted

³⁸ 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).

³⁹ 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).

⁴⁰ 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).

⁴¹ 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)).

⁴² 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).

⁴³ 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).

⁴⁴ Indictment, ¶ 52, 53.

with Safeco Insurance Company (“Safeco”) to insure Rep. Renzi’s non-profit clients. Premiums received by Renzi and Company were to be held in trust and then passed on to NIF and Safeco, minus a 10% commission.⁴⁵ Andrew Beardall served as the company’s president and general counsel from November 2002 through December 2003.⁴⁶

From December 2001 through June 2003, Rep. Renzi and Andrew Beardall misappropriated more than \$400,000 of clients’ funds and failed to pay NIF \$236,000 in insurance premiums, leading NIF to cancel the coverage of those insured.⁴⁷ To conceal the theft, Rep. Renzi sent letters to his insurance customers falsely claiming that their coverage had been moved to another company, attaching fake certificates of coverage in the name of Jimcor Insurance Company, actually an insurance broker that did not issue policies.⁴⁸ When state insurance regulators investigated the cancelled policies, Rep. Renzi and Mr. Beardall claimed that the false certificates were sent due to a clerical error.⁴⁹ In a series of transactions between December 2001 and March 2002, Rep. Renzi moved over \$300,000 of the misappropriated money to his congressional campaign.⁵⁰

Insurance Fraud

Federal law prohibits making material false statements in connection with documents presented to insurance regulatory officials and agencies for the purposes of influencing the actions of such officials or agencies. By embezzling and misappropriating insurance premiums for conversion to use by Rick Renzi for Congress, the United States has alleged that, in a conspiracy with Mr. Beardall, Rep. Renzi committed insurance fraud in violation of 18 U.S.C. § 1033(b).⁵¹

False Statements to Influence Insurance Regulatory Investigations

Federal law prohibits making material false statements for the purpose of influencing a pre-existing investigation by an insurance regulatory agency. The United States has alleged that by arranging for a letter to be sent through the U.S. mail to insureds noting the existence of an insurance investigation and falsely claiming that the insureds’ liability coverage had been moved to another company, and by sending a letter to the Virginia and Florida Bureaus of Insurance

⁴⁵ Id., ¶ 53.

⁴⁶ Id., ¶ 3.

⁴⁷ Id., ¶ 57.

⁴⁸ Indictment, ¶ 58.

⁴⁹ Id., ¶ 59.

⁵⁰ Id., ¶¶ 60, 61(a)-(d).

⁵¹ Indictment, ¶¶ 62-63.

falsely claiming that the initial false letters had been sent through a clerical error, in a conspiracy with Mr. Beardall, Rep. Renzi made false statements to influence an insurance regulatory investigation in violation of 18 U.S.C. § 1033(a)(1).⁵²

Conduct Not Reflecting Creditably on the House

By engaging in insurance fraud while a member of the House of Representatives, Rep. Renzi's conduct does not reflect creditably on the House.

⁵² Indictment, ¶¶ 64-69.

REP. HAROLD ROGERS

Rep. Harold Rogers (R-KY) is a 14th-term member of Congress representing Kentucky's fifth 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 was included in CREW's 2007 congressional corruption report.

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 border and port security.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

¹ Press Release, Department of Homeland Security, 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, *New York Times*, May 14, 2006 (Exhibit 2).

³ NuSAFE Website, http://www.nucsafe.com/about_nucsafe.htm (Exhibit 3).

⁴ Robert O'Harrow, Jr. and Scott Higham, Post 9/11 Rush Mixed Politics with Security, *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).

agency.⁸ Richard Seymour, who runs NucSafe, has admitted: “It’s no secret we’ve gotten 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 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 2006, Raytheon and Accenture donated \$31,000 to HALPAC.¹⁶

⁸ O’Harrow and Higham, *Washington Post*, Dec. 25, 2005.

⁹ Id.

¹⁰ Press Release, Accenture, Accenture Announces Key Smart Border Alliance Subcontracts for US-VISIT Program, September 3, 2004 (Exhibit 9).

¹¹ Press Release, Department of Homeland Security, Department of Homeland Security Announces Award of US-VISIT Prime Contract To Accenture LLP, June 1, 2004 (Exhibit 10).

¹² Id.; Raytheon Website, <http://www.raytheon.com/about/> (Exhibit 11).

¹³ Congressman Rogers’ Neighborhood, *American Prospect*, January 2006 (Exhibit 12).

¹⁴ Press Release, Accenture, Sept. 3, 2004.

¹⁵ Raytheon Website.

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);

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

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 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, *New York Times*, May 14, 2006.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Lipton, *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, *New York Times*, May 14, 2006.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Lipton, *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

Starting in 2004, 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-

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, *New York Times*, May 14, 2006.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Lipton, *New York Times*, May 14, 2006.

detection machines for use at airports.³⁸ Beginning in 2004 and continuing through 2006, Reveal 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

³⁸ *American Prospect*, Jan. 2006.

³⁹ *Id.*; O'Harrow and Higham, *Washington Post*, Dec. 25, 2005.

⁴⁰ *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 and Higham, *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 and Higham, *Washington Post*, Dec. 25, 2005.

⁴⁵ *Id.*

⁴⁶ *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).

TSA announced it was purchasing eight machines from Reveal.⁴⁹

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, executives 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

⁴⁹ *American Prospect*, Jan. 2006.

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 and Higham, *Washington Post*, Dec. 25, 2005.

⁵² *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. 7-10, 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 NucSafe Inc., 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 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, Sensure 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.

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).

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 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 X23, 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.,

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.

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 23.

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 Sensure, 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 23 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

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 23, cl. 1.

⁶⁵ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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).

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 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 23, clause 1.

2008 Update

From 2006 through March 2008, Raytheon's political action committee donated \$7,500 to Rep. Rogers' campaign committee.⁷² Since 2006, executives of Reveal Imaging

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 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).

⁷² Raytheon Company PAC, FEC Form 3, October Monthly Report 2006, October 18, 2006, pp. 335, 340; Raytheon Company PAC, FEC Form 3, April Monthly Report 2007, April 20, 2007, p. 115; Raytheon Company PAC, FEC Form 3, July Monthly Report 2007, July 19, 2007, p. 298; Raytheon Company PAC, FEC Form 3, August Monthly Report 2007, August 17, 2007, p. 340; Raytheon Company PAC, FEC Form 3, March Monthly Report 2008, March 19,

Technologies have donated \$10,500 to HALPAC.⁷³

2008, p. 69 (Exhibit 62).

⁷³ Help America's Leaders PAC, FEC Form 3, Mid-Year Report 2007, October 22, 2007, pp. 8, 11, 15, 19; Help America's Leaders PAC, FEC Form 3, Year-End Report 2007, February 13, 2008, pp. 8, 11, 18; Help America's Leaders PAC, FEC Form 3, March Monthly Report 2008, March 12, 2008, pp. 6, 7, 8 (Exhibit 63).

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, Rep. 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 convicted businessman Dennis Troha. Rep. Young was included in CREW's 2007 congressional corruption report.

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, *Seattle Times*, August 19, 2007 (Exhibit 1).

² David Kirkpatrick, Campaign Funds for Alaska, *New York Times*, June 7, 2007 (Exhibit 2).

³ Id.

⁴ Id.

⁵ Id.; Alaskans For Don Young, FEC Form 3, April Quarterly Report 2005, April 12, 2005, p. 37 (Exhibit 3); Midnight Sun Political Action Committee, FEC Form 3, October Quarterly Report 2005, 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 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, *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 Press Release, Office of Representative Mark Kirk, House Appropriations Committee Backs Bridges To Nowhere, 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, *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, *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 Virginian Pilot*, May 10, 2007 (Exhibit 13).

²⁵ VECO Corporation Website, Pipelines and Terminals, <http://www.veco.com/BusinessSectors/PipelinesTerminals/default.asp> (Exhibit 14).

²⁶ Matt Volz, VECO Money Spiked During Gas Pipeline Talks, *Associated Press*, September 5, 2006. (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, *Wall Street Journal*, July 25, 2007.

³¹ Quinn, *Virginian Pilot*, May 10, 2007.

³² Volz, *Associated Press*, Sept. 5, 2006.

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 Sen. 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 Matanuska-Susitna Borough Website, <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-Office of Public Affairs, May 17, 2006.

³⁹ Tim Bradner, Post-Allen, VECO Pushes Forward, *Alaska Journal of Commerce*, June 17, 2007 (Exhibit 26).

⁴⁰ Matanuska-Susitna Borough Website, <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, *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 (*See* Exhibit 28).

⁴⁸ FedSpending Database, Contracts to PBS&J (FY 2006), www.fedspending.org (Exhibit 30).

⁴⁹ Knik Bridge Facts Website, 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 2005, June 13, 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 14, 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 23, 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 23.

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 23.

By accepting campaign contributions from Dennis Troha and other JHT executives in return for supporting legislation to change the maximum length of semi-truck trailers, Rep. Young likely violated 5 U.S.C. § 7353 and House Rule 23.

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 23 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 23, cl. 1.

⁸¹ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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 23, 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.

2008 Update

Earmarking Transportation Funds to a Campaign Donor

In April 2008, Senate Majority Leader Harry Reid called for a Department of Justice (DOJ) investigation into the 2005 earmark that was inserted for the interchange at Coconut Road.⁹¹ Congress split on how best to handle the inquiry, some called for an external investigation while others argued that Congress itself was best equipped to handle the matter.⁹² Ultimately, both the House and Senate voted to direct the DOJ to launch an investigation into the earmark.⁹³ After the calls for an inquiry, Rep. Young admitted that he sponsored the Coconut Road earmark and that his staff “corrected” the earmark before the bill went to the White House to be signed by the president.⁹⁴ Rep. Young’s office has denied that the fundraiser held by Mr. Aronoff was the motive for sponsoring the earmark.⁹⁵

Association with VECO Corporation

The corruption probe of VECO which includes Rep. Young is ongoing⁹⁶ and has led to conviction of several of his fellow Alaskan politicians. In March of 2008, the chief of staff to former Alaska Governor Frank Murkowski, Jim Clark, pleaded guilty to charges that he conspired with VECO executives to hide of \$68,000 from state election regulators.⁹⁷ In December of 2007, former Alaska state representative Pete Kott was sentenced to six years in prison for his part in

⁹¹ Susan Crabtree and Manu Raju, Reid Wants DOJ Probe of Coconut Road, *The Hill*, April 15, 2008 (Exhibit 44).

⁹² Id.

⁹³ Susan Crabtree, Senate Calls for the Probe of Coconut Road, *The Hill*, April 17, 2008; Jonathan Weisman, House Says Earmark Merits Criminal Probe, *Washington Post*, May 1, 2008 (Exhibit 45).

⁹⁴ Paul Kane, Congress May Seek Criminal Probe of Altered Earmark, *Washington Post*, April 17, 2008 (Exhibit 46).

⁹⁵ Kane, *Washington Post*, Apr. 17, 2008.

⁹⁶ Carrie Johnson and Paul Kane, Sen. Stevens Indicted on 7 Corruption Counts, *Washington Post*, July 30, 2008 (Exhibit 47).

⁹⁷ Steve Quinn, Aide to Former Governor Pleads Guilty to Fraud in Corruption Probe, *Associated Press*, March 4, 2008 (Exhibit 48).

accepting bribes from VECO executives.⁹⁸ On July 29, 2008, Sen. Ted Stevens (R-AK) was indicted on seven counts of failing to disclose gifts he received from VECO CEO Bill Allen.⁹⁹

Association with PBS&J

Three PBS&J executives have been convicted for their part in a long-running scheme to circumvent campaign election laws.¹⁰⁰ In October 2007, the Federal Election Commission launched its own investigation into the illegal campaign contributions and use of political action committees by PBS&J.¹⁰¹

Ties to Jack Abramoff

Rep. Young has argued that he never had a close relationship with Jack Abramoff but new records indicate the opposite.¹⁰² Records from two of Mr. Abramoff's law firms show over 120 contacts with Rep. Young and his staff – including ten with Rep. Young himself – over a 25 month period.¹⁰³ The records relate to only one of Mr. Abramoff's clients, the Commonwealth of the Northern Mariana Islands, from the years 1995 to 2001-- the same years that Rep. Young oversaw the U.S. Territory as the chair of the House Resource Committee.¹⁰⁴ The records indicate that Mr. Abramoff was very concerned about legislation that would have reformed labor and immigration practices on the islands against the interests of his client.¹⁰⁵ The bill, introduced by Sen. Frank Murkowski passed the Senate unanimously but was killed in the House by Rep. Young who refused to hold a hearing in his committee, claiming the alleged labor abuses were just rumors perpetuated by unions and hyped by the media.¹⁰⁶

⁹⁸ Lawmaker Jailed for Taking Bribes, *Edmonton Journal*, December 8, 2007 (Exhibit 49).

⁹⁹ Johnson and Kane, *Washington Post*, July 20, 2008.

¹⁰⁰ Patrick Danner and Dan Christensen, Ex-PBS&J Boss Sentenced to Home Confinement, *Miami Herald*, May 9, 2008 (Exhibit 50).

¹⁰¹ Danner and Christensen, *Miami Herald*, May 9, 2008.

¹⁰² Richard Mauer, Billing Records Expose Young, Abramoff Ties, *Anchorage Daily News*, April 20, 2008 (Exhibit 51).

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Mauer, *Anchorage Daily News*, Apr. 20, 2008.

When Rep. Young was forced by term limits to give up the chairmanship of the resources committee in 2001, Mr. Abramoff wrote a memo to the governor of the islands expressing concern stating, “the loss of Chairman Young's authority cannot easily be measured -- or replaced.”¹⁰⁷ Nevertheless, as Rep. Young took over the chairmanship of the transportation committee, Mr. Abramoff began looking for new ways to exploit his relationship with Rep. Young. One of Mr. Abramoff's colleagues sent him an email suggested a meeting with one of Rep. Young's top aides noting, “Young should be there [the transportation committee] for six years -- that is plenty of time to develop appropriate clients, sign them up and deliver.”¹⁰⁸

Ties to Dennis Troha

In March of 2008, Mr. Troha was sentenced to probation for his role in an illegal political donation scheme.¹⁰⁹ Mr. Troha received a lighter sentence in exchange for his cooperation in the ongoing investigation.¹¹⁰

Legal Fees

Rep. Young continues to pay legal fees in connection with several ongoing investigations. Since July of 2007, Rep. Young's campaign committee paid \$993,655.28 in legal fees.¹¹¹ By January of 2008, Rep. Young opened a legal defense fund,¹¹² which, by July 2008, had paid out \$49,415.25 in legal fees.¹¹³

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ John Diedrich, Judge Gives Troha Probation, No Fine, *Milwaukee Journal Sentinel*, March 7, 2008 (Exhibit 52).

¹¹⁰ Id.

¹¹¹ Alaskans for Don Young, FEC Form 3, July Quarterly Report 2008, July 15, 2008, pp. 40, 41, 87, 88, 93; Alaskans for Don Young, FEC Form 3, April Quarterly Report 2008, April 15, 2008, pp. 64, 100, 113, 120; Alaskans for Don Young, FEC Form 3, October Quarterly Report 2007, October 15, 2007, pp. 84, 135; Alaskans for Don Young, FEC Form 3, Year End Report 2007, January 31, 2008, pp. 31, 32, 68, 69, 75, 76 (Exhibit 53).

¹¹² Susan Crabtree, Don Young Opens a Legal Defense Fund, *The Hill*, January 30, 2008; Congressman Don Young Legal Expense Trust, filed January 14, 2008 (Exhibit 54).

¹¹³ Congressman Don Young Legal Expense Trust, filed July 30, 2008 (Exhibit 55).

MEMBERS OF THE SENATE

SEN. MARY LANDRIEU

Sen. Mary Landrieu (D-LA) is a second-term senator from Louisiana. Her ethics issues stem from her insertion of an earmark into an appropriations bill to benefit a large campaign donor.

Earmark for Voyager Learning

The Voyager Expanded Learning literacy program had no proven track record when Congress appropriated \$2 million in the fall of 2001 to be spent on the program, aimed at District of Columbia kindergartners and first graders.¹ Voyager's founder, Randy Best, had hired former Rep. Bob Livingston (R-LA) to help get Voyager's programs into schools without having to sell the curricula to any district school systems.² On September 24, 2001, the House Appropriations Committee included \$1 million for Voyager in the District of Columbia's appropriations bill with the condition that the District provide an additional \$1 million.³ When Mr. Livingston was unable to obtain a similar earmark in the Senate, Voyager hired the lobbying firm of O'Connor & Hannon, which arranged for Mr. Best to meet with Sen. Landrieu, the chair of the Appropriations subcommittee responsible for the District of Columbia.⁴

After Mr. Best met with Sen. Landrieu, a member of the senator's staff called to ask him if he would throw a campaign fundraiser for her.⁵ On October 19, 2001, Mr. Best threw a fundraiser for Sen. Landrieu at his home in Dallas, Texas where, according to Mr. Best, Sen. Landrieu gave a short talk on the importance of reading.⁶ According to Federal Election Commission (FEC) records, on or about November 2, 2001, Sen. Landrieu's campaign committee received contributions of approximately \$30,000 from Voyager employees and their relatives.⁷ FEC records reflect that neither Mr. Best nor the others connected with Voyager had previously contributed to Sen. Landrieu's campaign committee.

Four days after the contributions were received, on November 6, 2001, when the Senate took up consideration of the District of Columbia appropriations bill passed by the

¹ James V. Grimaldi, A Reading Program's Powerful Patron, *Washington Post*, December 20, 2007 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Grimaldi, *Washington Post*, Dec. 20, 2007.

⁶ Id.

⁷ Friends of Mary Landrieu Inc., FEC Form 3, Year-End Report 2001, January 31, 2002, pp. 16-18, 66, 69, 77, 78, 125, 126, 148, 149, 154, 155, 158, 199 (Exhibit 2).

House, Sen. Landrieu successfully lobbied for a \$2 million earmark for the reading program.⁸

Sen. Landrieu, who refused to speak with *The Washington Post* before the paper ran its initial story on the Voyager earmark, put out a statement after CREW sent a letter to the Department of Justice requesting an investigation.⁹ Sen. Landrieu claimed that CREW's complaint was "factually flawed," "wholly without merit," and "readily dismissed by the facts."¹⁰ Sen. Landrieu explained that she met with Mr. Best on April 5, 2001, at which time he asked for her support for Voyager and she replied she would consider it if District of Columbia officials supported it.¹¹ Sen. Landrieu provided an April 25, 2001 letter from D.C. School Superintendent Paul Vance, in which he stated the letter was "in support of the request presented to you by Voyager for an additional appropriation beyond the requested District of Columbia budget for fiscal year 2002."¹² Sen. Landrieu's spokesperson claimed that the earmark followed the same process as every other earmark, noting that Sen. Landrieu sent Sen. Mike DeWine, then the chairman of the District of Columbia Appropriations Subcommittee, a letter on May 15, 2001 in which her \$3.5 million earmark request for Voyager was included.¹³

According to *The Washington Post* however, Mr. Vance neither initiated the letter nor supported Voyager, rather the idea was passed to the schools through the office of Mayor Anthony Williams.¹⁴ Greg McCarthy, then-deputy chief of staff for Mayor Williams, said the Voyager earmark was not the mayor's idea, but that Sen. Landrieu's office had called to find out if the schools would be willing to use Voyager.¹⁵ Mr. McCarthy encouraged school officials to

⁸ Grimaldi, *Washington Post*, Dec. 20, 2007.

⁹ Letter from CREW Executive Director Melanie Sloan to Attorney General Michael Mukasey, January 8, 2008 (Exhibit 3).

¹⁰ Press Release, Office of Senator Mary Landrieu, Statement Regarding CREW Complaint, January 8, 2008 (Exhibit 4).

¹¹ James Grimaldi, Landrieu Opens Files on Schools Earmark, *Washingtonpost.com*, January 22, 2008 (Exhibit 5).

¹² Letter from Paul L. Vance, Superintendent District of Columbia Public Schools to Mike DeWine, Chair and Mary Landrieu, Ranking Democrat, District of Columbia Appropriations Subcommittee, April 25, 2001 (Exhibit 6).

¹³ Kathleen Hunter, Landrieu Denies Ethics Allegation by Watchdog Group, *Congressional Quarterly*, January 9, 2008 (Exhibit 7); Letter from Sen. Mary Landrieu to Mike DeWine, Chair, Subcommittee on District of Columbia Appropriations, May 15, 2001 (Exhibit 8); *see also* Office of Sen. Mary Landrieu, Voyager Earmark Timeline, available at: <http://landrieu.senate.gov/news/Voyager.cfm> (Exhibit 9).

¹⁴ Grimaldi, *Washingtonpost.com*, Jan. 22, 2008.

¹⁵ Id.

support it because reading scores were so poor. As a result, school district officials, who were initially resistant because they had just selected a different reading program, felt compelled to take the money from the earmark.¹⁶

Sen. Landrieu argued the complaint and media reports “erroneously mischaracterize” her relationship to Mr. Best and said “it is not uncommon for Members of Congress to receive contributions from individuals who support their policy goals.”¹⁷

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.¹⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹⁹

Here, after meeting with Voyager founder Randy Best someone from Sen. Landrieu’s staff asked Mr. Best to hold a fundraiser for the senator, which he did. Shortly thereafter, Sen. Landrieu received \$30,000 in campaign contributions from individuals connected with Voyager and a mere four days after that, the senator inserted an earmark for Voyager into the District of Columbia appropriations bill. Even if, as she claims, Sen. Landrieu had agreed to push the earmark earlier in the year, neither Mr. Best nor his colleagues had ever previously donated to Sen. Landrieu and did so only after the senator had agreed to earmark an appropriation for Voyager. This may well constitute a direct exchange in violation of the bribery statute.

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. Landrieu sought campaign contributions from Voyager in exchange for inserting an earmark for the company into the District of Columbia appropriations bill, she may have violated 5 U.S.C. § 7353.

¹⁶ Id.

¹⁷ Id.

¹⁸ 18 U.S.C. § 201(b)(2)(A).

¹⁹ 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).

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.”²⁰ This rule is intended to protect the integrity and reputation of the Senate as a whole.²¹ 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. . .”²²

Whether or not Sen. Landrieu violated federal bribery laws, by accepting campaign contributions in apparent exchange for an earmark, she has engaged in improper conduct that reflects upon the Senate.

²⁰ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

²¹ Id.

²² 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).

SEN. MITCH MCCONNELL

Senator 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. Sen. McConnell's ethics issues stem from earmarks he has inserted into legislation for clients of his former chief of staff in exchange for campaign contributions as well as the misuse of his nonprofit McConnell Center for Political Leadership at the University of Louisville. Sen. McConnell was included in CREW's 2007 congressional corruption report.

Gordon Hunter Bates and the Bates Capitol Group LLC

Gordon Hunter Bates served as Sen. McConnell's chief legal counsel and 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 FEC records reflect that neither Mr. Philpolt nor Mr. Roy previously contributed to Sen. McConnell's campaign committee or PAC.

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 2003-2006, Secretary of the Senate, Office of Public Record (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.

Boardpoint LLC

Boardpoint LLC hired Bates Capitol in early 2004, paying between \$280,000 and \$290,000 in lobbying fees through December 2006.¹⁴ 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.¹⁵ Just two months earlier, Boardpoint Director Joe Coons donated \$2,100 to the McConnell Senate Committee.¹⁶

Voice for Humanity

Voice for Humanity is a non-profit organization¹⁷ originally formed by two Lexington businessmen to spread the word of Christ throughout the world.¹⁸ 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.¹⁹ 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.²⁰

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 2006.²¹ In October 2003, Sen. McConnell delivered a speech on the Senate floor praising Voice for Humanity.²² Between 2003 and December 2005, Sen. McConnell steered \$8.3 million in federal funds to the organization

¹⁴ The Bates Capitol Group LLC, Lobbying Report 2004-2006, Secretary of the Senate, Office of Public Record (Exhibit 12).

¹⁵ McConnell Secures \$95 million In Funding for Kentucky in FY'06 DOD Appropriations Bill, *States News Service*, December 22, 2005 (Exhibit 13).

¹⁶ McConnell Senate Committee FEC Form 3, Year End Report 2005, January 1, 2006, p. 15 (Exhibit 14).

¹⁷ Voice for Humanity, IRS 2005 Form 990, October 27, 2006 (Exhibit 15).

¹⁸ Linda B. Blackford, Voice For Humanity Finds Friendly Ears In Washington, *Lexington Herald-Leader*, December 18, 2005 (Exhibit 16).

¹⁹ Id.

²⁰ Id.

²¹ The Bates Capitol Group LLC Lobbying Report 2003-2006, Secretary of the Senate, Office of Public Record (Exhibit 17).

²² Blackford, *Lexington Herald-Leader*, Dec.18, 2005.

from the State Department for devices to be sent to Afghanistan and Nigeria.²³ A program evaluation conducted by USAID found that the organization's programs produced mixed results.²⁴ Nevertheless, Sen. McConnell recommended an additional \$15 million for Voice for Humanity to extend its work into Iran and North Korea.²⁵

FEC records reflect that Voice for Humanity founder Michael Kane never contributed to Sen. McConnell's campaigns before the senator began earmarking for the organization, but in 2004 he donated \$1,000 to Sen. McConnell's leadership PAC, and in 2005 donated \$4,200 to his campaign committee.²⁶ Voice for Humanity director Samuel Mitchell, who like Mr. Kane previously had not contributed to Sen. McConnell's campaigns, 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.²⁷

Appriss Inc.

Appriss Inc. is a Louisville based company that sells communication technology to law enforcement and owns VINE, the National Victim Notification Network.²⁸ VINE is the largest data network providing victim notification systems in the country.²⁹ Appriss has been providing technology such as VINE since 1994.³⁰ VINE data network technology did not become widely used, however, until after Appriss hired Bates Capitol.³¹

After Appriss hired Bates Capitol in 2004, Sen. McConnell praised Appriss in a 2004

²³ Id.

²⁴ Id.

²⁵ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

²⁶ 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).

²⁷ 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).

²⁸ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

²⁹ <http://www.appriss.com/sitedocs/VINECutSheet.pdf> (Exhibit 22).

³⁰ <http://www.appriss.com/> (Exhibit 23).

³¹ Sarah Jeffords, Appriss Adds Contracts, Products, Workers, *Business First of Louisville*, September 25, 2006 (Exhibit 24).

news conference.³² Between 2004 and 2006, Appriss paid Bates Capitol \$320,000.³³ 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.³⁴ 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 2006.³⁵ The increase in VINE contracts can be attributed to the increase in federal funding earmarked for victim-notifications programs.³⁶

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.³⁷ 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 2004.³⁸ Appriss director David Grissom donated \$5,000 to Sen.

³² Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³³ The Bates Capitol Group LLC, Lobbying Report, Mid Year 2004 through Year End 2006 (Exhibit 25).

³⁴ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³⁵ Jeffords, *Business First of Louisville*, Sept. 25, 2006.

³⁶ Id.

³⁷ 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).

³⁸ 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 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,

McConnell's Bluegrass Committee in 2003 and donated \$3,000 to the McConnell Senate Committee in 2005.³⁹

UPS

UPS has been a Bates Capitol client since 2003, having paid the firm \$320,000 as of the end of 2006.⁴⁰ 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.⁴¹ The UPS PAC contributed \$10,000 to the McConnell Senate Committee between July 2004 and August 2005⁴² and the company has donated \$400,000 to the McConnell Center for Political Leadership at the University of Louisville.⁴³

The McConnell Center for Political Leadership

The McConnell Center for Political Leadership was founded by Sen. McConnell in 1991⁴⁴ as a non-profit organization for which the senator raises funds.⁴⁵ The University of Louisville Foundation was sued by the *Courier Journal* of Louisville, Kentucky because the center insisted on maintaining the anonymity of its donors.⁴⁶ In November 2004, a Kentucky court ordered the foundation to release the names of corporate donors, including donations made

p. 173 (Exhibit 41).

³⁹ 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).

⁴⁰ The Bates Capitol Group LLC, Lobbying Report 2003-2006, Secretary of the Senate, Office of Public Record (Exhibit 45).

⁴¹ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

⁴² 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).

⁴³ Mark Pitsch, Foundation Releases Donor List; U Of L Includes McConnell Center Gifts, *Courier-Journal*, December 14, 2004 (Exhibit 48).

⁴⁴ <http://louisville.edu/mcconnellcenter/about/> (Exhibit 49).

⁴⁵ The Money Funnels, *www.kentucky.com*, October 15, 2006 (Exhibit 50).

⁴⁶ Pitsch, *Courier-Journal*, Dec. 14, 2004.

to the McConnell Center.⁴⁷ 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."⁴⁸ Two of the largest donors to the McConnell Center are Ashland Inc. and UPS, which have donated \$500,000 and \$400,000 respectively.⁴⁹ Some donations to the McConnell Center have been delivered to Sen. McConnell's Capitol Hill office.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, 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.⁵³ By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his 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.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ www.kentucky.com, Oct.15, 2006.

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).

⁵³ 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.⁵⁴ 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.⁵⁵

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 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.

⁵⁴ 18 U.S.C. § 201(c)(1)(B).

⁵⁵ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

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.”⁵⁶ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁵⁷ 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. . . .”⁵⁸

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.”⁵⁹ 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 . . .”⁶⁰ As a result, the committee issued a reprimand to Senator Cranston.⁶¹

In addition, the Senate Select Committee on Ethics’ Rules specifically list the Code of Ethics for Government Service as a source for committee jurisdiction.⁶² 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

⁵⁶ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁵⁷ Id.

⁵⁸ 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).

⁵⁹ Senate Ethics Manual, p. 434.

⁶⁰ Id. at 435.

⁶¹ Id.

⁶² Id. at 436.

his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”⁶³

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.

2008 Update

BAE Systems Earmarks

Since 1997, Sen. McConnell has earmarked \$336 million for United Defense,⁶⁴ a defense contracting firm purchased by BAE Systems in 2005.⁶⁵ The most recent allocation of funds came last October when Sen. McConnell earmarked \$25 million in federal funds for BAE Systems after the Defense Department failed to include the money in its own budget request.⁶⁶ BAE Systems is now under investigation by the Justice Department for bribery.⁶⁷

Prior to its acquisition by BAE, United Defense’ corporate PAC donated \$9,000 to Sen. McConnell’s campaign committee between 2001 to 2004.⁶⁸ United Defense’s PAC donated an additional \$9,000 to Sen. McConnell’s PAC in 2003 and 2004.⁶⁹ Finally, employees of United

⁶³ Id. (citing H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12)).

⁶⁴ James Carroll, Funds for Naval Guns Questioned, *Courier-Journal*, November 4, 2007 (Exhibit 51).

⁶⁵ Id.

⁶⁶ John Cheves, McConnell Marks Funds for Contractor: Firm Under Investigation for Bribery, *Lexington Herald-Leader*, October 27, 2007 (Exhibit 52).

⁶⁷ Id.

⁶⁸ United Defense, L.P. Employee PAC, FEC Form 3, Mid-Year Report 2001, July 23, 2001, pp. 14, 15; United Defense, L.P. Employee PAC, FEC Form 3, Year-End Report 2001, May 1, 2002, p. 54; United Defense, L.P. Employee PAC, FEC Form 3, April Quarterly Report 2002, April 10, 2002, p. 17; United Defense, L.P. Employee PAC, FEC Form 3, October Quarterly Report 2002, October 9, 2002, p. 59; United Defense, L.P. Employee PAC, FEC Form 3, Mid-Year Report 2003, July 30, 2003, p. 71 (Exhibit 53).

⁶⁹ United Defense, L.P. Employee PAC, FEC Form 3, Year-End Report 2003, January 28, 2004, p. 115; United Defense, L.P. Employee PAC, FEC Form 3, October Quarterly Report 2004, October 13, 2004, p. 94 (Exhibit 54).

Defense donated \$6,275 to Sen. McConnell's campaign committee from 2001 through 2005⁷⁰ and gave \$5,000 to his leadership PAC in 2003.⁷¹ United Defense pledged \$500,000 to the McConnell Center at the University of Louisville,⁷² making it one of the top donors.⁷³

Since 2005, after BAE Systems purchased United Defense, employees of BAE have donated \$7,000 to Sen. McConnell's campaign committee.⁷⁴ BAE's corporate PAC has donated \$10,000 Sen. McConnell's campaign committee⁷⁵ and \$12,000 to his leadership PAC since 2005.⁷⁶

Between the two companies, Sen. McConnell has received more than \$58,000 in contributions to his campaign committee and leadership PAC since 2001.

Bates Capitol Group

Appriss, Inc. and Boardpoint both continue to retain the lobbying services of the Bates

⁷⁰ McConnell Senate Committee 08, FEC Form 3, Mid-Year Report 2001, July 31, 2001, pp. 12, 95, 196, 234, 264, 277, 278, 280, 357, 418, 484; McConnell Senate Committee 08, FEC Form 3, April Quarterly Report 2002, April 22, 2002, p. 32; McConnell Senate Committee 08, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 184, 313 (Exhibit 55).

⁷¹ Bluegrass Committee, FEC Form 3, Year-End Report 2003, June 8, 2003, pp. 66, 70, 73-75 (Exhibit 56).

⁷² Cheves, *Lexington Herald-Leader*, Oct. 27, 2007.

⁷³ Pitsch, *Courier-Journal*, Dec. 14, 2004.

⁷⁴ McConnell Senate Committee 08, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 154, 163; McConnell Senate Committee 08, FEC Form 3, April Quarterly Report 2006, April 13, 2006, p. 17; McConnell Senate Committee 08, FEC Form 3, April Quarterly Report 2008, May 8, 2008, p. 92 (Exhibit 57).

⁷⁵ BAE Systems North America Inc., FEC Form 3, June Monthly Report 2004, June 18, 2004, p. 60; BAE Systems North America Inc., FEC Form 3, Year-End Report 2005, January 27, 2006, p. 95; BAE Systems North America Inc., FEC Form 3, July Monthly Report 2006, July 19, 2006, pp. 107, 108; BAE Systems North America Inc., FEC Form 3, April Monthly Report 2007, April 18, 2007, p. 62; BAE Systems North America Inc., FEC Form 3, May Monthly Report 2007, May 17, 2007, p. 70 (Exhibit 58).

⁷⁶ BAE Systems United Defense Employees, FEC Form 3, October Monthly Report 2005, October 20, 2005, p. 70; BAE Systems North America Inc., FEC Form 3, September Monthly Report 2006, September 15, 2006, p. 122; BAE Systems North America Inc., FEC Form 3, April Monthly Report 2007, April 18, 2007, p. 51 (Exhibit 59).

Capitol Group according to 2008 lobbying records.⁷⁷

Appriss, Inc

Executives and employees of Appriss, Inc have donated \$10,000 to Sen. McConnell's joint fund raising committee in the 2008 cycle.⁷⁸

Voice for Humanity

Voice for Humanity founder, Michael Kane, donated \$600 to Sen. McConnell's campaign committee in the 2008 cycle, \$200 of which appears to have been refunded.⁷⁹

The McConnell Center for Political Leadership

In a lawsuit brought by the *Courier-Journal* for records of donations made to the McConnell Center for Political Leadership, the Kentucky Supreme court ruled in August that the University of Louisville could not withhold information about donors from public records requests.⁸⁰ The court agreed with the newspaper that "certain donors may not simply wish to conceal their identities, but rather may wish to conceal the true purposes of their donations."⁸¹ Though the court ruled that the identities of 62 donors who requested their donations be anonymous need not be revealed, future donors will not be permitted to make anonymous donations.⁸²

⁷⁷ Bates Capitol Group LLC, Lobbying Reports 2008, Secretary of the Senate, Office of Public Record (Exhibit 60).

⁷⁸ McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, pp. 29, 38, 42, 115, 133, 184 (Exhibit 61).

⁷⁹ McConnell Senate Committee '08, FEC Form 3, October Quarterly Report 2007, October 15, 2007, pp. 184, 185 (Exhibit 62).

⁸⁰ Cape Publications, Inc. v. University of Louisville Foundation, Inc., Case No. 2005-SC-000454-DG, 2008 KY Lexis 176 (Ky. August 21, 2008) (Exhibit 63).

⁸¹ Id., *8.

⁸² Id., *14.

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 gave up the chairmanship in January 2005 because of Republican six-year term limits on chairmanships.² Sen. Stevens is the ranking member of the Defense Appropriations Subcommittee and sits on several other Appropriations Subcommittees. Sen. Stevens' ethics issues stem from his ties to the 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. Sen. Stevens was indicted by a federal grand jury on June 29, 2008 on seven counts of making false statements. Sen. Stevens was included in CREW's 2007 congressional corruption report.

VECO Corporation

For several years, Sen. Stevens was under federal investigation for his ties to VECO Corporation, an oil field engineering firm in Alaska.³ The Justice Department was investigating whether Sen. Stevens accepted bribes, illegal gratuities or unreported gifts from VECO.⁴ Part of the inquiry focused 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 fit 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 were investigating a remodeling project

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, *Washington Post*, June 7, 2007 (Exhibit 21).

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 hired a lawyer to handle the probe and confirmed 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, *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 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, *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. Stevens' 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, *Associated Press*, July 31, 2007 (Exhibit 26).

³⁵ Mauer and Bolstad, *Anchorage Daily News*, July 31, 2007.

³⁶ Id.

³⁷ Apuzzo, Corruption Investigation, *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, *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

Federal Indictment

On July 29, 2008, Sen. Stevens was indicted by the Department of Justice for making false statements on his financial disclosure forms.⁴⁹ The indictment alleges that beginning in May 1999 through August 2007, Sen. Stevens engaged in a scheme to conceal “his continuing receipt of hundreds of thousands of dollars worth of things of value” from VECO and Mr. Allen by failing to report them on his financial disclosure forms.⁵⁰ The things of value included home improvements to the Girdwood residence, automobiles, household goods, and tools, totaling over \$250,000.⁵¹

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ FedSpending Database, Contracts to VECO (FY 2000-2006), www.fedspending.org, September 9, 2007 (Exhibit 29).

⁴⁵ Margasak and Apuzzo, *Associated Press Online*, July 10, 2007.

⁴⁶ Neubauer, Pasternak, and Cooper, *Los Angeles Times*, June 23, 2003.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ United States v. Theodore F. Stevens, Crim. No. 1:08-cr-00231-EGS (D.D.C.), Indictment (hereinafter “Indictment”) (Exhibit 30).

⁵⁰ Id., ¶ 15.

⁵¹ Id.

The renovations to Sen. Stevens' home took place over a six-year period from 2000-2006 and Sen. Stevens was personally supervised the work, having multiple conversations and correspondence with Mr. Allen and VECO employees about the construction, reviewing and commenting on plans for the work, being present for while some of the work was performed, and suggesting additional improvements.⁵²

According to the indictment, as part of the scheme, while Sen. Stevens was receiving gifts from VECO, he used his official position on VECO's behalf. VECO asked Sen. Stevens for: funding and assistance with international VECO projects and partnerships, including some in Pakistan and Russia; multiple federal grants and contracts to benefit VECO, including grants from the National Science Foundation to a VECO subsidiary; assistance on federal and state issues in connection with the effort to construct a natural gas pipeline from Alaska's North Slope region.⁵³

The government provided further information regarding Sen. Stevens' assistance to VECO in a motion filed in August. In regard to construction of the gas pipeline, the government intercepted a number of telephone calls between Mr. Allen, Sen. Stevens, the senator's legislative staff, and others, including Sen. Stevens' son, discussing the pipeline.⁵⁴ During those discussions, Sen. Stevens told Mr. Allen that he would "whittle down" the federal permitting and review process and that he would try to get federal officials, including the Secretary of Energy and the head of the Federal Energy Regulatory Commission (FERC), to weigh in.⁵⁵ Shortly after Sen. Stevens addressed the Alaska Senate Energy and Natural Resources Committee about the matter, FERC issued a report with a similar message.⁵⁶

Sen. Stevens also helped VECO with the government of Pakistan. In 1998, Pakistan awarded a letter of intent to Asia Petroleum Limited, a company in which a VECO subsidiary had an ownership interest, concerning the creation of an underground pipeline to transport oil to a privately-owned generation plant near Karachi, Pakistan.⁵⁷ When Pakistan delayed implementing the project VECO asked Sen. Stevens for help and Sen. Stevens contacted World Bank President James D. Wolfensohm to request his assistance.⁵⁸

⁵² *Id.*, ¶ 37,

⁵³ Indictment, ¶ 17.

⁵⁴ *U.S. v. Stevens*, Crim. No. 08-231-EGS, Government's Motion *In Limine* Concerning the Inapplicability of the Speech or Debate Clause, p. 7 (D.D.C. Aug. 14, 2008) (hereinafter "*Motion In Limine*") (Exhibit 31).

⁵⁵ *Id.*, pp. 7-8.

⁵⁶ *Id.*, p. 8.

⁵⁷ *Id.*, pp. 8-9.

⁵⁸ *Motion In Limine*, p. 9.

On August 14, 2008, prosecutors filed a motion noticing their intent to introduce evidence of other crimes for which Sen. Stevens has not been charged at his criminal trial.⁵⁹ In February 2001, Sen. and Mrs. Stevens agreed to buy a \$360,000 condo, putting 10% or \$36,000 down.⁶⁰ In reality, the Stevens' only put down \$5,000 and the remaining \$31,000 was paid by an unnamed fellow investor and personal friend of Sen. Stevens in the form of an interest free loan.⁶¹ Six months later, on August 21, 2001, the condo was sold for \$515,000.⁶² Sen. Stevens repaid the \$31,000 loan in two installments by the end of 2001.⁶³ By his own calculations, Sen. Stevens made slightly over \$103,000 on the deal.⁶⁴ Despite Senate rules requiring any liabilities over \$10,000 in a calendar year be reported, Sen. Stevens did not report the loan on his 2001 personal financial disclosure forms.⁶⁵

In the same motion, prosecutors also provided notice of their intent to introduce evidence that Sen. Stevens had asked Mr. Allen for a generator for his Alaska home, a new car for his daughter, and jobs for his son and grandson.⁶⁶ In addition, prosecutors suggested that Sen. Stevens improperly attempted to influence a witness's grand jury testimony, sending emails stating, "I hope we can work something out to make sure you aren't led astray on this occasion," and "don't answer questions you don't KNOW the answers to." (Capitalization in original).⁶⁷

Sen. Stevens pleaded not guilty to all seven counts on July 31, 2008.⁶⁸ He also asked for an expedited trial so as to have the proceedings completed before Election Day on November 4, 2008.⁶⁹ U.S. District Court Judge Emmet Sullivan has set a tentative trial date of September 24,

⁵⁹ U.S. v. Stevens, Crim No. 08-CR-231-EGS, United States' Notice of the Intent to Introduce Evidence or, in the Alternative, Notice Pursuant to Rule 404(b) (D.D.C. Aug. 14, 2008) (hereinafter "404(b) Notice") (Exhibit 32).

⁶⁰ Id., p. 3.

⁶¹ Id., p. 4.

⁶² Id.

⁶³ 404(b) Notice, p. 4.

⁶⁴ Id.

⁶⁵ Id., p. 5.

⁶⁶ Id., pp. 5-7.

⁶⁷ 404(b) Notice, pp. 8-9.

⁶⁸ Erika Bolstad, Stevens' Trial Scheduled Before Election, *Anchorage Daily News*, July 31, 2008 (Exhibit 33).

⁶⁹ Id.

2008.⁷⁰

False Statements

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.⁷¹ 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.⁷² Senate Rule 34 incorporates the financial disclosure provisions of the Ethics in Government Act.

Financial disclosure forms require the filer to disclose information regarding liabilities in excess of \$10,000 owed at any point in the calendar year as well as gifts from a single source if the value of the items received was greater than a particular dollar value that periodically changes.⁷³ For the calendar years 1999-2002, the amount was \$260, for 2003 it was \$285, and for the years 2004-2006, it was \$305.⁷⁴

By failing to include gifts from VECO and Mr. Allen on his personal financial disclosure forms from 2000 through 2006, the government has alleged that Sen. Stevens made false statements in violation of 18 U.S.C. § 1001.⁷⁵

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 \$218,774.⁷⁶ 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

⁷⁰ Id.

⁷¹ 5 U.S.C. app. 4, § 104.

⁷² 18 U.S.C. § 1001.

⁷³ Indictment, ¶¶ 13-14.

⁷⁴ Id., ¶ 14.

⁷⁵ Id., ¶¶ 46, 52, 58, 64, 70, 76, 82.

⁷⁶ Id.

games and then paid an additional \$57,000 as a consultant to the national Special Olympics.⁷⁷ While Sen. Stevens pushed legislation to require federal fishing regulators to come up with a plan for crab quotas, Ben Stevens was paid \$56,000 by the North Pacific Crab Association.⁷⁸ 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 \$42,500.⁷⁹ 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 \$80,000.⁸⁰ 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 \$12,800.⁸¹ 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.⁸² 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’.⁸³

Fishing Industry

In the fall of 2006, the federal government issued subpoenas for Sen. Ben Stevens’ records involving the Alaska Fisheries Marketing Board⁸⁴ as well as to fishing industry executives in

⁷⁷ Neubauer, Pasternak, and Cooper, *Los Angeles Times*, June 23, 2003.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Neubauer, Pasternak, and Cooper, *Los Angeles Times*, June 23, 2003.

⁸² Mauer and Demer, *Anchorage Daily News*, May 8, 2007.

⁸³ U.S. v. Bill J. Allen, Factual Basis for Plea, Case No. 3:07-cr-00057 (D. Alaska May 4, 2007).

⁸⁴ 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 34).

Washington state, Washington, D.C. and Alaska.⁸⁵ The Alaska Fisheries Marketing Board (AFMB) is a non-profit federal grant distribution organization set up by Sen. Ted Stevens to distribute federal funds to fishing companies.⁸⁶ Sen. Ben Stevens chaired the AFMB from its creation in 1993 until he resigned on April 19, 2006.⁸⁷ Sen. Ted Stevens' former aide, Trevor McCabe, also served on the board.⁸⁸ 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.⁸⁹

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.⁹⁰ 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.⁹¹ The Southeast Seiners, a salmon fishing association, hired lobbying firm Advance North LLC, which was co-owned by Sen. Ben Stevens and Trevor McCabe.⁹² Only Mr. McCabe registered to lobby Congress on the issue of the permit buy-backs, but both men were paid as consultants.⁹³ 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.⁹⁴ 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."⁹⁵ Questions about the financial wisdom of the buy-back program were raised because lower salmon prices had already reduced the amount of permits used.⁹⁶ The

⁸⁵ John Stanton, Stevens' Home Raided by Feds, *Roll Call*, July 31, 2007 (Exhibit 35).

⁸⁶ Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁸⁷ Id.

⁸⁸ Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁸⁹ Id.

⁹⁰ Peter Overby, Corruption Probe Ensnarers Powerful Alaska Senator, *NPR Weekend Edition*, July 15, 2007 (Exhibit 36).

⁹¹ Id.

⁹² Mauer, *Anchorage Daily News*, Dec. 10, 2006.

⁹³ Overby, *NPR Weekend Edition*, July 15, 2007.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

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.

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. Steven's former aide and Sen. Ben Stevens' business partner, Mr. McCabe.⁹⁷ The Department of the Interior's Inspector General and the FBI are jointly investigating the earmark and the subsequent decision to purchase the property.⁹⁸ 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.⁹⁹ SeaLife also paid a construction company, for which Mr. McCabe was a managing partner, at least \$200,000 to demolish a building on the property.¹⁰⁰

Despite the investigations into Sen. Stevens' earmarks, the senator earmarked an additional \$3.5 million for the Alaska SeaLife Center in the Fiscal Year 2008 Omnibus spending bill.¹⁰¹

William Bittner, Jonathan Rubini and Leonard Hyde

William Bittner is Sen. Stevens' brother-in-law, an Anchorage lawyer and a Washington, D.C. lobbyist¹⁰² at Birch Horton Bittner and Cherot.¹⁰³ 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,¹⁰⁴ Arctic Slope Regional Corporation and its subsidiary Arctic Slope World Services and the Alaska

⁹⁷ Stanton, *Roll Call*, July 31, 2007.

⁹⁸ Paul Kane and Dan Eggen, FBI Probes Stevens's Earmarks; \$1.6 Million Appropriation Went to Alaska Marine Life Center, *Washington Post*, August 1, 2007 (Exhibit 37); Stanton, *Roll Call*, July 31, 2007.

⁹⁹ Stanton, *Roll Call*, July 31, 2007.

¹⁰⁰ Probe Eyes Money Stevens Steered to Research Center, *Associated Press*, August 1, 2007 (Exhibit 38).

¹⁰¹ John Stanton, Stevens Adds Millions in Earmarks to Omnibus, *Roll Call*, Dec. 18, 2007 (Exhibit 39).

¹⁰² Chuck Neubauer and Richard T. Cooper, Federal Buyout With A Family Connection, *Los Angeles Times*, December 17, 2003 (Exhibit 40).

¹⁰³ http://www.birchhorton.com/attorney_bittner.html, September 10, 2007 (Exhibit 41).

¹⁰⁴ Birch Horton Bittner and Cherot, Lobbying Report 2003, Secretary of the Senate, Office of Public Records (Exhibit 42).

Communications Systems Group.¹⁰⁵ Mr. Bittner also helped to arrange Sen. Stevens' initial 1997 investment with Jonathan Rubini, a successful Alaskan real estate developer.¹⁰⁶

In 1997, Mr. Bittner approached his friend, Mr. Rubini, about possible investments for Sen. Stevens.¹⁰⁷ Mr. Rubini arranged for Sen. Stevens to be part of a new syndicate, JLS Properties LLC.¹⁰⁸ The syndicate consisted of Jonathan Rubini, Leonard B. Hyde, Stuart Bond and Sen. Stevens.¹⁰⁹ 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.¹¹⁰ The three other partners each invested \$200,000, while Sen. Stevens invested just \$50,000.¹¹¹ JLS Properties was very successful and by the start of 2001, Sen. Stevens' investment was worth between \$250,000 and \$500,000.¹¹²

In June 2001, Mr. Rubini and Mr. Hyde began construction on a 10-story office building in midtown Anchorage, called Centerpoint I.¹¹³ 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.¹¹⁴ In October 2001, Sen. Stevens became an investor in Centerpoint I and Centerpoint II, the 22-acre development next to

¹⁰⁵ Chuck Neubauer and Richard T. Cooper, Senator's Way To Wealth Was Paved With Favors; Circle Of Influence, *Los Angeles Times*, December 17, 2003 (Exhibit 43).

¹⁰⁶ 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 44); Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹⁰⁷ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹⁰⁸ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003; Sen. Ted Stevens, Personal Financial Disclosure Statement for Calender Year 1996, filed May 15, 1997; Sen. Ted Stevens, Personal Financial Disclosure Statement for Calender Year 1997, filed May 11, 1998 (Exhibit 45).

¹⁰⁹ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹¹⁰ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹¹¹ Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

¹¹² Id.

¹¹³ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹¹⁴ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

Centerpoint I.¹¹⁵ Sen. Stevens' investments in the Centerpoint buildings were included as part of his original \$50,000 investment in JLS Properties;¹¹⁶ he was not required to pledge additional capital.¹¹⁷

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.¹¹⁸

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.¹¹⁹ 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.¹²⁰ This investment was not disclosed on the senator's financial disclosure forms.¹²¹ 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.¹²²

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.¹²³ 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.¹²⁴ Mr. Rubini was given a two-week extension, and with only the final paperwork to be

¹¹⁵ Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

¹¹⁶ Id.

¹¹⁷ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹¹⁸ Ruskin, *Anchorage Daily News*, Aug. 17, 2003.

¹¹⁹ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹²⁰ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹²¹ Sen. Ted Stevens, Personal Financial Disclosure Statement for Calendar Year 2003, filed May 17, 2004 (Exhibit 46).

¹²² Margasak and Apuzzo, *Associated Press Online*, July 10, 2007.

¹²³ Ruskin, *Anchorage Daily News*, Aug. 17, 2003; Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹²⁴ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

completed, claimed he was led to believe that his group had secured the contract.¹²⁵ 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.¹²⁶ Mr. Rubini filed a formal complaint against the Air Force and went to Washington, D.C. to meet with Sen. Stevens regarding the matter.¹²⁷

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.¹²⁸ 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.¹²⁹ Sen. Burns also arranged for a similar letter to be sent by the chairman of the corresponding House Committee.¹³⁰ House aides said they were aware of Sen. Stevens' interest in the awarding of the Elmendorf housing contract to Mr Rubini's group.¹³¹

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.¹³² In early December 2000, the Air Force awarded the new Rubini-Hunt partnership the Elmendorf housing contract.¹³³ 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.¹³⁴

National Archives and Records Administration Relocation Project

In 1998, the National Archives and Records Administration ("NARA") began the process

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Neubauer and Cooper, Senator's Way To Wealth, *Los Angeles Times*, Dec. 17, 2003.

¹³³ Id.

¹³⁴ Id.

of securing a new facility for documents in Alaska.¹³⁵ The same year, Sen. Stevens and local officials began working on a redevelopment plan for a largely unused part of Anchorage.¹³⁶ 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.¹³⁷

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.¹³⁸ Nevertheless, neither NARA nor Sen. Stevens' office ever contacted the 40th Street Investors and Congress' interest in the project appeared to wane.¹³⁹

Then, on May 21, 2002, Mr. Hyde and Mr. Rubini entered into an agreement with the 40th Street Investors to purchase the property.¹⁴⁰ 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.¹⁴¹ 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.¹⁴² In 2003, Sen. Stevens inserted an additional \$2.25 million for the project in the Fiscal Year 2004 Treasury appropriations bill.¹⁴³

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.¹⁴⁴ 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

¹³⁵ John Stanton, Government Good To Stevens' Friends, *Roll Call*, July 10, 2007 (Exhibit 47).

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Stanton, *Roll Call*, July 10, 2007.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Stanton, *Roll Call*, July 10, 2007.

¹⁴⁴ Id.

Eagle River purchased it to avoid a significant capital gains tax.¹⁴⁵

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.¹⁴⁶ 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.¹⁴⁷ A spokesman for Sen. Stevens said that while the senator fully supports the project, it remains unclear whether any more funding will be earmarked.¹⁴⁸

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.¹⁴⁹

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 2000¹⁵⁰ "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."¹⁵¹ In October 2006, the foundation changed its name to The North to the Future Foundation.¹⁵² 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.¹⁵³

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Rosemary Shinohara, Midtown Park Will Have A Speedskating Oval, *Anchorage Daily News*, May 11, 2007 (Exhibit 48).

¹⁴⁸ Id.

¹⁴⁹ Stanton, *Roll Call*, July 31, 2007.

¹⁵⁰ State of Alaska Charitable Organization, Annual Registration Form, November 5, 2003 (Exhibit 49).

¹⁵¹ Id.

¹⁵² State of Alaska Department of Commerce, Form 08-440, Articles of Amendment (Domestic Business, Professional Corporation or Non Profit Corporation), December 20, 2006 (Exhibit 50).

¹⁵³ Ponying Up for Ted, *Washington Post*, March 5, 2004 (Exhibit 51).

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.¹⁵⁴ In 2003, the Ted Stevens Foundation listed total assets as \$144,584.¹⁵⁵ This figure jumped to \$2,310,840 by the end of 2005.¹⁵⁶ Between 2003 and 2005, the foundation spent \$380,000 on fundraisers, and has made only two grants; a \$40,000 desk to the Smithsonian Institute¹⁵⁷ and \$10,000 to the Anchorage Rowers Association.¹⁵⁸

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.¹⁵⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹⁶⁰

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.

¹⁵⁴ The Ted Stevens Foundation, 2002 IRS Form 990-EZ (Exhibit 52).

¹⁵⁵ The Ted Stevens Foundation, 2003 IRS Form 990-EZ (Exhibit 53).

¹⁵⁶ The Ted Stevens Foundation, 2005 IRS Form 990-EZ (Exhibit 54).

¹⁵⁷ The Ted Stevens Foundation, 2004 IRS Form 990-EZ (Exhibit 55).

¹⁵⁸ The Ted Stevens Foundation, 2005 IRS Form 990-EZ.

¹⁵⁹ 18 U.S.C. § 201(b)(2)(A).

¹⁶⁰ 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).

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.¹⁶¹ 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 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.¹⁶² 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.¹⁶³

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

¹⁶¹ 18 U.S.C. § 1341.

¹⁶² 18 U.S.C. § 201(c)(1)(B).

¹⁶³ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

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 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 1967¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶ 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

¹⁶⁴ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

¹⁶⁵ 5 U.S.C. app. 4, § 104.

¹⁶⁶ Senate Ethics Manual, p. 133.

(B) in stocks, bonds, commodities futures, and other forms of securities.¹⁶⁷

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.¹⁶⁸ “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.”¹⁶⁹

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.”¹⁷⁰ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹⁷¹ 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. . .”¹⁷²

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.”¹⁷³ 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

¹⁶⁷ Instruction Booklet, Transactions.

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service, Senate Ethics Manual*, Appendix E, p. 432.

¹⁷¹ Id.

¹⁷² 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).

¹⁷³ Senate Ethics Manual, p. 434.

established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate . . .¹⁷⁴ As a result, the committee issued a reprimand to Senator Cranston.¹⁷⁵

In addition, the Senate Select Committee on Ethics' Rules specifically list the Code of Ethics for Government Service as a source for committee jurisdiction.¹⁷⁶ 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."¹⁷⁷

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.

¹⁷⁴ Id. at 435.

¹⁷⁵ Id.

¹⁷⁶ Id. at 436.

¹⁷⁷ Id. (*citing* H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12)).

DISHONORABLE MENTIONS

REP. MARSHA BLACKBURN

Rep. Marsha Blackburn (R-TN) is a third-term member of Congress representing Tennessee's seventh congressional district. Her ethics issues stem from her repeated failure to properly report campaign receipts and expenditures, including payments made to a family owned business.

Unreported Campaign Expenses/Contributions

In April of 2008, Rep. Blackburn announced that her campaign committee had discovered errors in their reporting extending back six years.¹ The committee failed to report \$286,278 in expenditures, including \$18,821 paid to a firm owned by her daughter and son-in-law.² The campaign also failed to report \$102,044 in contributions.³ Additionally, the campaign had misreported over \$52,025 in campaign contributions and disbursements.⁴

Rep. Blackburn's campaign committee has had a pattern of erroneous reporting. In 2005, the Federal Election Commission (FEC) investigated the campaign committee for major reporting discrepancies.⁵ The matter was eventually resolved with the campaign committee paying a \$1,500 fine and the committee treasurer agreeing to attend an FEC compliance seminar.⁶ During the course of that investigation, Rep. Blackburn's campaign committee failed to properly disclose a 2004 \$1,000 contribution from Friends of Duke Cunningham, the former committee for the now imprisoned ex-congressman.⁷ The contribution was finally noted on an amendment filed in April of 2008.⁸

During Rep. Blackburn's first three campaigns, the FEC sent 33 letters pointing out 90

¹ Bartholomew Sullivan, Blackburn Campaign Admits Finance Glitch, *Memphis Commercial Appeal*, April 16, 2008 (Exhibit 1).

² Id.

³ Bill Theobald, Blackburn Campaign Misreported Thousands in Campaign Donations, Spending, *Tennessean*, April 18, 2008 (Exhibit 2).

⁴ Id.

⁵ Federal Election Commission, Complaint: ADR Case #287, July 20, 2005 (Exhibit 3).

⁶ Federal Election Commission, Settlement Agreement: ADR Case #287, March 22, 2006 (Exhibit 4).

⁷ Bartholomew Sullivan, Watchdog Group, Germantown Woman File FEC Complaint Against Rep. Blackburn, *Memphis Commercial Appeal*, June 11, 2008 (Exhibit 5).

⁸ Id.

possible errors in the committee's reports.⁹ After the 2005 FEC enforcement case, Rep. Blackburn hired election lawyer Donald McGahn to conduct an internal audit.¹⁰ Following the audit, Rep. Blackburn's campaign committee filed amendments for all 32 reports it has submitted to the FEC.¹¹

Violations of Campaign Finance Law

By failing to properly report contributions and expenditures to the FEC, including payments made to a business owned by her daughter and son-in-law, Rep. Blackburn's campaign committee violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4). In addition, by failing to disclose the contribution from Friends of Cunningham after signing a settlement agreement claiming that all previously submitted information was true and correct, the treasurer of the campaign committee may have committed perjury in violation of 28 U.S.C. § 1746.-law.¹²

⁹ Bill Theobald, Blackburn Campaigned Plagued By Financial Data Problems, *Jackson Sun*, May 19, 2008 (Exhibit 6).

¹⁰ Id.

¹¹ Id.

¹² Bartholomew Sullivan, Blackburn Gets Little Shelby Cash, *Commercial Appeal*, July 29, 2006 (Exhibit 7).

SEN. NORM COLEMAN

Senator Norm Coleman (R-MN) is a first-term senator, representing Minnesota. His ethics issues stem from lodging he accepted in violation of the Senate gifts rule.

Failure to Pay Rent

When in Washington, Sen. Coleman lives in a basement apartment in the Capitol Hill townhouse of Republican operative Jeff Larson.¹ Mr. Larson runs FLS Connect, a telemarketing firm, which has been paid over \$1.4 million since 2001 by Sen. Coleman's leadership political action committee (PAC) and two campaign committees.² Mr. Larson is also the treasurer of Sen. Coleman's PAC and provides it with office space in St. Paul, MN.³ Adding to the relationship between the pair, Mr. Larson's wife, Dorene Kainz, had been employed as a casework supervisor in Sen. Coleman's St. Paul office, though after *National Journal* questioned Sen. Coleman about this, his staff announced that she would leave the office on July 10, 2008.⁴

In March 2007, Mr. Larson and his wife purchased a townhouse on Capitol Hill.⁵ In July 2007, Sen. Coleman began paying Mr. Larson \$600 per month to rent a portion of the basement apartment.⁶ After *National Journal* began asking Sen. Coleman and Mr. Larson about the senator's living arrangement, the senator "discovered" that he had failed to pay rent in November 2007 and January 2008, leading his wife to provide Mr. Larson with a personal check for \$1,200.⁷ In addition, Sen. Coleman sold Mr. Larson some furniture -- a couch, table and chairs and a desk -- to cover one month's rent, and Mr. Larson held onto Sen. Coleman's March rent check for three months, until June 17, before cashing it only days after *National Journal* began making inquiries.⁸ Similarly, Sen. Coleman did not have a lease or pay utilities for the

¹ Edward T. Pound, Friendly Dealings, *National Journal*, June 28, 2008 (Exhibit 1).

² Coleman for Senate 08, FEC Form 3 Reports, 2003-2008; Norm Coleman for US Senate, FEC Form 3 Reports, 2001-2005; NorthStar Leadership PAC, FEC Form 3 Reports, 2003-2008 (pages listing contributions attached) (Exhibit 2).

³ Pound, *National Journal*, June 28, 2008.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Pound, *National Journal*, June 28, 2008.

⁸ Id.

first year he lived in the apartment.⁹ On July 3, 2008, Sen. Coleman and his wife signed a lease and on July 14, 2008, Ms. Coleman wrote a \$532.88 check for a year's worth of utilities.¹⁰ According to his campaign manager, a verbal agreement with Mr. Larson was the basis for Sen. Coleman's annual utility bill.¹¹

Gifts Rule Violation

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."¹² 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."¹³

Over the past year, Sen. Coleman appears to have accepted lodging from Mr. Larson for at least three months without paying the agreed upon rent until caught by *National Journal*. Although Sen. Coleman recently paid \$1,200 and Mr. Larson cashed a check for an additional \$600 after *National Journal* questioned the pair about the payments, the fact that the payments were not made until flagged by the media heightens rather than diminishes the concerns over Sen. Coleman's conduct. Sen. Coleman's repeated missed rent payments and Mr. Larson's failure to cash Sen. Coleman's check suggest that Mr. Larson was not, in fact, necessarily expecting payment. Moreover, it is unclear whether the \$600 rental rate represents the fair market value of the apartment considering other rental rates in the Capitol Hill neighborhood. After touring Sen. Coleman's apartment, a *Minneapolis Star Tribune* reporter wrote that the space is not extravagant but well kept and renovated.¹⁴ A spokesman for Sen. Coleman said,

⁹ Kevin Duchscherer, Coleman Defends D.C. Lease, *Minneapolis Star Tribune*, August 13, 2008 (Exhibit 3).

¹⁰ Id.

¹¹ Id.

¹² Senate Ethics Manual, Select Committee on Ethics, U.S. Senate, p. 314 (2003 ed.).

¹³ Rule 35, paragraph 1(b)(1).

¹⁴ Emily Kaiser, The Down-low on Coleman's Digs in Upscale D.C. Neighborhood, *Minneapolis Star Tribune*, July 11, 2008 (Exhibit 4).

according to their research, the senator is paying fair market value,¹⁵ but a Minnesota political group reported similar apartments on Capitol Hill rent for \$1,100 to \$1,450.¹⁶

Because lodging clearly falls within the Senate's definition of "gift," Sen. Coleman appears to have violated the Senate gifts rule by accepting free lodging from Mr. Larson, someone who financially benefits from his relationship with the senator. Further complicating the issue is the question of whether the salary paid to Mr. Larson's wife as an employee in Sen. Coleman's office might constitute the true payment of the rent. Also troubling is the fact that Sen. Coleman paid his back rent, and Mr. Larson cashed Sen. Coleman's checks, only once the media began questioning the living arrangement. Finally, by failing to pay his utility bills, which were valued at \$532.88 – well over the \$49.99 permissible gift limit -- Sen. Coleman accepted an improper gift from Mr. Larson.

On July 1, 2008, CREW filed a complaint with the Senate Select Committee on Ethics requesting an investigation into this matter to determine whether Sen. Coleman has violated the Senate gifts rule.¹⁷

¹⁵ Kevin Duchscherer, DFLers claim Sen. Coleman's D.C. Digs Break Senate Rules, *Minneapolis Star Tribune*, June 30, 2008 (Exhibit 5).

¹⁶ Id.

¹⁷ Letter from Melanie Sloan, CREW, to Barbara Boxer, Chair and John Cornyn, Ranking Member, July 1, 2008 (Exhibit 6).

REP. LAURA RICHARDSON

Rep. Laura Richardson (D-CA) is a first-term member of Congress, representing California's 37th congressional district. Rep. Richardson's ethics issues stem from accepting favorable loans and her failure to properly report a loan on her financial disclosure statements.

Falling into Foreclosure

In May 2008, it was reported that Rep. Richardson's Sacramento home had been sold into foreclosure.¹ She claimed that this had happened without her knowledge and contrary to an agreement with her lender.² Rep. Richardson had failed to make mortgage payments on the property for nearly a year and had defaulted on other home loans as well.³ Rep. Richardson also failed to include the mortgage on her Sacramento home on her personal financial disclosure statements.⁴ According to press reports, Rep. Richardson has defaulted on loans at least eight times on properties she owns in Long Beach, San Pedro and Sacramento.⁵ She also failed to pay approximately \$9,000 in property taxes on the Sacramento residence.⁶ James York, the owner of Red Rock Mortgage bought the Sacramento home at a foreclosure auction on May 7, 2008 for \$388,000.⁷

At the same time that Rep. Richardson was missing payments and failing to pay her taxes, in June and July 2007, she made three loans to her congressional campaign totaling \$77,500.⁸

¹ Anthony York, Debate Intensifies Over Richardson Home Default, *Capitol Weekly*, May 22, 2008 (Exhibit 1).

² Erica Werner, California Congresswoman Says Home Sale Improper, *Associated Press*, May 24, 2008 (Exhibit 2).

³ Gene Maddaus, Broker Alleges Loan Favoritism, *Press-Telegram*, June 9, 2008 (Exhibit 3).

⁴ Rep. Laura Richardson, Personal Financial Disclosure Statement for Calendar Year 2007, Filed May 19, 2008; Rep. Laura Richardson, Amended Personal Financial Disclosure Statement for Calendar Year 2007, Filed June 13, 2008; Rep. Laura Richardson, Amended Financial Disclosure Statement for Calendar Year 2007, Filed June 27, 2008 (Exhibit 4).

⁵ Jared Allen and Jackie Kucinich, GOP Leaders Say Richardson's Housing Troubles Warrant Scrutiny, *The Hill*, June 18, 2008 (Exhibit 5).

⁶ Maddaus, *Press-Telegram*, June 9, 2008.

⁷ Allen and Kucinich, *The Hill*, June 18, 2008.

⁸ Richardson for Congress, FEC Form 3, Pre-Runoff Report 2007, August 10, 2007, pp. 38-40 (Exhibit 6).

On June 2, 2008, Washington Mutual Bank, Rep. Richardson's lender, filed a notice of rescission of the foreclosure sale.⁹ By that time, Mr. York had already invested money cleaning up the house and preparing it for resale.¹⁰ As a result, Mr. York filed suit against Rep. Richardson and Washington Mutual, alleging that Rep. Richardson received preferential treatment from Washington Mutual because of her position as a member of Congress.¹¹ Mr. York claimed that Washington Mutual would never have rescinded the sale, but for the fact that Rep. Richardson is a member of Congress.¹² In July 2008, it was reported that Mr. York suit against Rep. Richardson and the bank had been dropped, allowing Rep. Richardson to reclaim the home.¹³

Press reports also indicate that Rep. Richardson has been late in paying car bills to mechanics and an invoice for invitation printing related to her campaign.¹⁴

Gift Rule Violation

Rule 25, clause 5(1)(A)(I) of the House rules states that "a Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause."¹⁵ The Rules define "gift" to mean "a 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."¹⁶

Rule 25, clause 5(a)(3)(R)(v) allows Members, officers, and employees to accept opportunities and benefits that are available to a wide group, specifically providing that they may accept "loans from banks and other financial institutions on terms generally available to the

⁹ Maddaus, *Press-Telegram*, June 9, 2008.

¹⁰ Id.

¹¹ Gene Maddaus, Rep. Richardson Can Get Sacramento House Back, *Press-Telegram*, July, 25, 2008 (Exhibit 7).

¹² Maddaus, *Press-Telegram*, June 9, 2008.

¹³ Maddaus, *Press-Telegram*, July, 25, 2008.

¹⁴ Paul Eakins, U.S. Rep. Laura Richardson Late on Car Bills, *Daily Breeze*, June 6, 2008 (Exhibit 8).

¹⁵ Rules of the House of Representatives, 110th Congress, p. 41.

¹⁶ House Rule 25, clause 5 (a)(2)(A).

public.”¹⁷

Given that “loans” are included in the definition of “gifts,” if Washington Mutual Bank rescinded its foreclosure of Rep. Richardson’s house and renegotiated her mortgage on terms that differed from the terms the bank offered to any other similarly situated individual in default on their mortgage, Rep. Richardson may have received an improper gift in violation of House rules.

The House ethics committee also should inquire into whether Rep. Richardson has received other favorable treatment from lenders in the past. According to press reports, Rep. Richardson has defaulted on loans at least eight times on properties she owns in Long Beach, San Pedro and Sacramento.¹⁸ Because it is unusual for someone with such a deplorable credit history to be approved for mortgages repeatedly, Rep. Richardson may have traded on her other elected positions in order to receive those loans.

Failure to Report Loan on Financial Disclosure Statements

The House ethics committee should consider whether Rep. Richardson’s failure to include the mortgage violates House rules.

Personal obligations aggregating over \$10,000 owed to one creditor at any time during the calendar year, regardless of repayment terms or interest rates must be included on personal financial disclosure statements.¹⁹ Although mortgages secured by a personal residence need not generally be disclosed, there is an exception if the indebtedness exceeds the purchase price.²⁰ Rep. Richardson purchased the house in January 2007 and by the end of the year, she owed \$575,000 to the bank after failing to make payments on her initial \$535,000 mortgage.²¹ Thus, because Rep. Richardson owed \$40,000 more than the initial purchase price of the house, she was required to include the debt on her personal financial disclosure statement. It is also possible that given her history of defaulting on loans, Rep. Richardson may owe more than the initial purchase price on the Long Beach and San Pedro homes as well, meaning that those loans too ought to have been included on the congresswoman’s financial disclosure statements.

The Ethics in Government Act authorizes the Attorney General to seek a penalty of up to \$11,000 against an individual who knowingly and willfully falsifies or fails to file or report any

¹⁷ House Rules, p. 42.

¹⁸ Allen and Kucinich, *The Hill*, June 18, 2008.

¹⁹ House Ethics Manual, p. 258 (*citing* 5 U.S.C. App. 4 § 102(a)(4)).

²⁰ *Id.*

²¹ Jared Allen, Mortgage Non-Disclosure is Trouble for Richardson, *The Hill*, June 3, 2008 (Exhibit 9).

required information.²² In addition, knowingly and willfully falsifying a report or concealing a material fact is a crime punishable by up to 5 years in jail.²³

Conduct that Does Not Reflect Creditably on the House

In addition, the committee should examine the timing of Rep. Richardson's most recent default and the \$77,500 she loaned her congressional campaign committee. Members of the House are required to conduct themselves "at all times in a manner that reflects creditably on the House."²⁴ This ethics standard is considered to be "the most comprehensive provision of the code."²⁵ By funneling money that should have gone to pay her mortgage and property taxes to her congressional campaign, Rep. Richardson clearly engaged in conduct that does not reflect creditably on the House.

²² Id. at 265 (*citing* 5 U.S.C. App. 4 § 104(a)).

²³ 18 U.S.C. § 1001.

²⁴ Rule 23, clause 1.

²⁵ House Ethics Manual, p. 12.

REP. MIKE TURNER

Rep. Mike Turner (R-OH) is a third-term member of Congress, representing Ohio's third congressional district. Rep. Turner's ethics issues stem from a no-bid marketing contract that was awarded to his wife from a group that receives federal funding.

The Turner Effect

Rep. Turner's wife, Lori Turner, is president and CEO of the Turner Effect, a Dayton, Ohio based marketing firm.¹ The Turner Effect was awarded a no-bid contract by Dayton Development Coalition in 2006 to develop and market an advertising campaign.² The Dayton Development Coalition lobbies the Miami Valley congressional delegation, which includes Rep. Turner, for federal funds.³ The coalition paid the Turner Effect \$300,000 for the first part of a \$1.5 million marketing campaign.⁴

Ms. Turner said that in the past her company has turned down clients based on potential conflicts of interest with her husband.⁵ She claimed the Dayton Development Coalition contract presented no conflict of interest because her husband has no affiliation, is not a member of the coalition and that the coalition receives no federal earmarks.⁶ FedSpending.org shows, however, that the coalition received at least \$1.2 million in federal funds in fiscal year 2006.⁷ Additionally, federal lobbying records show the coalition has retained outside lobbying services since 2002 and has been registered to lobby on its own behalf in 2004, 2005, 2006 and 2008.⁸

After criticism from the local media, Ms. Turner withdrew her company from the branding campaign in February 2008, before receiving additional funds from the coalition for the

¹ <http://www.turnereffect.com> (Exhibit 1).

² Tom Beyerlein, Questions Raised About Branding Contract for U.S. Rep. Mike Turner's Wife, *Dayton Daily News*, February 10, 2008 (Exhibit 2).

³ Id.

⁴ Id.

⁵ Tom Beyerlein, Turner Says She Has Turned Down Clients Because of Ties to Husband, *Dayton Daily News*, February 20, 2008 (Exhibit 3).

⁶ Id.

⁷ Fed Spending Database, Contracts to Dayton Development Coalition (FY 2006), www.fedspending.org (Exhibit 4).

⁸ Dayton Development Corporation, Lobbying Disclosure 2004-2006, 2008, Secretary of the Senate, Office of Public Record (Exhibit 5).

second half of the campaign.⁹

Additionally, since 2002 staff, members of the board of directors of the Dayton Development Coalition and their families have donated \$100,650 to Rep. Turner's campaign committee.¹⁰

5 CFR § 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."¹¹ 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 earmarking funds for a coalition that hires his wife, Rep. Turner has used his position to provide a financial benefit to his wife, thus running 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."¹² The Committee stated specifically that the provisions of the Code of Ethics for Government Service apply to House members, and that

⁹ Tom Beyerlein, Turner Leaves Branding Campaign, *Dayton Daily News*, February 20, 2008 (Exhibit 6).

¹⁰ Turner for Congress, FEC Form 3 Reports, 2002-2008 (pages listing contributions attached, Exhibit 7);
<http://www.getmidwest.com/aboutUs/trustees.cfm?sectionID=au&subNavID=1>;
<http://www.getmidwest.com/aboutUs/staff.cfm?sectionID=au&subNavID=2> (Exhibit 8).

¹¹ 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.

¹² 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.

formal charges may be brought against a member for violating that code.¹³

The Committee on Standards of Official Conduct should investigate whether Ms. Turner secured a contract with the Dayton Development Coalition because of her relationship with Rep. Turner and as part of an effort by the coalition to curry favor with Rep. Turner in order to receive federal earmarks. By using the powers of his office to funnel funds to an entity that hired his wife, Rep. Turner may have dispensed special favors in violation of House 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, 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.”¹⁴ House Rule 23, 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.

The Committee on Standards of Official Conduct should investigate to determine if Rep. Turner accepted over \$100,000 in campaign contributions from the Dayton Development Coalition in return for earmarking federal funds in violation of 5 U.S.C. § 7353 and House Rule 23.

¹³ Id.

¹⁴ 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.

EXHIBITS

To view all the exhibits cited in this report, please visit www.CREWsMostCorrupt.org.