

CREW'S MOST

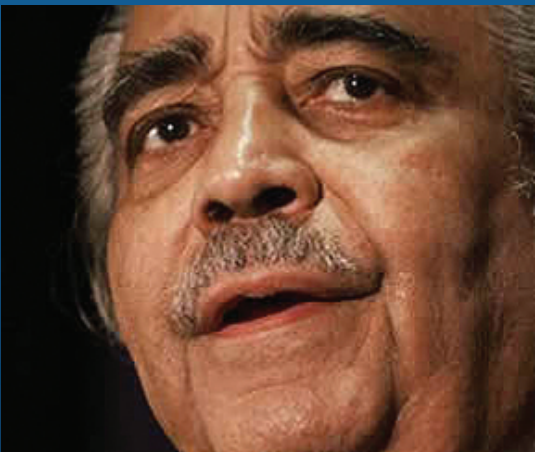
CORRUPT

THE 15 MOST

CORRUPT MEMBERS

OF CONGRESS

FEATURING



A Project of

CREW

citizens for responsibility
and ethics in washington

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EXECUTIVE SUMMARY

CREW's fifth annual report on congressional corruption includes 15 members of Congress, significantly fewer than last year's report. While corruption has remained a significant political issue, many elected officials seem to be taking greater care to avoid unethical conduct.

The list shrank primarily because out of the 24 members included in last year's report, eight are no longer in Congress and seven others were omitted either because no action was taken by any law enforcement agency, or the House or Senate ethics committees, or CREW discovered no additional information to add. New to this year's list are Senators Roland Burris and John Ensign, and Representatives Nathan Deal, Jesse Jackson, Jr. and Pete Visclosky. After having been off the list for two years, Rep. Maxine Waters has reappeared for unethical activities entirely unrelated to the conduct that landed her on the list in the past.

Of this year's list of 15, at least 12 are under some sort of investigation: Vern Buchanan, Roland Burris, Ken Calvert, John Ensign, Jesse Jackson Jr., Jerry Lewis, Alan Mollohan, John Murtha, Charlie Rangel, Laura Richardson, Pete Visclosky and Don Young.

This year as every year, members have used their positions to financially benefit themselves, their friends and their families. Earmarks for large campaign contributors are commonplace and many members have traded legislative assistance for personal favors.

Although ethics reforms measures were passed last Congress and the House created the new Office of Congressional Ethics, there still appears to be little enforcement of ethics rules. In the Senate, Sens. Kent Conrad and Chris Dodd were not disciplined in any way for their participation in Countrywide Financial's VIP loan program. The Senate Select Committee on Ethics sank to an all time low, holding itself -- rather than the senators themselves -- responsible for the senators' accepting the loans. The Senate Ethics Manual is readily available and it clearly states that loans can be improper gifts. If CREW can read and understand the manual, presumably, senators can too.

As always things are worse in the House, which consistently refuses to condemn any lawmaker's conduct no matter how outrageous. The investigation of Rep. Rangel, which was only initiated at the lawmaker's request in the first place, has dragged on for a year with no end in sight. If the committee ever sees fit to release any sort of report regarding Rep. Rangel's many misdeeds, expect the ethics panel to use the occasion as a "teaching moment," reminding members of their responsibilities under the ethics rules. Any meaningful censure of Rep. Rangel is unlikely.

Similarly, thanks to Rep. Jeff Flake's efforts, the House Ethics Committee was forced to reveal it is investigating the PMA scandal, which involves Reps. Murtha and Visclosky and likely other members as well. If history is any guide, however, nothing will come of the committee's inquiry. If the committee opened the door to permit questions regarding the relationship between earmarks and campaign contributions, few members would be safe from scrutiny.

The Office of Congressional Ethics is now up and running, but it has yet to release any information about its work, leaving CREW to continue to question the office's utility.

As a result of the Sen. Ted Stevens prosecution debacle and courts' continued expansive interpretation of the Speech or Debate Clause of the Constitution, expect fewer federal corruption prosecutions of members of Congress in the coming years. First, the Justice Department's Public Integrity Section is in disarray. Section Chief William Welch remains in place despite the section's mishandling of the Stevens prosecution and U.S. District Court Judge Emmet Sullivan's forceful criticism. Thus, the department is likely to be hesitant to investigate, much less bring charges against other members of Congress absent glaring evidence of wrongdoing. Further debilitating criminal prosecutions is the continued expansion of the Speech or Debate Clause. An Arizona federal court is considering whether charges brought against former Rep. Rick Renzi can withstand constitutional challenge. In addition, federal investigators were forced to drop the investigation of former Rep. Tom Feeney after a court ruled the Clause prohibited the House Ethics Committee from providing any incriminating information it had obtained during its own investigation of Rep. Feeney's conduct in regard to the Jack Abramoff scandal.

Given that the Justice Department has been defanged and the ethics committees are basically worthless, it will be up to the voters to decide if a member of Congress's conduct disqualifies him from holding a position of public trust.

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

REPRESENTATIVE VERN BUCHANAN

Representative Vern Buchanan (R-FL) is a two-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. Rep. Buchanan was included in CREW's 2008 congressional corruption report.

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 them 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 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

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.

⁶ Id.

⁷ Id.

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 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

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.

¹⁶ Id.

¹⁷ Id.

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

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 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

¹⁹ Id.

²⁰ Id.

²¹ Jeremy Wallace and Carol E. Lee, 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).

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).

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, Rep. 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, Rep. 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).

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).

2009 UPDATE

Additional Conduit Contribution

In 2009, an additional allegation of a conduit contribution to Rep. Buchanan's campaign committee surfaced.³² Terry Keith Howell, a registered Democrat, claimed he had been reimbursed for donations he had unwillingly made to Rep. Buchanan's campaign.³³ According to a deposition he gave in a lawsuit, Mr. Howell claimed the \$8,800 contribution he made to Rep. Buchanan and the \$10,000 he gave to the Republican Party of Florida were paid by Timothy Mobley, "a Tampa developer whose relatives and employees were the single largest group of contributors to Buchanan."³⁴ Mr. Mobley was Mr. Howell's business partner in a

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

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

³² Susan Taylor Martin, Hard Times, Large Checks, *St. Petersburg Times*, June 20, 2009 (Exhibit 11).

³³ Id.

³⁴ Id.

trucking company.³⁵ Mr. Howell said, “Tim Mobley told me that Vern Buchanan is somebody good to have on your side, because he was going to be in charge of overseeing the DOT transportation stuff, so the amount of favors he could do for us was enormous.”³⁶ Notably, Mr. Howell was in bankruptcy at the time he made the contributions.³⁷

CREW’s FEC complaint against Rep. Buchanan remains unresolved.

Business Holdings

In November 2008, Rep. Buchanan announced he planned to sell more of his business holdings to “reduce [his] exposure” to lawsuits and uncomfortable political situations.³⁸

In December 2008, instead of recusing himself, Rep. Buchanan voted against the Auto Industry Financing and Restructuring Act, also known as the “auto bailout.”³⁹ In contrast, Rep. John Campbell (R-CA), who also had a pecuniary interest in a car dealership and was concerned about the potential conflict-of-interest, voted “present” on the bailout.⁴⁰ Later, however, Rep. Buchanan voted “present” on the “Cash for Clunkers” program.⁴¹

³⁵ Id.

³⁶ Martin,, *St. Petersburg Times*, Jun. 20, 2009.

³⁷ Id.

³⁸ Jeremy Wallace, Less Business, More Politics for Buchanan, *Sarasota Herald Tribune*, November 19, 2008 (Exhibit 12).

³⁹ <http://clerk.house.gov/evs/2008/roll690.xml> (Exhibit 13).

⁴⁰ Id.; Carol E. Lee, Auto Bailout May Affect Buchanan’s Wallet, *Politico*, December 9, 2008 (Exhibit 14).

⁴¹ <http://clerk.house.gov/evs/2009/roll314.xml> (Exhibit 15); Larry Webster, The Case Against Cash For Clunkers: Analysis, *Popular Mechanics*, June 25, 2009 (Exhibit 16).

REPRESENTATIVE KEN CALVERT

Representative Ken Calvert (R-CA) is a nine-term member of Congress, representing California's 44th congressional district. Rep. Calvert's ethics issues stem from (1) his use of earmarks for personal gain; (2) his illegal land purchase; and, (3) his connections to a lobbying firm under investigation. Rep. Calvert was included in CREW's 2006, 2007, and 2008 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 from the purchase price.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 appropriation of \$1.5 for commercial development of the area surrounding the airfield.³

Rep. Calvert and his partner have argued that the increase in the land value 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, Mr. Harpole brokered another deal with a group of investors.⁷ For a purchase price of \$975,000,⁸ the group bought property at 20330 Temescal Canyon Road, located a few blocks from the site of the then-proposed interchange.

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 Calver 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.

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

Within six months following appropriation of the earmark for the interchange, the parcel sold for \$1.45 million.⁹ Rep. Calvert's firm received a commission on the sale.¹⁰

Rep. Calvert also owns other Corona, California, 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 was expected to 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 (JCSD).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

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:

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. Govt 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).

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.

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

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 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).

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 Copeland Lowery’s principal, 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 six years. 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.”³¹

Rep. Calvert has ties to both Rep. Lewis and Lowery’s firm.³² Rep. Lewis has been something of a benefactor to Rep. Calvert; he 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.³³ On May 23, 2006, the FBI obtained Rep. Calvert’s financial records at the same time that they pulled Rep. Lewis’s financial records.³⁴ According to Rep. Calvert, no one has contacted his office and he maintains that he has not been accused of any wrongdoing.³⁵

After Rep. Lewis, Rep. Calvert was the inland California representative who has received the most amount of money from Copeland Lowery³⁶ – \$25,803 from Copeland employees for both his campaign fund and his PAC leading up to 2006.³⁷ Notably, Copeland Lowery was also the single largest donor for Rep. Calvert in the 2003-2004 election cycle.³⁸

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).

³¹ Id.

³² Edward Barrera, FBI Reviews Calvert Links, *Inland Valley Daily Bulletin*, June 17, 2006 (Exhibit 8).

³³ Id.

³⁴ Claire Vitucci, Douglas Quan and Michelle Dearmond, Finances Of Lewis, Calvert Inspected, *Press Enterprise*, June 10, 2006 (Exhibit 9).

³⁵ Barrera, *Inland Valley Daily Bulletin*, Jun. 17, 2006.

³⁶ Vitucci, Quan and Dearmond, *Press Enterprise*, Jun. 10, 2006.

³⁷ Id.

³⁸ Barrera, *Inland Valley Daily Bulletin*, Jun. 17, 2006.

Records show that Rep. Calvert helped pass through at least 13 earmarks sought by Copeland Lowery in fiscal year 2005, for a total of \$91,300,000.³⁹ Rep. 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 Committees.⁴⁰

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.⁴¹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵

³⁹ 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 FY 2005 Omnibus Appropriations Bill, November 17, 2005 (Exhibit 10).

⁴⁰ Hamburger, Pugmire and Simon, *Los Angeles Times*, May 15, 2006.

⁴¹ 18 U.S.C. § 201(b)(2)(A).

⁴² 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).

⁴³ 18 U.S.C. § 1341.

⁴⁴ 18 U.S.C. § 201(c)(1)(B).

⁴⁵ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

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

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.⁴⁶

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."⁴⁷ House Rule XXIII, clause 3, similarly provides:

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

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

5 C.F.R. § 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).

House Rule 23

Congressman 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.

⁴⁶ *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).

⁴⁷ 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.

2007 UPDATE

In 2007, Rep. Calvert came to the attention of federal investigators, who were examining his financial disclosure records for the years 2000-2005.⁴⁸ Rep. Calvert also has been connected to the FBI's probe of links between Rep. Jerry Lewis (R-CA) and the now-disbanded lobbying firm of Copeland, Lowery, Jacquez, Denton & White.⁴⁹ 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.⁵⁰

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.⁵¹ The district had acquired the land for flood control and a park that was never built, and subsequently sold the land for \$1.2 million.⁵² The grand jury concluded the sale was illegal because the district had failed to first offer the land to other public agencies.⁵³

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.⁵⁴

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.⁵⁵ Rep. Calvert's 2006 financial disclosure form shows that in December 2006, he sold property near the proposed transit center for between \$100,000 and \$1 million; the property was originally purchased for between \$250,000 and \$500,000.⁵⁶

⁴⁸ Susan Davis, Calvert Picked For Vacant Approps Seat, *Roll Call*, May 10, 2007 (Exhibit 11).

⁴⁹ 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).

⁵⁰ Davis, *Roll Call*, May 10, 2007.

⁵¹ David Danelski, Report: Land Sold Too Cheaply, *Press Enterprise*, April 12, 2007 (Exhibit 14).

⁵² Id.

⁵³ Jesse B. Gill, Board Silent On Grand Jury Report, *Inland Valley Daily Bulletin*, July 11, 2007 (Exhibit 15).

⁵⁴ Susan Crabtree, Ethics Panel Gives Green Light To Calvert Earmark, *The Hill*, May 18, 2007 (Exhibit 16).

⁵⁵ Id.

⁵⁶ 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).

2008 UPDATE

Jurupa Land Deal

Rep. Calvert maintains he had no knowledge any rules were being broken when he purchased land from the Jurupa Community Services District, he further maintains he has only come under fire for the purchase because of his position as a federal lawmaker.⁵⁷

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.⁵⁸ The JARPD has maintained that the land was given to the Jurupa Community Services District with the stipulation that it be used for a park.⁵⁹ 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.⁶⁰ The Community Services District has since offered JARPD \$570,000 – one half of what it received from Rep. Calvert and his partner – to drop the issue but the JARPD has refused.⁶¹ In August 2008, JARPD filed a lawsuit against the Jurupa Community Services District, alleging fraud and deceit in the property sale.⁶²

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.⁶³ In July 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.⁶⁴ In August of 2008, voters approved the measure overwhelmingly, thereby allowing Jurupa parks officials to begin eminent domain proceedings.⁶⁵

Federal Investigation

In November 2007, federal investigators continued their probe into Rep. Calvert's earmarking activities and had pulled Rep. Calvert's 2006 and 2007 personal financial disclosures.⁶⁶

⁵⁷ Ben Goad and Sandra Stokely, Inland Parks District Considers Forcing Calvert, Partners to Sell Disputed Land, *Press Enterprise*, November 16, 2007 (Exhibit 19).

⁵⁸ Liset Marquez, Eminent Domain Request Denied, *Inland Valley Daily Bulletin*, March 11, 2008 (Exhibit 20).

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Sandra Stokely, Jurupa District Voters Endorse Using Eminent Domain for Park Site, *Press Enterprise*, August 26, 2008 (Exhibit 21).

⁶³ Liset Marquez, Survey: People Want Public Use for Calvert's Land, *Inland Valley Daily Bulletin*, June 8, 2008 (Exhibit 22).

⁶⁴ Sandra Stokely, District Seeks Voter Approval, *Press Enterprise*, July 26, 2008 (Exhibit 23).

⁶⁵ Stokely, *Press Enterprise*, Aug. 26, 2008.

⁶⁶ Tory Newmayer, FBI Probes Continuing, *Roll Call*, November 19, 2007 (Exhibit 24).

2009 UPDATE

Jurupa Land Deal

In August 2008, JARPD filed a lawsuit against the Jurupa Community Services District for fraud and deceit for selling four acres of property in Mira Loma to Rep. Calvert and his partners.⁶⁷ As of March 31, 2009, JARPD spent \$379,133 in legal expenses and, due to the land deal, it estimated spending \$450,000 in legal fees this fiscal year, well over the budgeted amount.⁶⁸ The lawsuit, paired with the economic downturn, has forced the park district to make budget cuts to compensate.⁶⁹

On June 16, 2009, the Riverside County supervisors voted 3-1 to approve a zoning change to Rep. Calvert's property, reclassifying it from agricultural to commercial property.⁷⁰ The change will allow Rep. Calvert and his business partner, Stadium Properties, to build a storage facility that will likely increase the value of the property.⁷¹ Despite the increase in land value, JARPD continues to hope to be able to purchase the property from Stadium Properties, but it is unclear if Stadium Properties will sell the land.⁷² The park district wants to create a park or sports field on the land.⁷³ Rep. Calvert describes himself as a "passive one-third partner" in the land partnership.⁷⁴

County Supervisor Bob Buster, the sole dissenter on the zoning vote, stated, "I can't get past a public figure who ... would go to a public agency and acquire land that's not been advertised for public view without checking on it first. If they had checked, they would have found out that ... a community services district was required by law to advertise this land."⁷⁵

Federal Investigation

The status of the investigation into Rep. Calvert is unknown.

⁶⁷ Sandra Stokley, Suit Drains District Funds, *Press Enterprise*, April 3, 2009 (Exhibit 25).

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Darrell R. Santschi, Disputed Calvert Land Rezoned, *Press Enterprise*, June 17, 2009 (Exhibit 26).

⁷¹ Id.

⁷² Id.

⁷³ Stokley, *Press Enterprise*, Apr. 3, 2009.

⁷⁴ Santschi, *Press Enterprise*, Jun. 17, 2009.

⁷⁵ Id.

REPRESENTATIVE NATHAN DEAL

Representative Nathan Deal (R-GA) is a nine-term member of Congress, representing Georgia's 9th congressional district. His ethics issues stem from his abuse of his position for his personal financial benefit.

Recovery Services, Inc. a/k/a Gainesville Salvage & Disposal

Rep. Deal and Ken Cronan own and operate Recovery Services, Inc., a/k/a Gainesville Salvage & Disposal, which for nearly 20 years has provided a location and equipment for Georgia state inspectors to examine salvaged vehicles.¹

Since 1992, Georgia has required any vehicle wrecked and rebuilt to pass a safety inspection before the state will issue a title allowing the car to be sold or driven.² Initially and inefficiently, inspectors traveled to where the vehicles were located, but in 1989, the state authorized a station in Athens, Georgia to serve as an inspection site.³ The program was expanded in 1990, the same year Rep. Deal and Mr. Cronan incorporated Recovery Services, Inc., which became one of the first of eight regional inspection stations, though there is no record explaining how the stations were chosen and Rep. Deal has been unable to provide an explanation.⁴

The stations provide a garage bay with a hydraulic lift and an employee to help move cars while the state provides the inspectors.⁵ Station owners charge vehicle owners a fee to have their cars seen at the stations.⁶ While Rep. Deal and Mr. Cronan charge \$100 per vehicle, most other stations charge only \$60 or \$75.⁷ In 2008, Rep. Deal's and Mr. Cronan's Gainesville station hosted over 2,800 vehicles out of the 17,000 vehicles inspected by the state.⁸ Recovery Services, Inc. has never had to compete for the contract, which between 2004-2008 alone, earned the company \$1.4 million.⁹ Rep. Deal personally earns \$150,000 a year from the business.¹⁰

When Georgia Revenue Commissioner Bart Graham became responsible for the system, he discovered it cost nearly as much to operate as it brings in and the locations of the inspection stations are relatively far from the largest metropolitan areas, making the stations into regional

¹ Aaron Gould Sheinin and James Salzer, Agreement with State Benefits Deal's Firm, *Atlanta Journal-Constitution*, August 22, 2009 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

¹⁰ Id.

monopolies.¹¹ As a result, by 2008, the commissioner began making efforts to reform the system by increasing the number of inspection stations and awarding the sites through a competitive bidding process.¹²

Georgia Lieutenant Governor Casey Cagle ordered Comm. Graham to meet with him in his office to discuss the matter.¹³ On January 28, 2008, Comm. Graham arrived to discover he was meeting not only with Lt. Gov. Cagle and his then-chief of staff Brad Alexander, but also with Rep. Deal, Rep. Deal's congressional chief of staff, Chris Riley, and Rep. Deal's business partner, Mr. Cronan.¹⁴ Rep. Deal has admitted to requesting the meeting, during which Rep. Deal and Mr. Cronan questioned Comm. Graham about his intentions.¹⁵

Lt. Gov. Cagle and Rep. Deal are both from Gainesville and represented the same district in the state Senate.¹⁶ Recovery Services, Inc. contributed \$1,000 to Lt. Gov. Cagle's 2005 campaign and Rep. Deal contributed an additional \$5,000 to the campaign in 2006.¹⁷

In June 2008, Comm. Graham was called to another meeting with Rep. Deal, Mr. Cronan and others.¹⁸ After the meeting, Comm. Graham proposed privatizing the system and opening it up to more competition, at the same time eliminating the \$1.7 million for the program from the state budget.¹⁹ The plan was adopted by the Georgia House and sent to the state Senate.²⁰

At that time, Rep. Deal's chief of staff used his official House email account to contact Georgia state officials in an effort to keep the money in the state budget.²¹ The *Atlanta Journal-Constitution* obtained emails to and from Mr. Riley.²² On March 20, 2009, Mr. Riley emailed Georgia Deputy Revenue Commissioner Mack Chandler advising him, "We would like to discuss with DOR your intentions regarding inspections, but the House version of the bill is pretty clear, never the less (sic), we would like to work with you. We have to be in Atlanta next Friday, does that work for you?"²³

¹¹ Id.

¹² Id.

¹³ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

²² Id.

²³ Id.

On March 23, 2009, an aide to Lt. Gov. Cagle emailed Mr. Riley, “I just want to clarify that you are asking the DOR Salvage Inspection Program be fully funded at the previous continuation budget of \$1.7M.”²⁴

On March 27, Comm. Graham again was forced to meet with Rep. Deal and Mr. Cronan and state Senate staff, but Comm. Graham, explained to reporters that he insisted the meeting be held on neutral ground: Gov. Perdue’s conference room.²⁵ According to Comm. Graham, Rep. Deal and Mr. Cronan made quite clear they did not want the inspection system changed.²⁶

Just three days later, on March 30, 2009, the Senate Appropriations Committee put the money for the program back into the budget.²⁷ In a transparent effort to conceal Rep. Deal’s interference, less than an hour after the vote -- after the program’s continuation was basically guaranteed -- Mr. Riley sent an email to Lt. Gov. Cagle’s office saying, “Following our meeting with Commissioner Graham, we would like to withdraw our request to fully fund the DOR Salvage Inspection Program and accept the House’s language.”²⁸

Rep. Deal denies contacting anyone in the Senate to ask that the money for the program be left in the budget and both state Senate Appropriations Committee Chairman Jack Hill and Subcommittee Chairman Mitch Seabaugh claim to have no idea how the money was restored to the budget.²⁹ Lt. Gov. Cagle’s current chief of staff, Bart Gobeil, refused to say whether Lt. Gov. Cagle asked that the money be restored.³⁰

Rep. Deal has defended Mr. Riley’s use of his House email account to pursue Rep. Deal’s personal financial interests, claiming Mr. Riley “is on 24 hours,” and he is “responsible for setting up meetings for me. . . that’s part of what he does.”³¹ Rep. Deal claims to have been acting on behalf of his constituents: his business partner and the “fellows who work in the office.”³²

Honest Services Fraud

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

²⁴ Id.

²⁵ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Sheinin and Salzer, *Atlanta Journal-Constitution*, Aug. 22, 2009.

³⁰ Id.

³¹ Id.

³² Id.

of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³³ By using his position as a member of Congress as well as congressional resources, including House office staff time, to financially benefit himself and his business partner, Rep. Deal 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, 1346.

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.”³⁴

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.”³⁵ 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 having Mr. Riley, while on official time and with the use of official resources, contact Georgia state officials to pursue Rep. Deal’s personal business interests, Rep. Deal violated 31 U.S.C. § 3102(a), House ethics rules, and the regulations of the Committee on House Administration.

5 C.F.R. § 2635.702(a)

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

An employee shall not use or permit use of his Government

³³ See *Information, United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

³⁴ Committee on House Administration, *Members’ Handbook*, *Staff*.

³⁵ *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).

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

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. Deal, by using his position to influence Lt. Gov. Cagle to require Comm. Graham to attend meetings to discuss Rep. Deal's personal financial interests, clearly violated 5 C.F.R. § 2635.702(a). Rep. Deal further violated this prohibition by using his position to influence the Georgia state legislature to void the action of Georgia's Commissioner of Revenue and instead act in Rep. Deal's personal financial interest.

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.³⁷ 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 influence Lt. Gov. Cagle and the Georgia state Senate to benefit his personal financial interest, Rep. Deal violated House conflict-of-interest rules.

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."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 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.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

³⁷ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

³⁸ Rule 23, cl. 1.

³⁹ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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).

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

By using his position as a member of Congress to interfere in a matter of Georgia policy to protect his personal financial interests -- against the interest of the state of Georgia as expressed by the state's Commissioner of the Department of Revenue -- and by attempting to conceal those efforts, Rep. Deal undisputably has acted in a manner that brings discredit to the House.

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).

REPRESENTATIVE JESSE JACKSON, JR.

Representative Jesse Jackson, Jr., is an eight-term member of Congress, representing Illinois' 2nd district. Rep. Jackson's ethics issue stems from his bid to be appointed to a vacant Illinois Senate seat and subsequently, the federal investigation of former-Governor Rod Blagojevich (D-IL).

Vacant Senate Seat

On December 9, 2008, Gov. Blagojevich was arrested by federal agents for what was described at the time as a "political corruption crime spree."¹ One of the central allegations against the governor was that he attempted to sell an appointment to the Senate seat vacated by then President-elect Obama.²

The *Chicago Tribune* identified Rep. Jackson as "Senate Candidate 5," who was mentioned several times in Gov. Blagojevich's arresting affidavit.³ In the affidavit, Gov. Blagojevich said he believed Rep. Jackson would "raise money" for him and that "he might get some (money) upfront."⁴ The governor also claimed that an "emissary" from Rep. Jackson came to him and offered to raise a total of \$1.5 million for his campaign should Rep. Jackson indeed be appointed to the vacant Senate seat.⁵

Days before his arrest, Gov. Blagojevich attended a campaign fundraiser, which was co-hosted by Raghuveer Nayak, a supporter of both the governor and Rep. Jackson.⁶ According to the arresting affidavit, the governor had used Mr. Nayak -- who he believed was close to Rep. Jackson -- as a go-between to encourage Rep. Jackson to start raising money for him.⁷ Also present at the event was Rep. Jackson's brother, Jonathan Jackson, who had close business ties to Mr. Nayak.⁸

¹ Jeff Coen, Rick Pearson, John Chase and David Kidwell, Illinois Gov. Rog Blagojevich Arrested on Federal Charges, *Chicago Tribune*, December 10, 2008 (Exhibit 1).

² Id.

³ Dan Mihalopoulos and David Kidwell, Rep. Jess Jackson Jr. Again Defends Himself in Rod Blagojevich Scandal, *Chicago Tribune*, December 13, 2008 (Exhibit 2); Affidavit in Support of Application, U.S. v. Blagojevich, Sealed, (N.D.IL 2008) (hereinafter "Cain Affidavit") (Exhibit 3).

⁴ Cain Affidavit.

⁵ Id.

⁶ David Kidwell, John Chase and Dan Mihalopoulos, Blagojevich Fundraiser Held by Jackson Allies Saturday, *Chicago Tribune*, December 12, 2008 (Exhibit 4).

⁷ Cain Affidavit.

⁸ Kidwell, Chase and Mihalopoulos, *Chicago Tribune*, Dec. 12, 2008.

Previous meetings between Mr. Nayak and Gov. Blagojevich's aides had established that the fundraiser was to support Rep. Jackson's bid for the vacant Senate seat.⁹ In fact, the day before the governor's arrest, Rep. Jackson met with him to discuss the vacancy.¹⁰

The Office of Congressional Ethics (OCE) launched a "preliminary review of Rep. Jackson's actions surrounding his bid for appointment to the Senate seat."¹¹ OCE asked Gov. Blagojevich's former staffers and campaign aides to turn over correspondence between Rep. Jackson and the governor.¹²

Additionally, the Department of Justice (DOJ) interviewed Rep. Jackson during the probe of Gov. Blagojevich.¹³ Federal authorities subpoenaed individuals with knowledge of the alleged fundraising effort by Rep. Jackson's supporters to encourage the governor to appoint the congressman to the Senate.¹⁴ A grand jury was to hear testimony on the fundraising effort, but details have yet to emerge.¹⁵

Rep. Jackson has denied any wrongdoing and claims to have cooperated with both investigations.¹⁶ In the first half of 2009, his campaign committee paid \$18,697 in legal fees¹⁷ in addition to \$100,000 paid in December 2008.¹⁸ The investigations are ongoing.¹⁹

Bribery

It is a violation of Illinois law for a person, with intent to influence the performance of any act related to the employment or function of any public officer to promise or tender to that officer any property or personal advantage which he is not authorized by law to accept.²⁰ If Rep. Jackson offered then-Gov. Blagojevich anything of value, including campaign contributions, in exchange for an appointment to the vacant U.S. Senate seat, Rep. Jackson may have violated Illinois bribery law.

⁹ Id.

¹⁰ Id.; Cain Affidavit .

¹¹ Natasha Korecki, Ethics Board Launches Probe into Rep Jesse Jackson Jr, *Chicago Sun-Times*, April 7, 2009 (Exhibit 5).

¹² Id.

¹³ Jeff Coen and John Chase, Rep. Jesse Jackson Jr.: Feds Step Up Inquiry, *Chicago Tribune*, April 9, 2009 (Exhibit 6).

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.; Susan Saulny and Christopher Drew, Investigators Take Closer Look at Rep. Jackson in Blagojevich Case, *New York Times*, April 13, 2009 (Exhibit 7).

¹⁷ Jesse Jackson, Jr. For Congress, FEC Form 3, April Quarterly Report 2009, April 13, 2009, p. 106; Jesse Jackson, Jr. For Congress, FEC Form 3, July Quarterly Report 2009, July 9, 2009, p. 25 (Exhibit 8).

¹⁸ Jesse Jackson, Jr. For Congress, FEC Form 3, Year End Report 2008, January 23, 2009, p. 7 (Exhibit 9).

¹⁹ Saulny, *New York Times*, Apr. 13, 2009.

²⁰ 720 ILCS 5/33-1(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.”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 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

If Rep. Jackson offered then-Gov. Blagojevich anything of value in exchange for an appointment to the U.S. Senate, he engaged in conduct that does not reflect creditably on the House.

²¹ Rule 23, clause 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 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).

REPRESENTATIVE JERRY LEWIS

Representative Jerry Lewis (R-CA) is a sixteen-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, 2007 and 2008 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 had 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 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 Committee.⁶ In the year before Ms. White left Rep. Lewis' employ, her salary was cut from the

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.

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.

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

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

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 2, 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.

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.

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 was also an employee of Rep. Lewis and had her own lobbying firm, Hillscape Associates, with an address identical to that of Copeland Lowery.²⁴ Ms. Shockey admitted that her client roster included 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 in total 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 were investigating the cozy relationship between Rep. Lewis and Copeland Lowery and the activities of Ms. White and Mr. Shockey were part of that probe.³¹ 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,

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.

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).

how much they paid, and the nature of the communications between Copeland Lowery and Rep. Lewis.³²

Cerberus Capital Management

Cerberus Capital Management, a New York investment company, is another defense contractor that 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 was 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 sufficiently had determined that the earmarks Rep. Cunningham doled out were legitimate.⁴¹

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

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

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.

⁴² Id.

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 award ADCS, Inc. as much money as Mr. Wilkes wanted.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

As of 2006, Rep. Lewis had 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 were 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 received earmarks from the House Appropriations Committee and lobbied Rep. Lewis.⁵⁰ Records show that Trident, one of Ms. White's lobbying clients, 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

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).

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.

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 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 raised \$113,700 through June 2006.⁵⁸ Of that, \$46,000 came from Ms. White, her husband, and small defense contractors represented by Copeland Lowery.⁵⁹

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.⁶⁰ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶¹

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.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Kammer and Stern, *Copley News Service*, June 7, 2006.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ 18 U.S.C. § 201(b)(2)(A).

⁶¹ 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 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.⁶² 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, 1346.

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.⁶³ 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.⁶⁴

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.

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.⁶⁵

⁶² See *Information, United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

⁶³ 18 U.S.C. § 201(c)(1)(B).

⁶⁴ *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

⁶⁵ *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506, 100th Cong., 2d Sess. (1988) (recommending expulsion of the member from the House); *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, 96th Cong., 2d Sess. (1980).

5 U.S.C. § 7353 and House Rules

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the House, officers, and employees from asking for anything of value from a broad range of people, including “anyone who seeks official action from the House, does business with the House, or has interests which may be substantially affected by the performance of official duties.”⁶⁶ 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 Cerebus, 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.

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.”⁶⁷ 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.

⁶⁶ 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.

⁶⁷ 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.

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.”⁶⁸

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.”⁶⁹ This ethics standard is considered to be “the most comprehensive provision” of the code.⁷⁰ 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.⁷¹ 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,⁷² making false

⁶⁸ Id.

⁶⁹ Rule 23, cl. 1.

⁷⁰ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

⁷¹ 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).

⁷² 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,⁷³ criminal convictions for bribery,⁷⁴ or accepting illegal gratuities,⁷⁵ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁶

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.

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."⁷⁷

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

⁷³ 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).

⁷⁴ 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)).

⁷⁵ 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).

⁷⁶ 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).

⁷⁷ 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).

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.⁷⁸

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.⁷⁹

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.⁸⁰ 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%.⁸¹

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.⁸² Rep. Lewis has helped direct more than \$200 million in federal dollars to the medical center, which has facilities named in his honor.⁸³ In June 2006, Rep. Lewis acknowledged that the medical center benefitted from \$40 million in earmarks.⁸⁴

⁷⁸ 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)).

⁷⁹ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

⁸⁰ Michael R. Blood, Calif. Congressman Saw Profit From Bank, *Associated Press*, July 19, 2006 (Exhibit 14).

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Blood, *Associated Press*, July 19, 2006.

Many of Security Bank's board members have also contributed to Rep. Lewis' campaign and are linked to businesses that received federal earmarks.⁸⁵ 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 served on the board of the National Orange Show Events Center in San Bernardino.⁸⁶ The center has received more than \$800,000 in federal funds.⁸⁷

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.⁸⁸ 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.⁸⁹

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.

Honest Services Fraud

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, 1346.

Conduct Not Reflecting Creditably on the House

If Rep. Lewis received preferential treatment in being allowed to participate in the initial public offering of Security Bank in exchange for earmarks, his conduct does not reflect creditably on the House and violates House Rule 23, clause 1.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ 18 U.S.C. § 201(c)(1)(B).

⁸⁹ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

Use of Detailee

Marine Lt. Col. Carl Kime was a military officer in the Department of Defense (DOD), who formerly tracked defense appropriations as a staff member for Rep. Lewis.⁹⁰ 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.⁹¹ He remained on the Pentagon's payroll while working in Rep. Lewis' office and did not receive a congressional salary.⁹²

A review of House disbursement records dating back to 2001 does not indicate Lt. Col. Kime served on Rep. Lewis' staff.⁹³ Old House phone directories show that Lt. Col. Kime has worked in Rep. Lewis' office since at least spring 2001.⁹⁴ 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.⁹⁵

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.”⁹⁶

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 2006.⁹⁷

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

⁹⁰ Alexander Bolton, Lewis's Use of Military Aide May Break the Rules, *The Hill*, February 2, 2006 (Exhibit 15).

⁹¹ Id.

⁹² Alexander Bolton, Pentagon Recalled Lewis's Approps Staffer, *The Hill*, February 22, 2006 (Exhibit 16).

⁹³ Bolton, *The Hill*, Feb. 2, 2006.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Bolton, *The Hill*, Feb. 22, 2006.

agreements.⁹⁸ 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."⁹⁹

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."¹⁰⁰ 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 continued to investigate Rep. Lewis' relationship with the lobbying firm Copeland Lowery, which has reorganized after losing two partners and is now called Innovative Federal Strategies (IFS).¹⁰¹ In the Fiscal Year 2008 Defense Appropriations bill, Rep. Lewis sponsored or co-sponsored earmarks totaling \$55 million for clients of IFS.¹⁰² Letitia White, former appropriations aide to Rep. Lewis, and former Rep. Bill Lowery were employed by IFS.¹⁰³

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.¹⁰⁴ ESRI's co-founders, Jack and Laura Dangermond, donated \$4,000 to

⁹⁸ Comm. on House Administration, Committees' Congressional Handbook, *Detailees* (emphasis added).

⁹⁹ Comm. on House Administration, Committees' Congressional Handbook, *Committee Staff, Consultants, and Detailees, Detailees Guideline 2*.

¹⁰⁰ Comm. on House Administration, Committees' Congressional Handbook, *Detailees*.

¹⁰¹ Kevin Bogardus, Lobbying Firm Linked to Rep. Lewis Booms Despite Federal Investigation, *The Hill*, August 15, 2007 (Exhibit 17).

¹⁰² Id.

¹⁰³ Lewis For Congress Committee, FEC Form 3, April Quarterly Report, April 15, 2007, p. 14 (Exhibit 18).

¹⁰⁴ Fed Spending Database, Contract to ESRI (FY2006), www.fedspending.org (Exhibit 19).

Rep. Lewis' campaign committee in 2006.¹⁰⁵ In 2007, Ms. Dangermond donated \$2,000 to Rep. Lewis' campaign committee.¹⁰⁶

Rep. Lewis received a subpoena requesting documents relating to the investigation of former Rep. Randy "Duke" Cunningham and contractor Brent Wilkes.¹⁰⁷ Despite the ongoing investigations, Rep. Lewis managed to maintain his position as the ranking member on the House Appropriations Committee.¹⁰⁸

Legal Fees

In 2006, Rep. Lewis' congressional committee, Lewis For Congress Committee, spent \$881,145.83 on legal fees.¹⁰⁹ The campaign committee's quarterly reports filed in April and July 2007 indicate that the committee spent \$66,561.61 in the first half of 2007.¹¹⁰

2008 UPDATE

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

Rep. Lewis remained under federal investigation regarding his relationship with lobbyist Bill Lowery and his firm, the now defunct Copeland, Lowery, Jacquez, Denton and White.¹¹¹ 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.¹¹² Soon thereafter, the House counsel moved to quash the subpoena on the grounds that the request for documents and testimony was too broad.¹¹³ 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

¹⁰⁵ Lewis For Congress Committee, FEC Form 3, April Quarterly Report 2006, April 13, 2006, p. 5 (Exhibit 20).

¹⁰⁶ Lewis For Congress Committee, FEC Form 3, April Quarterly Report 2007, April 15, 2007, p. 5 (Exhibit 21).

¹⁰⁷ Susan Crabtree, Lewis Holds Fast to Approps Seat, *The Hill*, April 25, 2007 (Exhibit 22).

¹⁰⁸ Id.

¹⁰⁹ 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).

¹¹⁰ 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).

¹¹¹ Roxana Tiron and Jackie Kucinich, Lewis Offers Defense of Earmarks, *The Hill*, February 14, 2008 (Exhibit 31).

¹¹² Erica Werner, House Aid Subpoenaed in Investigation of California GOP Rep. Jerry Lewis, *Associated Press*, October 12, 2007 (Exhibit 32).

¹¹³ Alan K. Ota, Subpoena to be Resisted as Overly Broad, *Congressional Quarterly Today*, October 16, 2007 (Exhibit 33).

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.”¹¹⁴

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.¹¹⁵ In 2008, ESRI has received contracts worth over \$4 million dollars.¹¹⁶ Jack and Laura Dangermond have donated \$7,200 to Rep. Lewis’ campaign in the first half of 2008.¹¹⁷

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.¹¹⁸ Mr. Wilkes subsequently was sentenced to 12 years in federal prison.¹¹⁹

Assistance to Stepdaughter

In February 2008, the Federal Election Commission granted Small Business Tech PAC’s request to shut down.¹²⁰ 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.¹²¹

Legal Fees

Since the release of CREW’s 2007 congressional corruption report, through April 2006, Rep. Lewis’ campaign committee spent \$198,392.82 in legal fees.¹²² In the past three years, Rep. Lewis’ campaign committee has paid over \$1 million in legal fees.¹²³

¹¹⁴ Congressional Record-House, Communication From Staff Member of Committee On Appropriations, H11755, October 18, 2007 (Exhibit 34).

¹¹⁵ Kammer, *Copley News Service*, Dec. 23, 2005; Fed Spending Database, Contracts to ESRI (FY 2007), www.fedspending.org (Exhibit 35).

¹¹⁶ Fed Spending Database, Contracts to ESRI (FY 2008), www.fedspending.org (Exhibit 36).

¹¹⁷ 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).

¹¹⁸ Greg Moran, Jury Finds Wilkes Guilty, *San Diego Union-Tribune*, November 6, 2007 (Exhibit 38).

¹¹⁹ Greg Moran, Wilkes Gets 12 Years in Prison for Bribery, *San Diego Union-Tribune*, February 20, 2008 (Exhibit 39).

¹²⁰ Tory Newmyer and Matthew Murray, Money Matters, *Roll Call*, February 27, 2008 (Exhibit 40).

¹²¹ Id.

¹²² 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).

¹²³ Matthew Murray, Weller, Lewis Spend Big on Legal Fees, *Roll Call*, January 28, 2008 (Exhibit 42).

2009 UPDATE

Relationship with Bill Lowery and Copeland Lowery Jacquez Denton & White

Despite the continued scrutiny of his earmarking activities, Rep. Lewis has continued to request earmarks for Mr. Copeland and Ms. White's clients at IFS.¹²⁴ In 2009, Rep Lewis requested more than \$218 million in earmarks.¹²⁵ Nearly half of that -- \$102 million -- was designated for projects of IFS clients.¹²⁶ Of his 89 earmark requests, 32 were for clients of IFS.¹²⁷ Rep. Lewis also earmarked almost \$27 million for colleges and communities -- again clients of IFS -- that have been subpoenaed in recent years as part of the investigation into Rep. Lewis.¹²⁸ Rep. Lewis requested \$12 million in earmarks for ESRI¹²⁹ and \$13.7 million for the Loma Linda University, where his brother works in government relations department.¹³⁰

The House General Counsel successfully quashed the subpoena of appropriations staffer Greg Lankler relating to the Rep. Lewis investigation.¹³¹ The investigation into Rep. Lewis appears to be stagnant.¹³²

Legal Fees

This year, Rep. Lewis has paid \$68,000 in legal fees from his campaign account.¹³³

¹²⁴ Ben Goad, Jerry Lewis Defends Earmark Requests, *Press Enterprise*, May 25, 2009 (Exhibit 43).

¹²⁵ <https://realtime.dabbledb.com/page/jerrylewisearmarkrequests/uInmnDpt#page> (Exhibit 44).

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.; Guy McCarthy and Andrew Silva, Yucca Valley Tied to Lewis Inquiry, *San Bernardino County Sun*, June 6, 2006; George Watson and Andrew Silva, 2 More Cities Asked to Give Documents, *San Bernardino County Sun*, June 6, 2006; John Bresnahan, Subpoenas Indicate Lewis Probe is Heating Up, *Roll Call*, June 5, 2006; Guy McCarthy, FBI Eyes County Records, *San Bernardino County Sun*, June 1, 2006; George Watson, Highland's Turn in Lewis Inquiry, *San Bernardino County Sun*, June 15, 2006 (Exhibit 45).

¹²⁹ See <https://realtime.dabbledb.com/page/jerrylewisearmarkrequests/uInmnDpt#page>.

¹³⁰ Id.; David Kirkpatrick, Murtha's Nephew Named a Lobbyist for Marines, *New York Times*, May 2, 2009 (Exhibit 46).

¹³¹ Carrie Johnson, Legislators Using Law as Shield in Probes, *Washington Post*, November 1, 2008 (Exhibit 47).

¹³² Goad, *Press Enterprise*, May 25, 2009.

¹³³ Jennifer Yachnin, Rangel Report Big '09 Legal Expenses, *Roll Call*, July 21, 2009 (Exhibit 48).

REPRESENTATIVE ALAN B. MOLLOHAN

Representative Alan B. Mollohan (D-WV) is a fourteen-term Member of Congress, representing West Virginia's 1st congressional district. He serves on the House Appropriations Committee, where he is chair of the Subcommittee on Commerce, Justice, Science, and Related Agencies; he is also a member of the Subcommittee on Interior, Environment and Related Agencies and the Subcommittee on Homeland Security.

Rep. Mollohan's ethics issues stem primarily from misuse of his position on the powerful Appropriations Committee, from which he has steered hundreds of millions of dollars in earmarks to family, friends, former employees, and corporations in exchange for contributions to his campaign and political action committees. In addition, Rep. Mollohan misreported his personal assets on his financial disclosure forms. He is currently the subject of an investigation by the U.S. Department of Justice. The congressman was included in CREW's 2006, 2007, and 2008 reports on congressional corruption.

Earmarking of Funds for Personal Benefit

From 1996 to 2006, Rep. Mollohan 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 staffed by close associates of the congressman.²

The non-profits include: the Institute for Scientific Research; the West Virginia High Technology Consortium Foundation; the Canaan Valley Institute; the Vandalia Heritage Foundation; and, the MountainMade Foundation. All of these organizations are run by the congressman's friends, who contributed regularly to his campaign, his political action committee, Summit PAC, or 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 committee.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 from 1995 to 2006.⁷ A majority of ISR's earmarked funds were used to construct the organization's new headquarters, even though from the outset, ISR was reported to be in disarray.⁸ ISR's chief executive resigned after a controversy erupted over his \$500,000 annual compensation, which was 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 largest 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 Estep, a former head of ISR,¹⁴ served as the foundation's president and CEO.¹⁵ Jack Carpenter was the foundation's vice president as well as chairman of another Mollohan-created foundation, MountainMade.¹⁶ Raymond Oliverio was the foundation's executive vice president; he also was the treasurer of the

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).

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

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 established by Rep. Mollohan, worked on stream restoration and wastewater treatment.¹⁹ In 2006, CVI was building a \$33 million headquarters on 3,028 acres of land, which was being paid for with earmarks secured by Rep. Mollohan.²⁰ Having received at least \$28 million in federal funds since 1995,²¹ CVI relied on federal earmarks for 97% of its funding through April 2006.²²

CVI was housed in the office building of a fourth Mollohan-created non-profit, Vandalia Heritage Foundation.²³ CVI's \$5,100 monthly rent, paid to Vandalia, was covered by earmarks from the Environmental Protection Agency and the National Oceanic Atmospheric Administration.²⁴

Vandalia Heritage Foundation

Founded in 1998, Vandalia Heritage Foundation restored historic buildings and invested in devalued property.²⁵ Relying on earmarks for 92% of its funding, it received \$31.5 million in federal grants from 1999 through 2006.²⁶ Vandalia coordinated construction of ISR's headquarters building.²⁷ The foundation's funds decreased after Rep. Mollohan left the subcommittee responsible for appropriating funds for the Department of Housing and Urban Development.²⁸

Vandalia Heritage Foundation has been run by Laura Kurtz Kuhns.²⁹ A former appropriations staffer in Rep. Mollohan's office, Ms. Kuhns was a key player in Rep.

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 Id.

²⁵ Wilke, *Wall Street Journal*, Apr. 7, 2006.

²⁶ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

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

²⁸ Id.

²⁹ Id.

Mollohan's efforts to earmark funds for West Virginia; she was also the congressman's investment partner.³⁰

In addition to Vandalia, Ms. Kuhns has served on the boards of three other non-profits that are funded via earmarks. These include the Mollohan-created foundations MountainMade, ISR, and the National Housing Development Corporation (NHDC), which is the only out-of-state non-profit supported by Rep. Mollohan.³¹ NHDC, based in California, received \$31 million in earmarks between 2001 and 2006.³²

MountainMade Foundation

Created in 2000, MountainMade Foundation was a federally-funded, non-profit dedicated to promoting West Virginia crafts.³³ The smallest of the non-profits funded by the congressman, it received \$3.3 million in earmarks from 1995 to 2006.³⁴

MountainMade was housed on the first floor of the Vandalia Heritage Foundation's building; earmarks from the Small Business Administration were used to pay Vandalia its monthly rent of \$5,166.67.³⁵

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.³⁶ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.³⁷

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,

³⁰ Id.

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

³² Id.

³³ Id.

³⁴ Bowen, *Dominion Post*, May 28, 2006.

³⁵ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

³⁶ 18 U.S.C. § 201(b)(2)(A).

³⁷ 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).

loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.³⁸ By using his position as a member of Congress to financially benefit clients of a lobbying firm that employed one of his former aides, and by earmarking federal funds in apparent exchange for campaign contributions, Rep. Mollohan 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, 1346.

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.³⁹ 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.⁴⁰

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.

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.⁴¹

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."⁴² 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

³⁸ See *Information, United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

³⁹ 18 U.S.C. § 201(c)(1)(B).

⁴⁰ *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

⁴¹ *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).

⁴² See House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices, April 25, 1997.

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

If Rep. Mollohan accepted campaign contributions in return for legislative assistance by way of earmarking federal funds, he likely violated 5 U.S.C. § 7353 and House Rule 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.”⁴³ 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.”⁴⁴

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.”⁴⁵ This ethics standard is considered to be “the most comprehensive provision” of the Code.⁴⁶ 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.⁴⁷

⁴³ 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.

⁴⁴ Id.

⁴⁵ Rule 23, cl. 1.

⁴⁶ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

⁴⁷ 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).

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,⁴⁸ making false statements to the Committee,⁴⁹ criminal convictions for bribery,⁵⁰ or accepting illegal gratuities,⁵¹ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁵²

Rep. Mollohan apparently accepted campaign contributions in return for legislative favors that financially benefited campaign contributors and non-profit organizations that he had 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 Bilbao, Spain

In June 2004, Rep. Mollohan, his wife, and two top aides took a five-day trip to Bilbao, Spain. The trip, arranged by the West Virginia High Technology Consortium, 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.⁵³ Disclosure forms list the sponsor of the Spain trip as the “West Virginia (WV)-01 Trade Delegation,”⁵⁴ which, according to Rep. Mollohan’s office, was an *ad hoc* group of 19 government contractors and West Virginia non-profits.⁵⁵ Officials affiliated with the non-profit groups donated nearly \$400,000 to Rep. Mollohan’s re-election campaigns from 1997 through 2006.⁵⁶

⁴⁸ 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).

⁴⁹ 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).

⁵⁰ 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)).

⁵¹ 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).

⁵² 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).

⁵³ John Bresnahan, W.Va. Firms Footed Mollohan Trip, *Roll Call*, May 8, 2006 (Exhibit 6).

⁵⁴ Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed July 23, 2004 (Exhibit 7).

⁵⁵ Bresnahan, *Roll Call*, May 8, 2006.

⁵⁶ Id.

Representatives from TMC Technologies, a West Virginia high-tech firm, also accompanied Rep. Mollohan on the trip.⁵⁷ According to a press release issued by TMC 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.”⁵⁸ In 2004, TMC donated \$5,000 to Rep. Mollohan’s family foundation.⁵⁹ Since 2001, TMC’s President Wade Linger and his wife have given at least \$54,450 to Rep. Mollohan’s PAC and Mr. Linger’s employees have given another \$20,095.⁶⁰ 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.⁶¹ Since 2001, TMC has secured at least \$10 million in federal contracts; company officials have openly thanked Rep. Mollohan for adding the earmarks into spending bills.⁶²

A representative from FMW Composite Systems also accompanied Rep. Mollohan on the Spain trip.⁶³ FMW’s Chief Executive Officer, Dale McBride, is a life-long friend of the Congressman, and in May 2005, the two purchased a 300-acre farm together in West Virginia.⁶⁴ In December 2005, FMW won a \$2.1 million NASA contract from a program funded through a Rep. Mollohan earmark.⁶⁵

Azimuth, Inc., another West Virginia company that provided electronic and software engineering support services, also helped underwrite the Spain trip.⁶⁶ Azimuth won a \$20 million contract from the Department of Homeland Security in 2006⁶⁷ and its employees gave \$12,600 during the 2006 election cycle, and \$16,000 in the 2004 election cycle, to Rep. Mollohan’s campaign committee.⁶⁸

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Michael Forsythe, Mollohan Helped Steer U.S. Contracts to Family-Charity Donors, *Bloomberg*, June 22, 2006 (Exhibit 8).

⁶⁰ Id.

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

⁶² John Bresnahan, Mollohan Got \$23K From MZM, *Roll Call*, December 8, 2005 (Exhibit 9).

⁶³ Bresnahan, *Roll Call*, May 8, 2006.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Bresnahan, *Roll Call*, May 8, 2006.

⁶⁸ 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).

Illegal Gratuity

If Rep. Mollohan solicited funding for his trip to Spain from TMC Technologies just one month after TMC received a \$5 million contract resulting from an Mollohan earmark, Rep. Mollohan would be in violation of 18 U.S.C. § 201(c)(1)(B). Similarly, the trip's funding 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.⁶⁹ 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.⁷⁰

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, which is in violation of 5 U.S.C. § 7353. By accepting more than \$74,000 in campaign contributions from TMC Technologies, its president, and employees – as well as by accepting funding for the Spain trip 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.

⁶⁹ 5 U.S.C. § 7353.

⁷⁰ *Id.* (emphasis added).

The trip's financing may also involve 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.⁷¹

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."⁷²

In this instance, 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 group of 19 government contractors and West Virginia-based entities, while the trip itself 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, and which 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.

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 functioned as a third conduit for donations from government contractors and executives of non-profit organizations to which Rep. Mollohan has steered federal funds.⁷³ The foundation held an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, West Virginia – a top-100 course according to *Golf Magazine*.⁷⁴ 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.⁷⁵ Additionally, the West VHTCF provided staff and office services to the Mollohan Family Foundation.⁷⁶ Staff includes Raymond Oliverio, who was formerly the WVHTCF's executive vice president, treasurer of the

⁷¹ 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).

⁷² *Proper Sources of Expenses for Officially Connected Travel*, Rules of the House of Representatives on Gifts and Travel.

⁷³ Wilke, *Wall Street Journal*, Apr. 7, 2006.

⁷⁴ Gary Gaylean, Golf Magazine's Ranking of the Top Courses in the U.S. For 2003, *Golf Magazine*, August 11, 2003 (Exhibit 11).

⁷⁵ Wilke, *Wall Street Journal*, Apr. 7, 2006.

⁷⁶ Id.

Alan H. Mollohan Innovation Center,⁷⁷ and treasurer of the Robert H. Mollohan Family Charitable Foundation until at least 2006.⁷⁸

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.⁷⁹ 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 in January of that same year.⁸⁰

The foundation had a total donor list of 43 companies, including nine of the top 10 contributors to Rep. Mollohan's 2004 reelection campaign.⁸¹

Acceptance of a Bribe

Substantial contributions received by Rep. Mollohan's private foundation from companies that benefited from federal contracts earmarked by him, 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, 1346.

Illegal Gratuity

To the extent Rep. Mollohan has accepted donations to his family charity in exchange for earmarking federal funds to government contractors who make 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 who make those donations, he may have violated 5 U.S.C. § 7353 and House Rule 23.

⁷⁷ Rudoren, Johnston, and Pilhofer, *New York Times*, Apr. 8, 2006.

⁷⁸ Robert H. Mollohan Family Charitable Foundation, Inc., 2006 IRS Form 990, filed May 14, 2007 (Exhibit 12).

⁷⁹ Forsythe, *Bloomberg*, June 22, 2006.

⁸⁰ Id.

⁸¹ Id.

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.⁸² 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, apparently in an effort to disguise the dramatic increase in his personal wealth.⁸³ Those forms showed a jump in Rep. Mollohan's portfolio, from less than \$500,000 in assets that generated less than \$80,000 in income in 2000, to at least \$6.3 million in assets earning \$200,000 to \$1.2 million in 2004.⁸⁴ As of 2005, Rep. Mollohan's reported personal assets were worth at least \$8 million and his liabilities were in excess of \$3.43 million.⁸⁵ The congressman credited part of this increase in assets to a sizeable inheritance from his father's estate.⁸⁶ On 2006 personal financial disclosures, Mollohan showed at least \$5.9 million in assets that earned at least \$694,700, with at least \$4.4 million in liabilities.⁸⁷ The 2007 forms showed assets totaling at least \$5.88 million, which earned \$103,711 and liabilities of at least \$2 million.⁸⁸

Rep. Mollohan's real estate holdings include 17 units in The Remington, a Washington, D.C. condominium complex, which he, along with his wife, Barbara, his third cousin, Joseph L. Jarvis, and Mr. Jarvis' wife, purchased in 1996.⁸⁹ Over the ensuing seven years, they added another 10 units,⁹⁰ between 1999 and 2003, The Remington increased in value by more than 9,000%.⁹¹ The condos were then valued at \$8 million.⁹²

⁸² Rudoren, Johnston and Pilhofer, *New York Times*, Apr. 8, 2006.

⁸³ Id.

⁸⁴ Id.

⁸⁵ John Bresnahan, Mollohan Made \$1M-Plus in Real Estate in 2005, *Roll Call*, June 14, 2006 (Exhibit 13).

⁸⁶ Id.

⁸⁷ Rep. Alan Mollohan, Personal Financial Disclosure Statement For Calendar Year 2006, filed May 17, 2007 (Exhibit 14).

⁸⁸ Rep. Alan Mollohan, Personal Financial Disclosure Statement For Calendar Year 2007, filed May 15, 2008 (Exhibit 15).

⁸⁹ 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).

⁹⁰ Id.

⁹¹ Bresnahan, *Roll Call*, Jun. 14, 2006.

⁹² Jodi Rudoren and Aron Pilhofer, Congressman's Condo Deal Is Examined, *New York Times*, May 17, 2006 (Exhibit 17).

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.⁹³ The two families jointly owned five properties on Baldhead Island, North Carolina, which, in 2006, were listed in local real estate records as having a total value of \$2 million.⁹⁴

In May 2005, Rep. Mollohan and Dale McBride, CEO of FMW, and whom Rep. Mollohan has described as a life-long friend, jointly purchased a 300-acre farm in West Virginia.⁹⁵ All of Rep. Mollohan's real estate deals are currently under scrutiny by the U.S. Department of Justice.⁹⁶

In June 2006, in reaction to NLPC's complaint, Rep. Mollohan filed two dozen corrections to his past six financial disclosure forms.⁹⁷

18 U.S.C. § 1001

Federal law prohibits Members of Congress from making "any materially false, fictitious, or fraudulent statement or representation"⁹⁸ on "a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch."⁹⁹

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."¹⁰⁰

⁹³ Wilke, *Wall Street Journal*, Apr. 7, 2006.

⁹⁴ *Id.*

⁹⁵ *Id.*; Bresnahan, *Roll Call*, May 8, 2006.

⁹⁶ Rudoren and Pilhofer, *New York Times*, May 17, 2006.

⁹⁷ 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).

⁹⁸ 18 U.S.C. § 1001(a)(2).

⁹⁹ *Id.* at § 1001(c)(2).

¹⁰⁰ House Comm. On Standards of Official Conduct, *Assets and Unearned Income*, Financial Disclosure Instruction Booklet.

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

Deferral to Department of Justice

The fact that the Department of Justice is currently conducting a criminal investigation of Rep. Mollohan's activities should not be a basis for the Ethics Committee to defer any investigation into, or action on, Rep. Mollohan's ethical violations. Under the Committee on Standards of Official Conduct Rule 15(f), the Committee "may defer action on a complaint against a Member" if: 1) "the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or 2) "the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."¹⁰¹

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.¹⁰²

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.¹⁰³

Rep. Mollohan's conduct unquestionably relates 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

¹⁰¹ 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).

¹⁰² 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)).

¹⁰³ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

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

Department of Justice Investigation

Due to the Department of Justice criminal investigation, in January 2007, when Rep. Mollohan was named 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.¹⁰⁴

The FBI subpoenaed financial records from the non-profit organizations that have benefitted from federal funding steered to them by Rep. Mollohan.¹⁰⁵ In addition, at least one witness has been subpoenaed to testify before a grand jury about Rep. Mollohan's finances.¹⁰⁶

Despite the legal questions surrounding some of Rep. Mollohan's previous earmarks, he requested a \$1 million earmark to allow the Department of the Interior to expand a wilderness area abutting property owned by him.¹⁰⁷ The Nature Conservancy and the Conservation Fund both urged the congressman to request the earmark, which was listed as a priority by the U.S. Fish and Wildlife Service.¹⁰⁸ As required by House Rules, Rep. Mollohan certified that neither he nor his spouse has a financial interest in the project.¹⁰⁹ 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.¹¹⁰

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 services, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self dealing, concealment, bribery, fraud and corruption. 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, 1346.

¹⁰⁴ Andrew Taylor, Congressman Recuses Himself, *Associated Press*, January 10, 2007 (Exhibit 20).

¹⁰⁵ Id.

¹⁰⁶ Beth Gorczyca Ryan, Possible Subpoenas Sent in Mollohan Issue, *State Journal*, March 22, 2007 (Exhibit 21).

¹⁰⁷ Paul Singer, Mollohan Earmarks Nearby Land, *Roll Call*, June 28, 2007 (Exhibit 22).

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Id.

2008 UPDATE

Canaan Valley Institute

In 2007, as a result of mounting media pressure, Rep. Mollohan stripped all CVI related earmarks out of the fiscal year 2007 Agriculture Bill.¹¹¹

Trip to Bilbao, Spain

Rep. Mollohan received \$12,500 from Azimuth employees in the 2008 election cycle through June 2008, and has taken at least \$46,000 in total funds over the course of his entire career.¹¹² Azimuth was a sponsor of the 2004 trip.¹¹³

Relationship with ProLogic

ProLogic, a company that made software for fighter jets, was under FBI investigation for using federal funds for profit.¹¹⁴ Rep. Mollohan used federal funds to set up a business center for ProLogic, and earmarked funds for the company,¹¹⁵ which had offices at the same address as the West Virginia High Technology Consortium Foundation.¹¹⁶ Since 1998, Rep. Mollohan received at least \$26,000 in campaign donations from ProLogic employees;¹¹⁷ additionally, the company was one of the contractors that sponsored Rep. Mollahan's trip to Bilbao, Spain.¹¹⁸

¹¹¹ Susan Crabtree, GOP Complains as Mollohan Earmarks Stripped From Bill, *The Hill*, August 3, 2007 (Exhibit 23).

¹¹² 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).

¹¹³ Bresnahan, *Roll Call*, May 8, 2006.

¹¹⁴ Sharyl Attkisson, The "Pros" Of The Earmark Game, *CBS News*, January 11, 2008 (Exhibit 25).

¹¹⁵ Id.

¹¹⁶ ProLogic Website: <http://www.prologic-inc.com> (Exhibit 26).

¹¹⁷ 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. 23; Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2006, April 10, 2006, pp. 33, 42, 43, 76, 87 (Exhibit 27).

¹¹⁸ Rep. Alan Mollohan, Member/Officer Travel Disclosure Form, filed on July 23, 2004 (Exhibit 28).

A ProLogic spokesman said that Rep. Mollohan did not earmark for the company in fiscal year 2007 or 2008;¹¹⁹ however, in fiscal year 2007, the company received over \$55 million dollars in federal contracts. Of that amount, at least \$24 million was allocated to projects in Rep. Mollohan's district.¹²⁰

Federal Investigation

Rep. Mollohan has claimed that he has not been informed by the Justice Department that he is the target of an investigation.¹²¹ Nevertheless, he recused himself from a March 2008 hearing at which FBI Director Robert Mueller testified due to the ongoing investigation.¹²²

2009 UPDATE

Federal Investigation/Legal Fees

Rep. Mollohan spent over \$157,000 on legal fees and services in the 2008 election cycle.¹²³ Despite an ongoing investigation, Rep. Mollohan did not recuse himself from working on the fiscal year 2010 Commerce, Science and Justice appropriations bill, which controls funding of the Justice Department.¹²⁴ As of July 2009, Rep. Mollohan had not released a letter he claims to have written, recusing himself from working on these issues in January 2007.¹²⁵

West Virginia High Technology Consortium Foundation

Several additional companies with offices at the WVHTCF run office park have continued to maintain a close relationship with Rep. Mollohan by supporting both his campaign and the Mollohan Family Foundation.¹²⁶

¹¹⁹ Bill Byrd, ProLogic 'Believes it Has Acted Responsibly', *Times West Virginian*, January 25, 2008 (Exhibit 29).

¹²⁰ Fed Spending Database, Contracts to ProLogic Inc. (FY 2007), www.FedSpending.org (Exhibit 30).

¹²¹ Kate Ackley, Rachel Van Dongen and Elizabeth Brotherton, Morning Business, *Roll Call*, October 16, 2007 (Exhibit 31).

¹²² Andrew Noyes, FBI Director Grilled On Use of Increase in Funding Level, *Congress Daily*, April 1, 2008 (Exhibit 32).

¹²³ Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2007, April 12, 2007, p. 59; Alan Mollohan for Congress, FEC Form 3, July Quarterly Report 2007 Amended, August 13, 2007, pp. 49, 50, 56; Alan Mollohan for Congress, FEC Form 3, October Quarterly Report 2007, October 11, 2007, p. 67; Alan Mollohan for Congress, FEC Form 3, Year End Report 2007, January 28, 2008, pp. 28, 32; Alan Mollohan for Congress, FEC Form 3, July Quarterly Report 2008, July 14, 2008, p. 22; Alan Mollohan for Congress, FEC Form 3, Post-General Report 2008, December 3, 2008, p. 34 (Exhibit 33).

¹²⁴ John Carlisle, Pelosi AWOL as Mollohan Still Controls Budget of Those Investigating Him, *National Legal and Policy Center Blog Post*, July 16, 2009 (Exhibit 34).

¹²⁵ Id.

¹²⁶ Paul Singer, Six Degrees of Alan Mollohan, *Roll Call*, January 29, 2009 (Exhibit 35).

Information Manufacturing Corporation

Information Manufacturing Corporation (IMC) is owned by Mineral Holding Company, which is owned by Jim Cava and Robert Hytner.¹²⁷ Since 1998, Mr. Cava and Mr. Hytner, their families, and employees of IMC contributed over \$140,000 to Rep. Mollohan's campaign and PAC.¹²⁸ This year, Robert and Joanne Hytner each contributed \$2,300 to Rep. Mollohan's campaign committee.¹²⁹ IMC also supports the Mollohan Family Foundation, most notably with a \$10,000 donation in 2006.¹³⁰

Perhaps coincidentally, from 2000 to 2008, IMC received millions of dollars in federal contracts including more than \$84 million in contracts from the National Oceanic and Atmospheric Administration (NOAA).¹³¹ The appropriations subcommittee that Rep. Mollohan chairs is responsible for NOAA's budget.¹³²

Electronic Warfare Associates, Inc.

Electronic Warfare Associates, Inc. (EWA) is another company with a long relationship with Rep. Mollohan.¹³³ EWA employees and their family members have contributed over \$161,000 to Rep. Mollohan's campaign and PAC since 1998.¹³⁴ In 2006, EWA also contributed \$25,000 to the Mollohan Family Foundation.¹³⁵ In addition to having office space at the WVHTCF, Frank Blake, an EWA vice president, sits on the board of the WVHTCF.¹³⁶

EWA received a \$4 million earmark from Rep. Mollohan in 2007.¹³⁷ EWA's new offices on the WVHTCF campus were partially financed by the Department of Commerce Economic Development Administration, which falls under the appropriations jurisdiction of Rep. Mollohan's subcommittee.¹³⁸

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Alan Mollohan for Congress, FEC Form 3, April Quarterly Report 2009, April 9, 2009, pp. 6-7 (Exhibit 36).

¹³⁰ Singer, *Roll Call*, Jan. 29, 2009.

¹³¹ Id.; Fed Spending Database, Contracts to Information Manufacturing Corp. (FY 2000- FY 2008), www.fedspending.org (Exhibit 37).

¹³² Singer, *Roll Call*, Jan. 29, 2009.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Singer, *Roll Call*, Jan. 29, 2009; <http://www.wvhtf.org/about/leadership/> (Exhibit 38).

¹³⁷ Singer, *Roll Call*, Jan. 29, 2009.

¹³⁸ Id.

Randall West and Robison International

Rep. Mollohan had close ties to Robison International, a lobbying firm run by retired Major General Randall L. West.¹³⁹ Robison International represented several of Rep. Mollohan's largest campaign donors, including Azimuth, IMC, Lockheed Martin, and Boeing.¹⁴⁰ It also represented FMW Composite Systems, to which Rep. Mollohan helped steer federal funds.¹⁴¹ FMW's owner is Dale McBride, who invested in real estate with Rep. Mollohan.¹⁴² Finally, Robison International represented the Mollohan-linked non-profits, WVHTCF and ISR.¹⁴³

In 2006, the Mollohan Family Foundation announced it would start accepting money for a fund named after Gen. West.¹⁴⁴ Gen. West admitted to lobbying Rep. Mollohan on behalf of his West Virginia clients.¹⁴⁵

Employees of Robison International have donated over \$34,000 to Rep. Mollohan's campaigns, including \$6,900, to date, in the 2010 cycle.¹⁴⁶

The Robert H. Mollohan Family Charitable Foundation

In March 2009, *Roll Call* revealed the WVHTCF provided the Mollohan Family Foundation \$75,000 in free rent and administrative services in 2005, which was around the time Rep. Mollohan was earmarking millions for WVHTCF.¹⁴⁷

¹³⁹ Ken Silverstein, *Inappropriate Appropriations*, *Harper's*, April 26, 2006 (Exhibit 39).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Silverstein, *Harper's*, Apr. 26, 2006.

¹⁴⁴ Paul Singer, *Roll Call*, Jan. 29, 2009.

¹⁴⁵ *Id.*

¹⁴⁶ Alan Mollohan for Congress, *FEC Form 3, Pre-Primary Report 1998*, May 1, 1998, p. 1; Alan Mollohan for Congress, *FEC Form 3, Year End Report 2001*, January 23, 2001, p. 46; Alan Mollohan for Congress, *FEC Form 3, Pre-Primary Report 2002*, April 26, 2002, pp. 6, 8-9; Alan Mollohan for Congress, *FEC Form 3, April Quarterly Report 2004*, April 14, 2004, pp. 49, 118, 119; Alan Mollohan for Congress, *FEC Form 3, July Quarterly Report 2005*, July 8, 2005, p. 26; Alan Mollohan for Congress, *FEC Form 3, April Quarterly Report 2006*, April 10, 2006, pp. 44, 102; Alan Mollohan for Congress, *FEC Form 3, October Quarterly Report 2006*, October 10, 2006, p. 69; Alan Mollohan for Congress, *FEC Form 3, April Quarterly Report 2007*, April 12, 2007, p. 34; Alan Mollohan for Congress, *FEC Form 3, July Quarterly Report 2007*, July 10, 2007, pp. 22, 34; Alan Mollohan for Congress, *FEC Form 3, October Quarterly Report 2007*, October 11, 2007, pp. 18, 19, 51; Alan Mollohan for Congress, *FEC Form 3, April Quarterly Report 2008*, April 9, 2008, p. 7; Alan Mollohan for Congress, *FEC Form 3, Pre-Primary Report 2008*, May 1, 2008 p. 5; Alan Mollohan for Congress, *FEC Form 3, Year End Report 2008*, April 22, 2009, p. 5; Alan Mollohan for Congress, *FEC Form 3, July Quarterly Report 2009*, July 14, 2009, p. 5, 7, 11(Exhibit 40).

¹⁴⁷ Paul Singer, *Mollohan Charity Got Rent Deal*, *Roll Call*, March 10 2009 (Exhibit 41).

Acceptance of a Bribe

Substantial contributions received by Rep. Mollohan's campaign committee and private foundation from companies that benefited from earmarks inserted by the congressman raise a serious question as to whether there was a direct exchange 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, 1346.

Illegal Gratuity

To the extent Rep. Mollohan has accepted donations to his family charity in exchange for earmarking federal funds to government contractors who make 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 or his campaign committee in exchange for earmarking federal funds to government contractors who make 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 and his campaigns, Rep. Mollohan may also have violated 5 C.F.R. § 2635.702(a), which prohibits members from taking actions for the prospect of personal gain for themselves or others.

REPRESENTATIVE JOHN P. MURTHA

Representative John P. Murtha (D-PA) is a nineteen-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 issues and violations stem from (1) his ties to the PMA Group, a now defunct lobbying firm under federal investigation; (2) his ties to Kuchera Industries, a defense contractor under federal investigation; (3) his ties to defense executives and former military personnel convicted of skimming money from government contracts; (4) actions he may have taken on benefit his brother's lobbying clients; and (5) his chief of staff's threats to a political opponent.

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, 2007, and 2008 reports on congressional corruption.

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 \$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

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).

⁸ Murtha for Congress Committee, FEC Form 3 Reports, 2000-2007, (pages listing contributions attached, Exhibit 7).

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 which 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 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 the 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

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).

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 December 4, 2006 (Exhibit 13).

¹⁸ Id.

¹⁹ Id.

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 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:

Since 2002, Conemaugh Health System employees, board members and their family members have contributed \$47,750 to Rep. Murtha’s campaign committee.²⁶

Since 2000, employees of DRS Technologies and their family members have donated \$83,500 to Rep. Murtha.²⁷ Since 2002, the firm’s political action committee, DRS Technology Good Government Fund, has donated \$35,000 to Rep. Murtha’s campaign committee and his PAC.²⁸

Since 2003, KDH Defense system President David E. Herbener has donated \$7,200 to Rep. Murtha’s campaign committee.²⁹

²⁰ www.sarkadyprocess.com (Exhibit 14).

²¹ See Concurrent Technologies Corporation, 2005 Tax Form 990, filed Dec. 4, 2006.

²² 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).

²⁵ \$406b Defense Bill to Benefit Local Organizations, *Tribune-Democrat*, August 5, 2007 (Exhibit 19).

²⁶ Murtha for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 20).

²⁷ Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 21).

²⁸ 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).

Since 2002, employees of L. Robert Kimball and Associates and their families have donated \$33,700 to Rep. Murtha's campaign committee.³⁰ Since 2006, Employees of the firm have also donated \$6,000 to Rep. Murtha's PAC.³¹

Since 2002, employees of Kuchera Defense Industries and their family members have donated \$61,400 to Rep. Murtha's campaign committee³² and since 2006, they have contributed an additional \$6,000 to his PAC.³³

Since 2001, MTS Technologies' employees, board members and their families have contributed \$74,200 to Rep. Murtha's campaign committee.³⁴ In addition, since 2006, employees of MTS have contributed \$9,000 to Rep. Murtha's PAC.³⁵

Since 2000, Northrop Grumman's PAC has contributed a total of \$34,500 to Rep. Murtha's campaign committee and PAC.³⁶

Since 2000, employees of St. Francis University and their families have donated \$15,500 to Rep. Murtha's campaign campaign.³⁷

Since 2000, employees, board members, and family members of Windber Research Institute have donated \$21,250 to Rep. Murtha's campaign committee and PAC.³⁸ Additionally, since 2006, employees of Windber Research Institute have also contributed \$2,200 to Rep. Murtha's political action committee.³⁹

³⁰ 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).

³² 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 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 Employees of Northrop Grumman Corporation, FEC Form 3 Reports, 2000-2007, (pages listing contributions attached, Exhibit 30).

³⁷ Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 31).

³⁸ 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 CTC 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, 1346.

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 Group's clients, CTC 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.

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 *See Information*, *United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

⁴³ 18 U.S.C. § 201(c)(1)(B).

⁴⁴ *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.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, CTC 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:

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.

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.

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 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

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).

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).

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

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

⁵⁷ Jake Tapper, Dem. Rep. Murtha Accused Of Ethics Violation, *ABC News*, May 18, 2007 (Exhibit 34).

⁵⁸ Id.

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.

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 Rules

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, 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. Tiahrt'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

⁶⁷ Intelligence Authorization Act for FY 2008, Vote on Motion to Recommit, May 10, 2007 (Exhibit 40).

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

⁶⁹ Id.

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 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 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, 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

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).

⁷¹ See Murtha for Congress Committee, FEC Form 3 Reports, 2007-2008, (pages listing contributions attached Exhibit 7); 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 November 15, 2007 (Exhibit 46).

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

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

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 since 2003.⁸⁵

Another CTC subsidiary to draw 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 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 sought 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 wanted 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

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).

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.*

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, in 2007, Sen. Charles Grassley began an inquiry into why CTC has been considered a tax exempt charity.⁹⁶

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 was a PMA client.¹⁰²

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).

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).

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

Since 2002, executives of Advanced Acoustic Concepts have donated \$28,500 to Rep. Murtha's campaign committee.¹⁰⁴ In addition, since 2003, Advanced Acoustic Concepts' corporate PAC has donated \$40,000 to Rep. Murtha.¹⁰⁵

Since the second quarter of 2007, employees of Conemaugh Health Systems have donated \$6,000 to Rep. Murtha.¹⁰⁶

Since the second quarter of 2007, executives of DRS have donated \$16,700 to Rep. Murtha's campaign committee.¹⁰⁷ Also during that period, DRS's corporate PAC has donated \$10,000 to Rep. Murtha's campaign committee¹⁰⁸ and \$10,000 to his PAC.¹⁰⁹

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).

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).

Since the third quarter of 2007, executives of L. Robert Kimball and Associates have donated \$3,500 to Rep. Murtha's campaign committee.¹¹⁰

Since the second quarter of 2007, executives of MTS Technologies have donated \$7,100 to Rep. Murtha's campaign committee.¹¹¹

Since the third quarter of 2007, employees and executives of the former Windber Research Institute, have donated \$5,480 to Rep. Murtha's campaign committee.¹¹²

Since the second quarter of 2007, employees of Kuchera Defense have donated \$11,500 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

2009 UPDATE

PMA Group

In November 2008, federal authorities raided the offices of the PMA Group and the home of its founder, Paul Magliocchetti.¹¹⁵ The PMA Group is being investigated for allegedly violating campaign finance laws by using "straw" donors to make contributions to lawmakers, concealing the true source of the money.¹¹⁶ In some cases, lawmakers received contributions from individuals listed as PMA lobbyists despite the fact that the individuals were never employees of the firm.¹¹⁷ Additionally, Mr. Magliocchetti may have reimbursed his employees for contributions made to candidates.¹¹⁸ After news of the raid broke, the lobbying shop closed its doors on March 31, 2009.¹¹⁹

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).

¹¹⁵ David Kirkpatrick and Charlie Savage, Star Lobbyist Close Shop Amid F.B.I. Inquiry, *New York Times*, March 30, 2009 (Exhibit 71).

¹¹⁶ Sarah Fitzpatrick, Amid PMA Probe, Rep. Visclosky Relinquished Chairmanship, *Washington Post*, June 2, 2009 (Exhibit 72).

¹¹⁷ Carol D. Leonnig, Despite Listing, Donors Don't Work for Firm Being Probed, *Washington Post*, February 14, 2009 (Exhibit 73).

¹¹⁸ Id.

¹¹⁹ Roxana Tiron, Visclosky Steers Clear of PMA Earmarks, *The Hill*, April 3, 2009 (Exhibit 74).

Since February 2009, Rep. Jeff Flake (R-AZ) has offered at least eight privileged resolutions about the PMA Group and asked for a House Ethics Committee investigation of the link between earmarks and campaign contributions.¹²⁰ Rep. Flake's first resolution did not seek any action related to any one member or any specific lobbying firm and called only for an investigation into "the relationship between earmark requests already made by Members and the source and timing of past campaign contributions."¹²¹ But Rep. Flake's second resolution, made in March 2009, called for an investigation into the "relationship between earmark requests on the behalf of clients of the raided firm [the PMA Group] already made by Members and the source and timing of past campaign contributions related to such requests."¹²² Rep. Flake continued offering these resolutions periodically, but withheld his ninth resolution in deference to a similar measure put forward by House Majority Leader Steny Hoyer (D-MD) in June 2009.¹²³ With each new resolution Rep. Flake attracted an increasing numbers of Democratic supporters, including Rep. Pete Visclosky (D-IN) a potential target of an Ethics Committee investigation.¹²⁴

On June 3, Rep. Hoyer brought his resolution, H. Res. 500, to the floor, which directed the Ethics Committee "to report to the House of Representatives on the actions the Committee has taken concerning any misconduct of Members and employees of the House in connection with the activities of the PMA Group."¹²⁵ The resolution came after months of Democratic resistance to Rep. Flake's efforts to compel an Ethics Committee investigation of the PMA Group.¹²⁶ The Democratic measure asked the Ethics Committee to disclose what, if any, action it had taken concerning the PMA Group, but did not require the committee to conduct an investigation, as Rep. Flake and House Republicans wanted.¹²⁷ The vote on Rep. Hoyer's resolution was largely along party lines with 17 members, including those on the Ethics Committee, voting present.¹²⁸ The resolution gave the Ethics Committee 45 day to respond to the House of Representatives.¹²⁹ On June 11, the Ethics Committee responded that it was investigating "certain, specific allegations within the committee's jurisdiction" relating to the

¹²⁰ Patrick O'Conner and John Bresnahan, Dems Fear Defections in PMA Probe, *Politico*, March 30, 2009; Press Release, Office of Rep. Jeff Flake, Congressman Flake to Offer Privileged Resolution on Earmarks This Week, June 1, 2009 (Exhibit 75).

¹²¹ H.R. Res. 189, 111TH Cong. (2009) (Exhibit 76).

¹²² H.R. Res. 212, 111TH Cong. (2009) (Exhibit 77).

¹²³ Press Release, Office of Rep. Jeff Flake, House Punts Again on PMA Investigation, June 3, 2009 (Exhibit 78).

¹²⁴ O'Conner and Bresnahan, *Politico*, Mar. 30, 2009.

¹²⁵ H.R. Res. 500, 111TH Cong. (2009) (Exhibit 79).

¹²⁶ John Bresnahan, Dems Push Through PMA Resolution, *Politico*, June 3, 2009 (Exhibit 80).

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ See H.R. Res. 500, 111TH Cong. (2009).

PMA Group¹³⁰ The Ethics Committee's statement did not mention any specific lawmaker by name, and Rep. Murtha's spokesperson said the committee had not contacted his office.¹³¹

Prior to that, in April 2009, four good-government groups – Democracy 21, Common Cause, Public Citizen and U.S. PIRG – wrote the House Ethics Committee urging the committee to open an investigation into the activities of the PMA Group and Rep. Murtha, Rep. Pete Visclosky (D-PA), and Rep. James Moran (D-VA).¹³² The groups asked the committee to examine whether these members were influenced by campaign contributions in exchange for earmarks for the PMA Group clients.¹³³

Despite the investigations into PMA's practices, lawmakers have continued to earmark for the firm's former clients.¹³⁴ Thus far in fiscal year 2009, former PMA Group clients have received \$317 million in earmarks, with Rep. Murtha requesting \$16.2 million of that total for Parametric Technology Corporation; Ardiem Medical; MobilVox; DRS Technologies; and MTS Technologies.¹³⁵ In exchange, these companies made contributions to Rep. Murtha's campaign committee and political action committee:

Since 2005, Parametric Technology Corporation's political action committee has donated \$25,000 to Rep. Murtha's campaign committee and political action committee.¹³⁶

Since 2007, employees of Adriem Medical have donated \$3,500 to Rep. Murtha's campaign committee.¹³⁷

Since 2002, employees of MobilVox have donated \$33,400 to Rep. Murtha's campaign

¹³⁰ Press Release, Committee on Standards of Official Conduct, U.S. House of Representatives, June 11, 2009; Glenn Thrush, Ethics Committee Launches PMA Probe, *Politico*, June 11, 2009 (Exhibit 81).

¹³¹ Id.

¹³² Letter from Democracy 21, Common Cause, Public Citizen and U.S. PIRG to Chairwoman Zoe Lofgren and Ranking Member Jo Bonner, House Committee on Standards of Official Conduct, April 30, 2009 (Exhibit 82).

¹³³ Id.

¹³⁴ Roxana Tiron, PMA's Clients Win \$317M in Earmarks, *The Hill*, June 25, 2009 (Exhibit 83).

¹³⁵ Id.

¹³⁶ Parametric Technology Corporation PAC, FEC Form 3, June Monthly Report 2005, June 20, 2005, p. 7; Parametric Technology Corporation PAC, FEC Form 3, June Monthly Report 2006, July 20, 2006, p. 7; Parametric Technology Corporation PAC, FEC Form 3, October Monthly Report 2006, October 20, 2006, p. 7; Parametric Technology Corporation PAC, FEC Form 3, Post-General Report 2006, June 20, 2006, p. 8; Parametric Technology Corporation PAC, FEC Form 3, April Monthly Report 2007, April 20, 2007, p. 8; Parametric Technology Corporation PAC, FEC Form 3, March Monthly Report 2008, March 21, 2008, p. 8; Parametric Technology Corporation PAC, FEC Form 3, October Monthly Report 2008, June 22, 2009, p. 6 (Exhibit 84).

¹³⁷ Murtha for Congress Committee, FEC Form 3, April Quarterly Report 2007, April 13, 2007, p. 87; Murtha for Congress Committee, FEC Form 3, Pre-Primary Report 2008, July 25, 2008, p. 22; Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2008, October 14, 2008, p. 25 (Exhibit 85).

committee and political action committee.¹³⁸

Since the third quarter of 2008, employees of DRS Technologies have donated \$6,600 to Rep. Murtha's campaign committee.¹³⁹ In total, employees of DRS Technologies have donated \$90,100 to Rep. Murtha since 2000.¹⁴⁰ The company'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 2002.¹⁴¹

Since the third quarter of 2008, employees of MTS Technologies have donated \$2,000 to Rep. Murtha's campaign committee.¹⁴² In total, employees of MTS technology have donated \$76,200 to Rep. Murtha since 2001.¹⁴³ In addition, since 2006, employees of MTS have contributed \$9,000 to Rep. Murtha's political action committee.¹⁴⁴

Since 1998, Rep. Murtha has accepted \$2,378,552 from PMA Group employees and clients of the firm, making him the biggest recipient of contributions from the firm.¹⁴⁵

Electro-Optics Center Investigation

The Electro-Optics Center (EOC) is a joint program between the University of Pennsylvania and the Office of Naval Research established in 1999 with the assistance of Rep. Murtha.¹⁴⁶ The EOC was intended to generate high-tech jobs in western Pennsylvania and has received nearly \$250 million in funding from Rep. Murtha.¹⁴⁷

¹³⁸ Murtha for Congress Committee, FEC Form 3 Reports, 2002-2009 (pages listing contributions attached, Exhibit 86).

¹³⁹ Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2008, pp. 20, 100, 112, 168 (Exhibit 87).

¹⁴⁰ Id.; See Murtha for Congress Committee, FEC Form 3 Reports, 2000-2007 (pages listing contributions attached, Exhibit 21).

¹⁴¹ See Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 22).

¹⁴² Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2008, pp. 115, 150 (Exhibit 88).

¹⁴³ Id.; See Murtha for Congress Committee, FEC Form 3 Reports, 2001-2007 (pages listing contributions attached, Exhibit 28).

¹⁴⁴ See 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).

¹⁴⁵ Congressmen Overseeing Defense Budget Got \$8 Million from PMA Group and Clients, *Center for Responsive Politics: Capital Eye Blog*, March 2, 2009 (Exhibit 89).

¹⁴⁶ John Bresnahan, Inside Murtha's 'Earmark Factory', *Politico*, March 11, 2009; Carol D. Leonnig, Research Center's Role Faces Scrutiny, *Washington Post*, March 17, 2009 (Exhibit 90).

¹⁴⁷ Id.

Federal investigators are examining the EOC as part of their larger probe of the PMA Group.¹⁴⁸ Records indicate the EOC worked with two individuals closely tied to Rep. Murtha, one a PMA Group lobbyist, Daniel Cunningham, the other a long time friend of the lawmaker now working on his staff, Charlie Horner.¹⁴⁹ Together they guided a large portion of the EOC's funding to firms that had made contributions to the lawmaker.¹⁵⁰ The EOC director worked with the two men to come up with a "wish list" of appropriation earmarks that were delivered to Rep. Murtha's office.¹⁵¹ The EOC heavily favored PMA Group clients when distributing its funding.¹⁵² In fact, one company, nLight, had its request for funding rejected after it dropped the PMA Group as its lobbyist.¹⁵³

According to lobbying disclosures, despite working closely with a PMA Group lobbyist, the EOC did not retain the services of the firm. Rep. Murtha's office has stated that it will not be making any funding requests for the EOC in fiscal year 2009; going forward it will receive its funding directly from military through a competitive bidding process.¹⁵⁴

Concurrent Technologies Corp Tax Status Investigation

Federal authorities continue their investigation into Concurrent Technologies Corporation (CTC) and its subsidiary, Commonwealth Research Institute (CRI).¹⁵⁵ CRI is under particular scrutiny concerning the process in which it was awarded its non-profit status.¹⁵⁶ When CRI petitioned the IRS for tax-exempt status the IRS questioned whether the group's purpose as a research institute was adequate rationale for tax-exempt status and noted that "research results must be made available to the interested public."¹⁵⁷ CRI responded that it planned to work primarily with government contracts, only a small portion of which would be classified; but in the nine years since the group petitioned the government for tax-exempt status it has not published any of its government backed research.¹⁵⁸

Previously, CRI caught the attention of the Pentagon's Office of Inspector General (IG), which was investigating payments made by CRI to an Air Force official awaiting confirmation

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Leonnig, *Washington Post*, Mar. 17, 2009.

¹⁵¹ Id.

¹⁵² Bresnahan, *Politico*, Mar. 11, 2009.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Robert O'Harrow Jr., Pentagon, FBI Probing Air Force Contracts, *Washington Post*, April 18, 2008 (Exhibit 91).

¹⁵⁶ Sharyl Attkisson and Laura Strickler, FBI Eyes Charity Linked to Rep. Murtha, *CBS News*, June 2, 2009 (Exhibit 92).

¹⁵⁷ Id.

¹⁵⁸ Id.

for work that was never done.¹⁵⁹ Shortly after admitting to a *Washington Post* reporter that he was being paid, but not doing any work in return, the official committed suicide.¹⁶⁰ The IG's investigation has been placed on hold pending the outcome of other probes into Rep. Murtha related entities.¹⁶¹

According to CTC's 2007 IRS 990, the non-profit received \$220,423,075 in funding from the federal government.¹⁶² The group's 990 also indicates that it paid the PMA Group \$461,334 for consulting services.¹⁶³

According to CRI's 2007 IRS 990, the non-profit received \$5,104,829 in funding from the federal government.¹⁶⁴ Since 2003, the group's total funding has jumped from \$632,884 to just over \$5 million.¹⁶⁵

Since the third quarter of 2008, employees of CTC have donated \$2,100 to Rep. Murtha's campaign committee.¹⁶⁶ Federal Election Commission data does not indicate that employees of CRI have made donations to Rep. Murtha. According to Rep. Murtha's congressional website, the lawmaker has not requested any earmarks for CTC or CRI in fiscal year 2010 spending bills.¹⁶⁷

Other Former PMA Group Clients

Since the third quarter of 2008, employees of Advanced Acoustic Concepts have donated \$15,100 to Rep. Murtha's campaign committee.¹⁶⁸

Since the third quarter of 2008, employees of Conemaugh Health Systems have donated \$7,150 to Rep. Murtha's campaign committee.¹⁶⁹

¹⁵⁹ Id.

¹⁶⁰ Attkisson, *CBS News*, Jun. 2, 2009.

¹⁶¹ Id.

¹⁶² Concurrent Technologies Corporation, 2007 Tax Form 990 (Exhibit 93).

¹⁶³ Id.

¹⁶⁴ Commonwealth Research Institute, 2007 Tax Form 990 (Exhibit 94).

¹⁶⁵ Id.

¹⁶⁶ Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2008, October 14, 2008, p. 87; Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2009, p. 45 (Exhibit 95).

¹⁶⁷ Press Release, Office of Rep. John Murtha, Appropriations Fiscal Year 2010 (Exhibit 96).

¹⁶⁸ Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2008, pp. 18, 26, 92, 167; Murtha for Congress Committee, FEC Form 3, Pre-General Report 2008, November 20, 2008, pp. 5, 6, 7, 9 (Exhibit 97).

¹⁶⁹ Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2008, pp. 14, 25, 38, 43, 91, 100, 127, 142, 171; Murtha for Congress Committee, FEC Form 3, October Quarterly Report 2008, October 14, 2008, p. 51 (Exhibit 98).

Since the third quarter of 2008, L. Robert Kimball and Associates's chairman, L. Robert Kimball, has donated \$2,300 to Rep. Murtha's campaign committee.¹⁷⁰

Kuchera Corporation

In January 2009, federal investigators raided the headquarters of Kuchera Corporation as well as the homes of the company's two top executives.¹⁷¹ The investigation concerns the misuse of corporate funds to finance a private ranch owned by the company's president, Bill Kuchera,¹⁷² and contract fraud.¹⁷³ In August 2008, Rep. Murtha held a fundraiser at the ranch, but failed to report any payments or in-kind donations related to the event, in violation of campaign finance law.¹⁷⁴ In response to the investigation surrounding the firm, the U.S. Navy placed the company on its Excluded Parties List, barring the firm from receiving any more federal contracts.¹⁷⁵ The suspension was revoked, however, after Kuchera agreed to alter some of its accounting practices.¹⁷⁶

In 1982, Mr. Kuchera pleaded guilty to a single felony count related to drug trafficking and spent less than a year in prison.¹⁷⁷ After his release Mr. Kuchera approached his uncle, then the owner of Kuchera Industries, based in Racine, Wisconsin for a job.¹⁷⁸ When Mr. Kuchera's partner in the drug-running operation, Peter Whorley, was released from prison in 1986, he approached Mr. Kuchera and invested \$50,000 in the fledgling company in exchange for a share of the profits.¹⁷⁹ Mr. Whorley also help connect Kuchera Industries with government contracts from the Census Bureau.¹⁸⁰ Later, Mr. Whorley was again convicted of selling drugs and sent to prison.¹⁸¹

¹⁷⁰ Murtha for Congress Committee, FEC Form 3, Post-General Report 2008, December 2, 2008, p. 84 (Exhibit 99).

¹⁷¹ Paul Singer, Murtha Had Long Relationship With Defense Firm, *Roll Call*, January 23, 2009 (Exhibit 100).

¹⁷² Shawn Piatek, Federal Probe Focuses on Kuchera Corporate Officers, LBK Game Ranch, *Tribune-Democrat*, January 23, 2009 (Exhibit 101).

¹⁷³ Dennis B. Roddy, Defense Firm Head Admits Early Role in Illegal Drugs, *Pittsburgh Post-Gazette*, June 5, 2009 (Exhibit 102).

¹⁷⁴ Susan Crabtree, Fundraiser for Murtha May Have Broken Campaign Finance Rules, *The Hill*, February 17, 2009 (Exhibit 103).

¹⁷⁵ Kuchera Appeals Order Banning Work with Navy, *Tribune-Democrat*, May 28, 2009 (Exhibit 104).

¹⁷⁶ Pete Yost, Suspension Lifted for Contractor Tied to Murtha, *Associated Press*, August 14, 2009 (Exhibit 105).

¹⁷⁷ Roddy, *Pittsburgh Post-Gazette*, Jun. 5, 2009.

¹⁷⁸ Carol D. Leonnig and Alice Crites, Firms Tied to Murtha Have Troubled Past, *Washington Post*, June 5, 2009 (Exhibit 106).

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id.

In 1993, Mr. Kuchera joined with his brother Ron Kuchera and misled their uncle into selling Kuchera Industries to a shell company controlled by the brothers.¹⁸² The following year, the brothers moved the company to Windber, Pennsylvania into Rep. Murtha's district, with the goal of winning defense contracts from the lawmaker.¹⁸³ With encouragement from Rep. Murtha, Kuchera Industries partnered with Hughes Aircraft and started winning contracts from the government.¹⁸⁴ Mr. Kuchera's felony conviction never barred his company from winning contracts to handle sensitive government work.¹⁸⁵

Kuchera Industries also qualified as a small, disadvantaged business because at least 20% of its employees are disabled.¹⁸⁶ In fact, Mr. Kuchera for a time served on the board of the Pennsylvania Association for Individuals with Disabilities (PAID), a non-profit with the mission to help disabled people find work in western Pennsylvania.¹⁸⁷ PAID was founded with the assistance of Rep. Murtha in partnership with a former aide to the lawmaker and current lobbyist for KSA Consulting, Carmen Scialabba.¹⁸⁸

Since 2001, Rep. Murtha has directed approximately \$50 million in earmarks to Kuchera Industries.¹⁸⁹ In turn, since 2002, employees of Kuchera Industries and their families have donated to \$90,500 to Rep. Murtha's campaign committee.¹⁹⁰ Additionally, since 2006, employees as well as their families have donated \$7,000 to Rep. Murtha's PAC.¹⁹¹ Kuchera Industries shares links with a host of other Rep. Murtha connected organizations, including lobbyists and defense contractors.¹⁹²

KSA Consulting

KSA Consulting is a lobbying firm that has employed Rep. Murtha's brother, Robert "Kit" Murtha, as well as Mr. Scialabba.¹⁹³ Mr. Scialabba joined KSA Consulting after leaving

¹⁸² Leonnig and Crites, *Washington Post*, June 5, 2009.

¹⁸³ Id.

¹⁸⁴ Id.

¹⁸⁵ Randy Griffith, Kuchera Haunted by '82 Drug Conviction, *Tribune-Democrat*, June 6, 2009 (Exhibit 107).

¹⁸⁶ Leonnig and Crites, *Washington Post*, June 5, 2009.

¹⁸⁷ Jonathan Weismann, Nonprofit Connects Murtha, Lobbyists, *Washington Post*, December 25, 2006 (Exhibit 108).

¹⁸⁸ Id.

¹⁸⁹ Leonnig and Crites, *Washington Post*, June 5, 2009.

¹⁹⁰ Murtha for Congress Committee, FEC Form 3 Reports, 2002-2008 (pages listing contributions attached, Exhibit 109).

¹⁹¹ Majority PAC, FEC Form 3, October Quarterly Report 2006, October 12, 2006, pp. 19, 20; Majority PAC, FEC Form 3, April Quarterly Report 2007, July 11, 2007, p. 14; Majority PAC, FEC Form 3, April Quarterly Report 2008, July 10, 2008, p. 15 (Exhibit 110).

¹⁹² Yost, *Associated Press*, Aug. 14, 2009.

¹⁹³ Ken Silverstein and Richard Simon, Lobbyist's Brother Guided House Bill, *Los Angeles Times*, June 13, 2005 (Exhibit 111).

the House Appropriations Committee where he worked as an aide to Rep. Murtha.¹⁹⁴ Clients of the lobbying firm that have received earmarks from Rep. Murtha include Aeptec Microsystems, Coherent Systems International, MountainTop Technologies, and KDH Technologies.¹⁹⁵

Mr. Murtha was personally invited to join KSA Consulting as a lobbyist in 2002 by Mr. Scialabba, where he established a reputation as an “earmark specialist.”¹⁹⁶ In 2004, Congress passed a \$417 billion defense appropriations bill, which included earmarks benefitting at least 10 companies represented by KSA Consulting.¹⁹⁷ Records show that KSA Consulting directly lobbied Rep. Murtha’s office for seven of those companies.¹⁹⁸ Mr. Murtha retired from KSA Consulting in 2006.¹⁹⁹

Pennsylvania Association for Individuals with Disabilities (PAID)

In 2001, Mr. Scialabba with the help of Rep. Murtha, who was instrumental in securing the \$500,000 in start-up funds, founded the Pennsylvania Association for Individuals with Disabilities (PAID).²⁰⁰ The non-profit’s purpose is to help disabled workers find work in rural Pennsylvania, but it also serves as another conduit for lobbyists and defense contractors to connect with Rep. Murtha.²⁰¹ At one time, PAID’s board of directors included five government contractors, including Ron Kuchera of Kuchera Industries, and at least three KSA lobbyists sat on its advisory board.²⁰²

MountainTop Technologies

MountainTop Technologies (MTT) is a defense contractor that primarily develops content for web-based training programs, but has in recent years diversified to provide other services.²⁰³ The company was a client of KSA Consulting until 2004, and “Kit” Murtha lobbied

¹⁹⁴ Weisman, *Washington Post*, Dec. 25, 2006.

¹⁹⁵ Paul Singer, *Companies Follow Murtha’s Earmark Trial, Roll Call*, June 25, 2007; KSA Consulting, *Lobbying Termination 2004*, Client: Aeptec Microsystems, Secretary of the Senate, Office of Public Records; KSA Consulting, *Lobbying Termination 2008*, Client: Coherent Systems International, Secretary of the Senate, Office of Public Records; KSA Consulting, *Lobbying Termination 2004*, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records (Exhibit 112).

¹⁹⁶ Silverstein and Simon, *Los Angeles Times*, Jun.13, 2005; *Meet the New Boss*, *Wall Street Journal*, November 15, 2006 (Exhibit 113).

¹⁹⁷ Silverstein and Simon, *Los Angeles Times*, Jun. 13, 2005.

¹⁹⁸ *Id.*

¹⁹⁹ *Wall Street Journal*, Nov. 15, 2006.

²⁰⁰ Weisman, *Washington Post*, Dec. 25, 2006

²⁰¹ <http://www.paid-online.org/aboutpaid.htm>; Weisman, *Washington Post*, Dec. 25, 2006 (Exhibit 114)

²⁰² *Id.*

²⁰³ <http://www.mntntp.com/about/index.htm> (Exhibit 115).

for the company.²⁰⁴ In the past five years, MTT, based in Rep. Murtha's district, has been awarded at least \$36 million in contracts, most without competition.²⁰⁵ The Justice Department is investigating how a company with little experience in law-enforcement was selected to administer \$10 million in Justice Department grants distributed to local Pennsylvania police departments.²⁰⁶ Rep. Murtha selected MTT via a succession of earmarks to administer the program and distribute the funds, which often were handed out before fall elections and with the explanation that it was made possible by the lawmaker.²⁰⁷ MTT has grown significantly since it was first founded in 1993 and has branched out to military and aviation related work, but often has to hire outside specialists to help complete its contracted work.²⁰⁸

KDH Technologies

KDH Technologies received its first government contract in 2004, sewing bullet-proof vests for the U.S. Navy, before the company even had a manufacturing facility.²⁰⁹ The company had, however, expressed interest in opening a facility in Rep. Murtha's district.²¹⁰ In 2003, KDH became a client of KSA Consulting and Rep. Murtha's brother lobbied for the company until his retirement in 2006.²¹¹

Rep. Murtha earmarked at least \$3 million for KDH to develop an underwater sonar system to detect swimmers for the Navy, although the company has no expertise in building sonar systems.²¹² In 2004, KDH president David Herbener made a presentation to Department of Defense about the project and claimed he had already secured an earmark worth \$1 million in fiscal year 2005 from Rep. Murtha.²¹³ Also at that meeting, Mr. Herbener claimed that KDH intended to partner with two other Johnstown based contractors, Kuchera Industries and Coherent Systems International (CSI).²¹⁴ Those plans never came to fruition; lawyers for Kuchera contend they never worked with KDH and CSI dropped out of the deal within days of the contract signing.²¹⁵ Instead, KDH eventually partnered with a British company, Curtis

²⁰⁴ See KSA Consulting, Termination Report 2005, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records.

²⁰⁵ Carol D. Leonnig, Justice Dept. Investigates Pa. Contractor Tied to Murtha, *Washington Post*, May 25, 2009 (Exhibit 116).

²⁰⁶ Id.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Singer, *Roll Call*, June 25, 2007.

²¹⁰ Id.

²¹¹ Silverstein and Simon, *Los Angeles Times*, Jun.13, 2005; KSA Consulting, Lobbying Report 2009, Client: KDH Technologies, Secretary of the Senate, Office of Public Records; KSA Consulting, Lobbying Report 2003, 2006, Client: KDH Technologies, Secretary of the Senate, Office of Public Records (Exhibit 117).

²¹² Paul Singer, Murtha Earmarks Funded Garment Company's Sonar Project, *Roll Call*, July 7, 2009 (Exhibit 118).

²¹³ Id.

²¹⁴ Id.

²¹⁵ Id.

Technology, an expert in sonar, to finish the engineering work, but the project was continually delayed, and the partnership resulted in a court battle.²¹⁶ In the interim, the Navy decided to purchase a system from another company.²¹⁷

Despite losing its customer, KDH saw its contract move from the Navy to the Army when the procurement officer in charge of the sonar project moved from the Navy to the Army.²¹⁸ Finally, last fall KDH completed a prototype, but said it would have to be re-engineered before it could be mass produced.²¹⁹

Aeptec Microsystems, Coherent Systems International and Schaller Engineering

Aeptec Microsystems is a defense contractor based in Rockville, Maryland.²²⁰ In 2004, the company opened an office in Rep. Murtha's district, but never moved in to it.²²¹ Aeptec retained the services of KSA Consulting and Rep. Murtha's brother.²²² At one time the company was also a client of the PMA Group.²²³ From 2000 through 2004 the company saw its federal grants jump from \$13 million to \$33 million.²²⁴ The firm maintained other ties with Rep. Murtha, it was as an early supporter of PAID, the non-profit the lawmaker formed with his aide, Mr. Scialabba.²²⁵

In 2005, the House passed a military spending bill securing funding for countries coping with the aftermath of the December 2004 tsunami.²²⁶ Included in that bill was an earmark worth \$8.2 million for Coherent Systems International (CSI) to build a unified battlefield communications platform, but the project had earlier been awarded to Aeptec.²²⁷ For unknown reasons the relationship between Rep. Murtha and Aeptec dissolved and the company saw its

²¹⁶ Singer, *Roll Call*, Jul. 7, 2009.

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Id.

²²⁰ Singer, *Roll Call*, Jun. 25, 2007.

²²¹ Id.

²²² KSA Consulting, Lobbying Report 2004, Client: Aeptec Microsystems, Secretary of the Senate, Office of Public Records (Exhibit 119).

²²³ Singer, *Roll Call*, Jun. 25, 2007.

²²⁴ Id.

²²⁵ Paul Singer, Murtha Apparently Moved Earmark Between Brother's Clients, *Roll Call*, June 3, 2009 (Exhibit 120).

²²⁶ Id.

²²⁷ Id.

funding stripped, allegedly by Rep. Murtha's office, and transferred to CSI.²²⁸ Also, in the end of 2004, KSA Consulting filed termination papers ending its relationship with Aeptec.²²⁹

According to court documents and a plea agreement, after CSI received the battlefield communications system earmark that had been stripped from Aeptec, the company's president, Richard Ianieri, sub-contracted the work out to five other firms.²³⁰ All five firms, including Kuchera Industries, have worked with lobbying firms tied to Rep. Murtha.²³¹ Prosecutors allege that work was either never completed on the project, or work was done for projects unrelated to the original earmark.²³² In July 2009, Mr. Ianieri pleaded guilty to charges that he accepted \$200,000 in bribes from an employee of Kuchera Industries.²³³ CSI and Kuchera had very close ties; in fact in 2006 Rep. Murtha touted the relationship, claiming the two companies were working "virtually as one."²³⁴

Schaller Engineering, owned by Richard Schaller, was sub-contracted by Mr. Ianieri to provide tracking systems²³⁵ at a price of \$200,000.²³⁶ In July 2009, Mr. Schaller was found guilty of destroying records and perjuring himself before a grand jury.²³⁷ The government accused Mr. Schaller, his business partner, Theodore Sumrall, and the defense department procurement officer in charge of the project, Mark O'Hair, of splitting the money between themselves and not delivering the devices.²³⁸ Just prior to his trial, Mr. O'Hair pleaded guilty to charges he had skimmed money from the contract.²³⁹ Schaller Engineering was a client of the PMA Group in 2005 and 2006.²⁴⁰

²²⁸ Id.

²²⁹ See KSA Consulting, Termination Report 2004, Client: Aeptec Microsystems, Secretary of the Senate, Office of Public Records.

²³⁰ Carol D. Leonnig, New Charges for Man Tied to Rep. Murtha, *Washington Post*, July 10, 2009 (Exhibit 121).

²³¹ Id.

²³² Id.

²³³ *Testimony of Richard S. Ianieri*, United States of America v. Richard Schaller, Crim No. 3:08cr75/LAC (N.D. Fla. 29, 2009) p. 4 ¶¶ 1, 4 (Exhibit 122).

²³⁴ Carol D. Leonnig, Bribery Plea in Probe of Firm With Murtha Ties, *Washington Post*, July 8, 2009 (Exhibit 123).

²³⁵ Paul Singer, Murtha-Linked Firm Charged, *Roll Call*, July 8, 2009 (Exhibit 124).

²³⁶ Melissa Nelson, Ex-Air Force Officer Guilty of Lying on Contracts, *Associated Press*, July 31, 2009 (Exhibit 125).

²³⁷ Id.

²³⁸ Singer, *Roll Call*, Jul. 8, 2009.

²³⁹ Paul Singer, Ex-Air Force Employee Pleads Guilty in Case Tied to Murtha Earmark, *Roll Call*, July 20, 2009 (Exhibit 126).

²⁴⁰ The PMA Group, Lobbying Registration 2005, Client: Schaller Engineering, Secretary of the Senate, Office of Public Records; The PMA Group, Termination Report 2006, Client: Schaller Engineering, Secretary of the Senate, Office of Public Records (Exhibit 127).

In September 2005, Mr. Kuchera, Mr. Schaller, Mr. Ianieri and Mr. O'Hair, along with two lobbyists from KSA, met with a staffer from Rep. Murtha's district office to discuss opportunities to provide communication equipment to the military.²⁴¹

Threats to Political Opponents

John Hugya is Rep. Murth's chief of staff.²⁴² At a National Rifle Association meeting in March 2009, Mr. Hugya approached Rep. Murtha's Republican opponent in the 2008 election, William Russell, and threatened to have him recalled to active duty to face prosecution.²⁴³ Mr. Hugya had earlier made a similar threat to Mr. Russell's former commanding officer.²⁴⁴ Mr. Russell retired from the U.S. Army Reserves in June 2008, but was on active duty for part of the congressional race.²⁴⁵ Regulations prohibit members of the military from campaigning for political office while serving.²⁴⁶

Robert C. Murtha, Jr.

Rep. Murtha's nephew, Robert C. Murtha, Jr., operates Murtech Inc., a warehouse management and engineering services firm.²⁴⁷ Mr. Murtha's company received \$4 million in Pentagon contracts in 2008 alone.²⁴⁸ At least one early Murtech contract, worth \$1.4 million, was awarded without competition.²⁴⁹ Documents obtained by the *Washington Post* showed that Mr. Murtha used his uncle's position to leverage his business, an accusation he firmly denies.²⁵⁰ In one e-mail Mr. Murtha warned that unless the work was moved to Johnstown, PA "financial rewards" would be endangered for everyone.²⁵¹ Furthermore, Mr. Murtha and his company have been accused of not doing any real work on the federal contacts he received, and that the role his company played in the federal work was unnecessary.²⁵²

²⁴¹ Singer, *Roll Call*, Jul. 20, 2009.

²⁴² John Bresnahan, John Murtha Opponent Says Aide Threatened Him, *Politico*, May 13, 2009 (Exhibit 128).

²⁴³ Id.

²⁴⁴ Id.

²⁴⁵ Id.

²⁴⁶ Mike Faher, 6 Months After Election, Russell Still Sparring with Murtha Camp, *Tribune-Democrat*, May 8, 2009 (Exhibit 129).

²⁴⁷ David Kirkpatrick, Murtha's Nephew Named a Lobbyist for the Marines, *New York Times*, May 1, 2009 (Exhibit 130).

²⁴⁸ Carol D. Leonnig and Alice Crites, Murtha's Nephew Got Defense Contracts, *Washington Post*, May 5, 2009 (Exhibit 131).

²⁴⁹ Id.

²⁵⁰ Carol D. Leonnig, Nephew Mentioned Rep. Murtha in Dealings as Contractor, *Washington Post*, May 12, 2009. (Exhibit 132).

²⁵¹ Id.

²⁵² Id.

Former Staffers

In addition to Mr. Magliocchetti and Mr. Scialabba, at least five former aides to the lawmaker have gone on to lucrative careers in lobbying:²⁵³

David Morrison is a former staff assistant for the House Defense Appropriations Subcommittee and, since 2008, a lobbyist for the Podesta Group.²⁵⁴ One of Mr. Morrison's clients is the University of Pittsburgh.²⁵⁵ In a fiscal year 2010 appropriations bill, Rep. Murtha requested a \$3 million earmark for the school for a program to digitize health records.²⁵⁶

Greg Dalhberg is a former staff assistant for the House Defense Appropriations subcommittee and, since 2003, a lobbyist for Lockheed Martin.²⁵⁷

Greg Walters is a former staff assistant for the House Defense Appropriations Subcommittee.²⁵⁸ From 2003 to 2004, Mr. Walters was a registered lobbyist for the PMA Group, and since 2005, he has been a registered lobbyist for Lockheed Martin.²⁵⁹

David Kilian is a former minority staff assistant for the House Appropriations Committee.²⁶⁰ Since 2004, Mr. Kilian has been registered to lobby for Innovative Federal Strategies, f/k/a Copeland Lowery Jacquez Denton & White.²⁶¹ In 2005 and 2006, Mr. Kilian was also registered to lobby for his own company, David Kilian Strategies.²⁶² From 2006 through 2009, Mr. Kilian has lobbied on behalf of MountainTop

²⁵³ Susan Crabtree, PMA's Fallout Shines Spotlight on Revolving Door of Lobbyist, *The Hill*, June 22, 2009 (Exhibit 133).

²⁵⁴ http://www.legistorm.com/person/David_H_Morrison/18735.html; Podesta Group, Lobbying Report 2009, Client: University of Pittsburgh Medical Center, Secretary of the Senate, Office of Public Record (Exhibit 134).

²⁵⁵ Id.

²⁵⁶ Crabtree, *The Hill*, June 22, 2009.

²⁵⁷ http://www.legistorm.com/person/Gregory_R_Dahlberg/55214.html; Lockheed Martin, Lobbying Report 2004, Client: Self, Secretary of the Senate, Office of Public Records (Exhibit 135).

²⁵⁸ http://www.legistorm.com/person/Gregory_J_Walters/55216.html (Exhibit 136).

²⁵⁹ PMA Group, Lobbying Report 2003, Client: Government Relations and Legislative Counsel, Secretary of the Senate, Office of Public Records; PMA Group, Termination Report 2004, Client: Noesis Inc, Secretary of the Senate, Office of Public Records; (Exhibit 137); See Lockheed Martin, Lobbying Report 2005, Client: Self, Secretary of the Senate, Office of Public Records (Exhibit 135).

²⁶⁰ http://www.legistorm.com/person/David_F_Kilian/48098.html (Exhibit 138).

²⁶¹ Innovative Federal Strategies, Lobbying Registration 2004, Client: Biotech-Pharma Advisory, LLC., Secretary of the Senate, Office of Public Records (Exhibit 139).

²⁶² David Kilian Consulting Services, Lobbying Registration 2005, Client: Self, Secretary of the Senate, Office of Public Records; David Kilian Consulting Services, Lobbying Termination 2006, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records (Exhibit 140).

Technologies while working for both firms.²⁶³

Scott Harshman worked for Rep. Murtha in various capacities starting in 1994 until 2003, when he left his job as district economic development coordinator to start his own lobbying firm, Harshman Consulting.²⁶⁴ One of Mr. Harshman's clients is Nokomis Inc., a defense contractor for which Rep. Murtha has requested earmarks worth \$6 million for anti-improvised explosive device technology.²⁶⁵

Gabrielle Carruth is a former member of the House Appropriations associate staff, after she left the committee, she joined Argon ST as the company's first in-house lobbyist.²⁶⁶ In 2009, she terminated her lobbying registration with the company and registered to lobby with Lockheed Martin.²⁶⁷

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.²⁶⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.²⁶⁹

If, as it appears, Rep. Murtha accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds, 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.²⁷⁰ By using

²⁶³ Id.; David Kilian Consulting Services, Lobbying Termination 2006, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records; Innovative Federal Strategies, Lobbying Registration 2006, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records; Innovative Federal Strategies, Lobbying Termination 2009, Client: MountainTop Technologies, Secretary of the Senate, Office of Public Records (Exhibit 141)

²⁶⁴ Crabtree, *The Hill*, June 22, 2009.

²⁶⁵ Id.

²⁶⁶ Paul Singer, Argon Talks to the Feds, Roll Call, May 14, 2009; Argon ST, Lobbying Registration 2008, Client: Self, Secretary of the Senate, Office of Public Records (Exhibit 142).

²⁶⁷ Argon ST, Lobbying Termination 2009, Client: Self, Secretary of the Senate, Office of Public Records; Lockheed Martin, Lobbying Report 2009, Client: Self, Secretary of the Senate, Office of Public Records (Exhibit 143).

²⁶⁸ 18 U.S.C. § 201(b)(2)(A).

²⁶⁹ 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).

²⁷⁰ *See Information*, United States v. Jack A. Abramoff, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

his position as a member of Congress to financially benefit clients of lobbying firms run by people close to him, 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, 1346.

Similarly, if Rep. Murtha directed earmarks to companies for the financial benefit of his nephew, he may have engaged in honest services fraud.

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.²⁷¹ If a link is established between Rep. Murtha's earmarking federal funds for clients of particular lobbying groups 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.²⁷²

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."²⁷³ 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 in exchange for earmarks, he likely violated 5 U.S.C. § 7353 and House Rule XXIII.

²⁷¹ 18 U.S.C. § 201(c)(1)(B).

²⁷² *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).

²⁷³ 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.”²⁷⁴ 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.”²⁷⁵

By funneling federal funds to clients of particular lobbying firms and by directing business to a firm that hired his nephew, Rep. Murtha 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.”²⁷⁶ 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 addition, if Rep. Murtha had his chief of staff threaten to have a political rival recalled to active duty if he again challenged Rep. Murtha, such conduct would not reflect creditably on the House.

²⁷⁴ 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.

²⁷⁵ Id.

²⁷⁶ Rule 23, clause 1.

REPRESENTATIVE CHARLES RANGEL

Representative Charles Rangel (D-NY) is a twenty-term member of the House of Representatives representing New York's 15th district. Rep. Rangel's ethics issues stem from (1) leasing rent controlled apartments; (2) improperly using congressional stationary; (3) failing to report rental income from a vacation property and; (4) trading legislative assistance for contributions to the Rangel Center at City College. Rep. Rangel was included in CREW's 2008 congressional corruption report.

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 insisted, however, that his arrangement as to the other three apartments was fair and legal.⁸

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

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*, July 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).

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 (FEC) regarding this matter¹⁰ and, Rep. Rangel himself sent a letter to the FEC asking for an opinion on its legality.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

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 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

⁹ Hernandez and Kocieniewski, *New York Times*, July 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).

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

¹⁵ Id.

¹⁶ Id.

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 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 stationary to solicit contributions in a direct mail appeal because the use of letterhead conveys the impression that the solicitation is endorsed by the

¹⁷ Kocieniewski, *New York Times*, July 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 constitute 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).

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.

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 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 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

²² Id.

²³ Id.

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

²⁵ Committee on Standards of Official Conduct, Advisory Opinion No. 5.

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 (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.

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. Rangel's lawyer reported that since 1988, Rep. Rangel has earned over \$75,000 in rental income from the property.³⁵ Records indicate 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.³⁷

In 1988, when Rep. Rangel purchased the villa for \$82,750, a mortgage loan was extended to him by the company developing the resort.³⁸ 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.³⁹ 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.⁴⁰

Improper Reporting on Personal Financial Disclosure Forms

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

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

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

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

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

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

³⁶ Id.

³⁷ Id.

³⁸ David Kocieniewski and David M. Halbfinger, Interest Was Waived for Rangel on Loan for Villa, *New York Times*, September 6, 2008 (Exhibit 16).

³⁹ Id.

⁴⁰ Id.

⁴¹ 18 U.S.C. § 1001(a)(2).

⁴² Id. at § 1001(c)(2).

addition, members of Congress must disclose all rental property.⁴³ 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.”⁴⁴

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.”⁴⁵ 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.”⁴⁶

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.”⁴⁷

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.

⁴³ 5 U.S.C. app. 4 § 101(a)(1)(B).

⁴⁴ House Comm. On Standards of Official Conduct, *Assets and Unearned Income*, Financial Disclosure Instruction Booklet.

⁴⁵ Rules of the House of Representatives, 110th Congress, p. 41.

⁴⁶ House Rule 25, clause 5 (a)(2)(A).

⁴⁷ House Rules, p. 42.

2009 UPDATE

Nabors Industries

Rep. Rangel apparently helped preserve a tax loophole benefitting Nabors Industries at the same time he was soliciting the company's chief executive for a donation to the Charles B. Rangel School of Public Service at the City College of New York.⁴⁸ In 2002, in response to a public uproar criticizing companies for moving overseas to avoid taxes there was a bi-partisan effort in Congress to prevent companies from taking advantage of tax loopholes.⁴⁹ As public criticism grew, Nabors Industries and three other companies rushed to open offices in the Caribbean to avoid paying millions of dollars in U.S. taxes.⁵⁰ Rep. Rangel joined the bi-partisan effort pushing for legislation to force the companies to pay more taxes and was an outspoken critic of the Bush administration for failing to take swift action against these companies.⁵¹

By October 2004, however, Nabors and three other companies had convinced a group of House Republicans to create a loophole, which would preserve their tax breaks.⁵² Rep. Rangel again opposed legislation favoring tax loopholes and pushed for legislation to make these companies pay more taxes.⁵³

On September 18, 2006, in an attempt to raise money for the Rangel Center, the congressman met with Manhattan District Attorney Robert M. Morgenthau, City College of New York President Gregory H. Williams and Nabors' Chief Executive Eugene M. Isenberg.⁵⁴ By the end of 2006, Mr. Isenberg had committed \$1 million to the school, the project's largest donation.⁵⁵

On February 1, 2007, after Democrats regained control of the House and Rep. Rangel was appointed Chairman of the House Committee on Ways and Means, the Senate overwhelmingly passed a bill that would end the loopholes Nabors was exploiting.⁵⁶ By this time, however, Rep. Rangel had changed his position and was firmly opposed to closing the tax loophole benefitting Nabors.⁵⁷ A week later, while Rep. Rangel was floating a counter proposal that would leave the Nabors' tax loophole intact, Mr. Isenberg wrote a \$100,000 check to City

⁴⁸ David Kocieniewski, The Congressman, the Donor and the Tax Break, *New York Times*, November 25, 2008 (Exhibit 17).

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Kocieniewski, *New York Times*, Nov. 25, 2008.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Kocieniewski, *New York Times*, Nov. 25, 2008.

⁵⁶ Id.

⁵⁷ Id.

College.⁵⁸ On the day of the House bill's mark-up, February 12, 2007, Rep. Rangel met with both Mr. Isenberg to discuss his continued support for the Rangel Center, and with a Nabors' lobbyist to discuss the tax loophole.⁵⁹ Eleven days later, City College cashed Mr. Isenberg's \$100,000 check.⁶⁰ By late April 2007, Rep. Rangel had killed the provision, preserving the tax loophole and saving Nabors tens of millions of dollars annually and an estimated \$1.1 billion in revenues over a decade.⁶¹ Rep. Rangel claimed that Mr. Isenberg's donation played no role in his decision to protect the company or other tax dodgers.⁶²

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.⁶³ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁶⁴

If Rep. Rangel accepted a contribution to the Rangel Center, in direct exchange for legislative assistance to Nabors Industries, 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.⁶⁵ By using his position as a member of Congress to offer legislative assistance to Nabors Industries in exchange for contributions for the Rangel Center, Rep. Rangel 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, 1346.

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

⁵⁸ Id.

⁵⁹ Kocieniewski, *New York Times*, Nov. 25, 2008.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ 18 U.S.C. § 201(b)(2)(A).

⁶⁴ 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).

⁶⁵ *See Information, United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

or because of any official act performed or to be performed by such official.⁶⁶ 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.⁶⁷

If a link is established between Rep. Rangel's actions to preserve a tax loophole for Nabors Industries and the contribution for the Rangel Center, Rep. Rangel may be in violation of the illegal gratuity statute.

In addition, the Committee on Standards of Official Conduct has used the acceptance of bribes and gratuities under these statutes as a basis for disciplinary proceedings and punishment of Members, including expulsion.⁶⁸

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."⁶⁹ 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. Rangel accepted contributions to the Rangel Center in return for preserving a tax loophole for Nabors Industries, 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."⁷⁰ House Members are directed to adhere to 5

⁶⁶ 18 U.S.C. § 201(c)(1)(B).

⁶⁷ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

⁶⁸ *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).

⁶⁹ 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.

⁷⁰ 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.

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.”⁷¹

By preserving a tax loophole for Nabors Industries to persuade Mr. Isenberg to make a substantial contribution to the Rangel Center, Rep. Rangel 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.”⁷² This ethics standard is considered to be “the most comprehensive provision” of the Code.⁷³ 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.⁷⁴

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,⁷⁵ making false statements to the Committee,⁷⁶ criminal convictions for bribery,⁷⁷ or accepting

⁷¹ Id.

⁷² Rule 23, cl. 1.

⁷³ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

⁷⁴ 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).

⁷⁵ 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).

⁷⁶ 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).

⁷⁷ 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

illegal gratuities,⁷⁸ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁷⁹

By using his position as chairman of the Ways and Means Committee to preserve a tax loophole that he had previously opposed in apparent exchange for a substantial contribution to the Rangel Center at City College of New York, Rep. Rangel acted in a manner that does not reflect creditably on the House.

Carribean Trip

The House Ethics Committee is reviewing a trip Rep. Rangel and four other members took to the Caribbean island of St. Maarten from November 6-9, 2008 to attend a conference supposedly sponsored by the Carib News Foundation.⁸⁰ The Carib News Foundation is a non-profit organization affiliated with a newspaper for Carribean immigrants living in New York City.⁸¹ Rep. Rangel reported the cost of trip as \$990 and that it was paid for by Carib News Foundation.⁸²

Peter Flaherty, the president of National Legal and Policy Center, also traveled to St. Maarten for the event and found evidence the trip was paid for by corporations including Citigroup, IBM, AT&T, Verizon, Pfizer, Macy's and American Airlines.⁸³ Mr. Flaherty reported that the corporate sponsorship of the event was evident throughout the event and, in fact, at the evening session on November 6, Rep. Donald Payne (D-NJ) identified each corporate sponsor by name and asked for a round of applause, noting the conference "can't be done without sponsors."⁸⁴

In response to a request from the Committee on Standards of Official Conduct, Mr. Flaherty submitted the evidence he collected at the conference including photographs of corporate logos, transcripts and a program and a letter requesting the committee investigate 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)).

⁷⁸ 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).

⁷⁹ 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).

⁸⁰ Press Release, Committee on Standards and Official Conduct, Statement of the Chair and Ranking Member, June 24, 2009. (Exhibit 18); National Legal and Policy Center Letter to Committee on Standards of Official Conduct, May 29, 2009 (*hereinafter* "National Legal and Policy Center Letter") (Exhibit 19); Member/Officer Travel Disclosure Form, filed by Rep. Rangel, November 24, 2008 (Rep. Rangel's travel disclosure form indicates he arrived at the conference on November 7, not the 6th) (Exhibit 20).

⁸¹ Susan Crabtree, Caribbean Trip Under Scrutiny By House Panel, *The Hill*, June 1, 2009 (Exhibit 21).

⁸² Member/Officer Travel Disclosure Form, filed by Rep. Rangel, November 24, 2008.

⁸³ National Legal and Policy Center Letter.

⁸⁴ Id.

trip.⁸⁵ In the letter Mr. Flaherty stated. “My characterization of the trip as a ‘junket’ is based on my observation that the sessions were lightly attended. Most attendees spent significant time at the beach or the pool. Members of Congress attended the sessions when they had a speaking role.”⁸⁶

Travel Rule Violation

Under travel rules revised in the 110th Congress, members of Congress and staff may only accept necessary travel expenses to attend a one-day event, with a single night’s lodging and meals when the trip is paid for by a private sponsor that retains or employs registered lobbyists.⁸⁷ In addition, the subject matter of the trip must be related to the official duties of the participating member of Congress.⁸⁸ “Events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of the individual as an officeholder.”⁸⁹ Additionally, when a nonprofit pays for travel with donations earmarked for the trip, each such donor is considered a “private source” for the trip and must be disclosed as a trip sponsor and must be a proper source of travel expenses.⁹⁰ Expenses may not be accepted from a source that has merely donated monetary or other support to the trip but does not have a significant role in organizing and conducting the trip.⁹¹

Because corporations that employ lobbyists appear to have put up the money for the trip, because these corporations did not have a direct and immediate relationship with the trip and because the trip appears to have largely been recreational in nature, Rep. Rangel likely violated House travel rules by accepting expenses for the trip.

Tax Issues and Financial Disclosures

In September 2008, Rep. Charles Rangel paid \$10,800 in back taxes for his 2004, 2005 and 2006 returns related to the unreported rental income he earned from his Dominican Republic beach house.⁹²

On November 13, 2008, Rep. Rangel hired the forensic accounting firm Watkins, Meegan, Drury & Company LLC to review his tax returns and financial disclosures.⁹³ It is

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ House Committee on Standards of Official Conduct, House Ethics Manual, p. 89.

⁸⁸ Id., p. 90; House Rule 25, clause 5(b)(1)(A).

⁸⁹ Id., p. 91.

⁹⁰ Id., p. 98.

⁹¹ House Ethics Manual, p. 97.

⁹² Devlin Barrett, Rep. Rangel Pays \$10K in Back Taxes, *Associated Press*, September 20, 2008 (Exhibit 22).

⁹³ David Kocieniewski, Rangel Hires Firm to Scour His Tax Returns for Errors, *New York Times*, November 14, 2008 (Exhibit 23).

unclear whether or not the firm was allowed to operate independently and turn over information to the House Ethics Committee or was to report to Rep. Rangel's legal defense team.⁹⁴

On February 4, 2009, the Sunlight Foundation reported Rep. Rangel had a history of failing to report asset transactions on his financial disclosure forms.⁹⁵ The lawmaker failed to report buying, owning or selling assets 28 times since 1978, when members first were required to disclose such information.⁹⁶ According to the report, "Assets worth between \$239,026 and \$831,000 appear or disappear with no disclosure of when they were acquired, how long they were held, or when they were sold, as the operative House rules at the time required."⁹⁷

The Sunlight Foundation also revealed that Rep. Rangel did not report receiving any royalties for his memoir, *And I Haven't Had a Bad Day Since*,⁹⁸ although the book is in its second printing.⁹⁹ Rep. Rangel's spokesperson, Emil Milne, claimed the congressman had not received any proceeds from the book.¹⁰⁰

On August 12, 2009, Rep. Rangel filed an amendment to 2007 personal financial disclosure form.¹⁰¹ The original report failed to disclose between \$512,009 and \$1.18 million in assets.¹⁰² The unreported assets included a Congressional Federal Credit Union checking account the balance of which was between \$250,000 and \$500,000.¹⁰³ Similarly, Rep. Rangel also failed to report between \$39,113 and \$117,800 in other income as well as two empty lots he owns in New Jersey.¹⁰⁴

Rep. Rangel also failed to report up to \$1.3 million in outside income on his financial disclosure forms for 2002-2006.¹⁰⁵ On his 2002 and 2003 forms, Rep. Rangel did not include any transactions, but in the amended forms, he listed transactions worth up to \$310,000 in 2002 and up to \$80,000 in 2003.¹⁰⁶ In 2004, the congressman failed to list up to \$430,000 in

⁹⁴ Id.

⁹⁵ <http://realtime.sunlightprojects.org/2009/02/04/ethics-panel-to-clear-rangel/> (Exhibit 24).

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Susan Crabtree, Rangel Faces Questions About Book Royalties, *The Hill*, February 5, 2009 (Exhibit 25).

¹⁰⁰ David Kocieniewski, Rangel's Financial Disclosures Omitted Data Over 30 Years, A Report Says, *New York Times*, February 5, 2009 (Exhibit 26).

¹⁰¹ Rep. Charles Rangel, Personal Financial Disclosure Statement For Calendar Year 2007, Filed August 12, 2009 (Exhibit 27); Rep. Charles Rangel, Personal Financial Disclosure Statement For Calendar Year 2007, Filed May 14, 2008 (see Exhibit 11).

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Charles Hurt, Oops! Charlie Forgot This \$1M House, *New York Post*, August 28, 2009 (Exhibit 28).

¹⁰⁶ Id.

transactions.¹⁰⁷ He originally disclosed earning between \$4,000 and \$10,000 in outside income that year, but his amended filing shows that after he sold property, his outside income was actually between \$118,000 and \$1.04 million.¹⁰⁸

Financial Disclosure Requirements

The Ethics in Government Act of 1967¹⁰⁹ 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.¹¹⁰ House Rule 26 incorporates the financial disclosure provisions of the Ethics in Government Act.¹¹¹

The House Ethics Manual requires members to disclose income derived from property held for investment or the production of income such as real estate, stock, bonds, savings accounts and retirement accounts if the asset was worth more than \$1,000 or it generated income of more than \$200.¹¹² The rules require the date, total purchase or sale price and description of any property bought or sold all be listed in Part IV of the financial disclosure form.¹¹³ All sales must be included on financial disclosure forms as transactions. The instruction booklet provides that filers must include:

A brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.¹¹⁴

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.¹¹⁵ “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.”¹¹⁶

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Pub. L. No. 95-521, 92 Stat. 1824 (Oct. 26, 1978).

¹¹⁰ 5 U.S.C. app. 4, § 104.

¹¹¹ House Ethics Manual, p. 248.

¹¹² Id., p. 254.

¹¹³ Id., p. 257.

¹¹⁴ Instruction Booklet, Transactions.

¹¹⁵ Id.

¹¹⁶ Id.

Rep. Rangel repeatedly failed to disclose all of his assets and unearned income and he failed to report the purchase and sale of property and securities in clear violation of House rules.

18 U.S.C. § 1001

Federal law prohibits Members of Congress from making “any materially false, fictitious, or fraudulent statement or representation”¹¹⁷ on “a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch.”¹¹⁸

If Rep. Rangel knowingly and willfully failed to disclose, or misrepresented, the true value of his personal assets on his financial disclosure forms, he would appear to be in violation of 18 U.S.C. § 1001.

Improper Vehicle Storage

In September 2008, it was reported that Rep. Rangel had been using a parking spot beneath a House office building to store his 1972 Mercedes for several years.¹¹⁹ The car was covered by a tarp and did not have license plates.¹²⁰ Its registration had expired in 2004 and the car did not display a current House parking permit.¹²¹ The space is valued at \$290 per month, and must be reported to the IRS as imputed income.¹²² Rep. Rangel would not comment on whether or not he reported the value of the space on his taxes.¹²³ The car was towed in September 2008.¹²⁴

House Parking Rules

Each Member is provided one garage parking permit for the member's use; at the prerogative of the Member, this permit may be assigned to staff.¹²⁵ Garage parking spaces may be reserved. If a space is reserved by an authorized permit holder, the permit holder incurs additional taxable income as a working condition fringe benefit. Under the tax code and IRS regulations, Members and their staff have imputed taxable income to the extent that the fair market value of Government-provided parking exceeds \$175.00/month (the value of the parking space is subject to future adjustments).¹²⁶ Parking permit applications for each vehicle must be submitted each Congress to the Office of House Garages and Parking Security. The application

¹¹⁷ 18 U.S.C. § 1001(a)(2).

¹¹⁸ *Id.* at § 1001(c)(2).

¹¹⁹ Daphne Retter, *Big Wheel Benz the Rules*, *New York Post*, September 18, 2008 (Exhibit 29).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Daphne Retter, *Tow-Nailing Charlie ‘Parker,’* *New York Post*, September 19, 2008 (Exhibit 30).

¹²⁴ *Id.*

¹²⁵ House Committee on Administration, *Member’s Handbook*, *Parking*.

¹²⁶ *Id.*

forms must include the individual's name, House of Representatives ID number (where applicable), the model, color, and year of the individual's automobile, and the automobile license number and state.¹²⁷

By storing an unlicensed vehicle in a House garage without a valid parking permit, Rep. Rangel violated House rules.

Ongoing Ethics Probe

Since Rep. Rangel initially requested the Committee on Standards of Official Conduct investigate allegations leveled against him, the committee's probe has expanded.¹²⁸ It currently is reviewing allegations into his use of congressional letterhead for fund-raising, the income he earned from the Dominican Republic villa, the three rent-controlled apartments he uses as his New York residence and the additional rent controlled apartment he used as a campaign office, his use of House parking facilities, the trip to the Caribbean and the alleged exchange of legislative assistance for a contribution to the Charles B. Rangel School of Public Service.¹²⁹ As a result of this investigation, Rep. Rangel has paid more than \$1 million in legal fees.¹³⁰

¹²⁷ Id.

¹²⁸ Jennifer Yachnin, Rangel Probe Hits 6 Months, *Roll Call*, March 18, 2009 (Exhibit 31).

¹²⁹ Id.; Press Release, Committee on Standards and Official Conduct, June 24, 2009 (see Exhibit 18).

¹³⁰ John Bresnahan, Charlie Rangel Spends \$1M on Legal Bills, *Politico*, August 4, 2009 (Exhibit 32).

REPRESENTATIVE LAURA RICHARDSON

Representative Laura Richardson (D-CA) is a two-term member of Congress, representing California's 37th congressional district. Rep. Richardson's ethics issues stem from accepting favorable loans, and failing to properly report a loan on her financial disclosure statements. Rep. Richardson was included in CREW's 2008 congressional corruption report.

Falling into Foreclosure

In May 2008, it was reported that Rep. Richardson's Sacramento home had been sold at a public foreclosure auction.¹ She claimed that this 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 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.⁴ She also failed to pay approximately \$9,000 in property taxes on her Sacramento residence.⁵ James York, the owner of Red Rock Mortgage, bought the Sacramento home for \$388,000 at a foreclosure auction on May 7, 2008.⁶

On June 2, 2008, Washington Mutual Bank, Rep. Richardson's lender, filed a notice of rescission of the foreclosure sale.⁷ By that time, Mr. York had already invested money cleaning up the house and preparing it for resale.⁸ As a result, Mr. York filed suit against Rep. Richardson and Washington Mutual, alleging that Rep. Richardson received preferential treatment from Washington Mutual.⁹ Mr. York claimed Washington Mutual would never have rescinded the sale, but for the fact that Rep. Richardson is a member of Congress.¹⁰ In July 2008 it was reported that Mr. York's suit against Rep. Richardson and the bank had been dropped, thereby allowing Rep. Richardson to reclaim her home.¹¹

During June and July of 2007, while Rep. Richardson was missing payments and failing to pay her taxes, she made three loans totaling \$77,500 to her congressional campaign.¹²

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 Jared Allen and Jackie Kucinich, Dem, GOP Leaders Say Richardson's Housing Troubles Warrant Scrutiny, *The Hill*, June 18, 2008 (Exhibit 4).

⁵ Maddaus, *Press-Telegram*, Jun. 9, 2008.

⁶ Allen and Kucinich, *The Hill*, Jun. 18, 2008.

⁷ Maddaus, *Press-Telegram*, Jun. 9, 2008.

⁸ Id.

⁹ Gene Maddaus, Rep. Richardson Can Get Sacramento House Back, *Press-Telegram*, July, 25, 2008 (Exhibit 5).

¹⁰ Maddaus, *Press-Telegram*, Jun. 9, 2008.

¹¹ Maddaus, *Press-Telegram*, Jul. 25, 2008.

¹² Richardson for Congress, FEC Form 3, Pre-Runoff Report 2007, August 10, 2007, pp. 38-40 (Exhibit 6).

Press reports also indicated Rep. Richardson had been late in paying car bills to mechanics and to a printer for a campaign-related invoice for invitations.¹³

Rep. Richardson also had failed to include the mortgage on her Sacramento home on her personal financial disclosure statements.¹⁴

Gift Rule Violation

Rule 25, clause 5(1)(A)(I) of the House Rules states “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 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 at least eight times on loans 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 repeatedly approved for mortgages, Rep. Richardson may have traded on her other elected positions in order to receive those loans.

¹³ Paul Eakins, U.S. Rep. Laura Richardson Late on Car Bills, *Daily Breeze*, June 6, 2008 (Exhibit 7).

¹⁴ 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 8).

¹⁵ Rules of the House of Representatives, 110th Congress, p. 41.

¹⁶ House Rules 25, clause 5 (a)(2)(A).

¹⁷ House Rules, p. 42.

¹⁸ Allen and Kucinich, *The Hill*, Jun. 18, 2008.

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 required information.²² In addition, knowingly and willfully falsifying a report or concealing a material fact is a crime punishable by up to five 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 as well as 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."

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).

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.

2009 UPDATE

Falling into Foreclosure

In October 2008, Rep. Richardson shared her personal financial records with her hometown paper in order to show she was up-to-date on previously defaulted home loans.²⁶ She claimed the loans for her Long Beach, Sacramento, and San Pedro homes had been modified and that her finances were in order.²⁷

Rep. Richardson's amended 2007 and 2008 personal financial disclosures failed, however, to include the mortgage loans for her properties in Long Beach, Sacramento, and San Pedro.²⁸

Rep. Richardson's housing issues have continued to plague the Sacramento neighborhood where one of her homes is located. In 2008, the Sacramento Code Enforcement Department declared her home a "public nuisance."²⁹ After visits to the home, city inspectors reported they found junk and debris in the driveway and rotting fruit in the backyard, attracting rodents.³⁰ In May 2009, after neighbors complained about the home's overgrown yard, the city posted another violation requiring that the lawn be mowed.³¹ The lawn was mowed but issues with the upkeep of the house did not end.³² Neighbors e-mailed and wrote letters complaining about the state of the home to Rep. Richardson and to House Speaker Nancy Pelosi, to no avail.³³ Eventually, neighbors began taking care of the house themselves: paying gardeners to mow the lawn, water plants, and rake leaves.³⁴

Office of Congressional Ethics Investigation

In July 2009, it was reported that the Office of Congressional Ethics (OCE) had launched an investigation into the circumstances around the temporary foreclosure of Rep. Richardson's Sacramento home and whether House gift rules were violated when neighbors spent money to

²⁶ John Canalis, Richardson Says Her Bills Are Paid Up, *Press Telegram*, October 31, 2008 (Exhibit 10)

²⁷ Id.

²⁸ See Rep. Laura Richardson, Amended Personal Financial Disclosure Statement for Calendar Year 2007, filed June 13, 2008; See Rep. Laura Richardson, Amended Personal Financial Disclosure Statement for Calendar Year 2007, filed June 27, 2008; Rep. Laura Richardson, Personal Financial Disclosure Statement for Calendar Year 2008, filed May 15, 2009 (Exhibit 11)

²⁹ Jeff Gottlieb, Long Beach Congresswoman's Problems With Houses Continues, *Los Angeles Times*, May, 5, 2009 (Exhibit 12).

³⁰ Id.

³¹ Id.

³² Id.

³³ Jeff Gottlieb, Congresswoman's Abandoned House Angers Neighbors, *Los Angeles Times*, June 12, 2009 (Exhibit 13).

³⁴ Id.

clean up her property.³⁵ The OCE contacted Mr. York and interviewed neighbors about the expenses they incurred cleaning up Rep. Richardson's yard.³⁶

Legal Fees

Rep. Richardson's campaign committee's amended July 2009 quarterly report indicated the committee paid \$6,000, and owed \$36,474.43, in legal fees.³⁷ In the campaign committee's original July 2009 quarterly report, there was an additional \$10,000 reported for legal services, but that was removed in the amended July quarterly report.³⁸

³⁵ Jeff Gottlieb, Rep. Richardson's Home is Focus of House Ethics Probe, *Los Angeles Times*, July 29, 2009 (Exhibit 14).

³⁶ Id.

³⁷ Richardson for Congress Committee, FEC Form 3, Amended July Quarterly Report 2009, July 15, 2009, pp. 16, 17, 34 (Exhibit 15).

³⁸ Richardson for Congress Committee, FEC Form 3, July Quarterly Report 2009, July 15, 2009, p. 16 (Exhibit 16).

REPRESENTATIVE PETE VISCLOSKY

Representative Pete Visclosky (D-IN) is a thirteen-term member of Congress, representing Indiana's 1st congressional district. Rep. Visclosky is the chairman of the House Appropriations Subcommittee on Energy and Water Development. Rep. Visclosky's ethics issues stem from his close ties to the PMA Group, a now defunct lobbying firm that represented numerous clients, many of them recipients of earmarks sponsored by the lawmaker.

The PMA Group

The PMA Group was a lobbying firm founded by former House Appropriations Committee aide, Paul Magliocchetti.¹ Mr. Magliocchetti and his firm had close ties to Rep. Visclosky – the lawmaker's former chief of staff, Rich Kaelin, was a registered lobbyist for the firm starting in 2003.² Rep. Visclosky benefitted from his close ties with the group.³ According to *The Center for Responsive Politics* from 1998 through the end of 2008, Rep. Visclosky was the second highest recipient of donations from PMA Group lobbyists and the firm's clients, with a total of \$1,369,298.⁴ Specifically, employees of the PMA Group donated \$209,500 to Rep. Visclosky's campaign committee and PAC⁵ and PMA's PAC donated \$23,000 to the lawmaker.⁶ In 2008, the PMA Group was Rep. Visclosky's number one campaign contributor.⁷ In exchange, the lawmaker rewarded PMA Group clients with millions in earmarks,⁸ at least \$23 million in fiscal year 2008 and at least \$10 million in fiscal year 2009.⁹

¹ Jonathan Allen and Alex Knott, Firm With Murtha Ties Got Earmarks From Nearly One-Fourth of the House, *CQ Politics*, February 19, 2009 (Exhibit 1).

² PMA Group, Lobbying Report 2003, Client: General Atomics, Secretary of the Senate, Office of Public Records (Exhibits 2).

³ Congressmen Overseeing Defense Budget Got \$8 Million from PMA Group and Clients, *Center for Responsive Politics: Capital Eye Blog*, March 2, 2009 (Exhibit 3).

⁴ Id.

⁵ Visclosky for Congress, FEC Form 3 Reports, 1998-2009 (pages listing contributions attached, Exhibit 4); Calumet PAC, FEC Form 3 Reports, 2003-2009 (pages listing contributions attached, Exhibit 5).

⁶ PMA Group PAC, FEC Form 3, March Monthly Report 2008, March 18, 2008, p. 23; PMA Group PAC, FEC Form 3, February Monthly Report 2007, February 15, 2007, p. 23; PMA Group PAC, FEC Form 3, April Monthly Report 2006, April 16, 2006, p. 29; PMA Group PAC, FEC Form 3, May Monthly Report 2005, May 10, 2005, p. 22; PMA Group PAC, FEC Form 3, April Monthly Report 2004, April 5, 2004, p. 24; PMA Group PAC, FEC Form 3, April Monthly Report 2003, April 17, 2003, p. 20; PMA Group PAC, FEC Form 3, April Monthly Report 2002, March 16, 2002, p. 16; PMA Group PAC, FEC Form 3, June Monthly Report 2001, June 18, 2001, p. 13; PMA Group PAC, FEC Form 3, June Monthly Report 2000, June 13, 2000, p. 7; PMA Group PAC, FEC Form 3, April Quarterly Report 1998, May 22, 1998, pp. 7, 8 (Exhibit 6).

⁷ Roxana Tiron, Visclosky Steers Clear of PMA Earmarks, *The Hill*, April 3, 2009 (Exhibit 7).

⁸ Id.

⁹ http://www.taxpayer.net/projects.php?action=view&category=&type=Project&proj_id=2539 (Exhibit 8).

In February 2009, it was reported that the offices of the PMA Group as well as the home of its founder, Mr. Magliocchetti, had been raided by the FBI in November 2008.¹⁰ After news of the raid broke, the PMA Group closed its doors and ceased operations.¹¹

The PMA Group is under investigation for allegedly violating campaign finance laws by making “straw” donations to lawmakers, concealing the true source of the money.¹² Rep. Visclosky apparently received approximately \$18,000 in contributions from individuals listed as PMA lobbyists, despite the fact that the individuals were never employees of the firm.¹³ The lawmaker turned those contributions over to the U.S. Department of the Treasury in April.¹⁴ Additionally, Mr. Magliocchetti may have reimbursed his employees for contributions made to candidates.¹⁵

Since the raid, Rep. Visclosky has done much to distance himself from the group and its founder. Although initially he voted against an effort to call for a House investigation into the generic relationship between earmarks and campaign contributions,¹⁶ he later endorsed a Republican-backed effort to investigate the PMA Group.¹⁷

In March 2009, Rep. Visclosky asked the Federal Elections Committee (FEC) for permission to use campaign funds to defray legal costs associated with defending himself during the course of the investigation.¹⁸ On June 18, 2009, the FEC issued an advisory opinion granting Rep. Visclosky permission to use campaign fund to pay legal fees.¹⁹ Additionally, on August 27, 2009, the FEC issued an advisory opinion granting Rep. Visclosky’s campaign committee permission to use campaign funds to pay legal expenses incurred by current and former aides to the lawmaker stemming from the investigation.²⁰ One member of the FEC commission

¹⁰ Emma Schwartz and Justin Rood, FBI Raided Lobbying Firm Connected to Murtha, *ABC News*, February 9, 2009; David D. Kirkpatrick and Charlie Savage, Star Lobbyist Closes Shop Amid F.B.I. Inquiry, *New York Times*, March 30, 2009 (Exhibit 9)

¹¹ Id.

¹² Sarah Fitzpatrick, Amid PMA Probe, Rep. Visclosky Relinquished Chairmanship, *Washington Post*, June 2, 2009 (Exhibit 10).

¹³ Id.; Carol D. Loennig, Despite Listing, Donors Don’t Work for Firm Being Probed, *Washington Post*, February 14, 2009 (Exhibit 11).

¹⁴ Maureen Groppe, Rep. Visclosky Gives Questionable Funds to Treasury, *Gannett Washington Bureau*, April 14, 2009 (Exhibit 12).

¹⁵ Loennig, *Washington Post*, Feb. 14, 2009.

¹⁶ Groppe, *Gannett Washington Bureau*, Apr. 14, 2009.

¹⁷ David D. Kirkpatrick and Charlie Savage, Lawmaker Said to Surface in Lobbying Inquiry, *New York Times*, April 4, 2009 (Exhibit 13).

¹⁸ Paul Singer, Visclosky Seeks to Use Campaign Funds for Legal Defense, *Roll Call*, April 20, 2009 (Exhibit 14).

¹⁹ FEC, AO 2009-10 (2009) (Exhibit 15).

²⁰ FEC, Draft AO 2009-20 (Aug. 20, 2009) (Exhibit 16).

expressed concern that the decision could cover the legal expenses of Mr. Kaelin, a staffer turned PMA lobbyist.²¹

Since receiving permission from the FEC, the lawmaker has only paid \$1,945 in legal fees, all to Perkins Coie, LLP.²² Press reports indicate Rep. Visclosky has hired another law firm specializing in federal elections law, Steptoe & Johnson.²³ Thus far, FEC records show no payments to that firm. Rep. Visclosky's campaign committee has re-filed its 2007 and 2008 finance reports with the FEC, making numerous corrections.²⁴

In May 2009, Rep. Visclosky was subpoenaed by a federal grand jury seeking information in its criminal probe of the lobbying firm.²⁵ Shortly after the subpoena was issued, Rep. Visclosky announced he would temporarily step down as chair of the House Energy and Water Appropriations Subcommittee.²⁶ Rep. Ed Pastor (D-AZ) took over as chair of the committee to oversee the fiscal year 2010 Energy and Water Appropriations bill.²⁷ Rep. Visclosky also pledged to cease earmarking for any for-profit company in this year's spending bills.²⁸ Finally, the lawmaker said he would reject \$21 million in requests made by former PMA Group clients to his office.²⁹

Purdue Research Park Northwest Indiana

The Purdue Research Park of Northwest Indiana (PRPNI) is a technology incubator established in 2005.³⁰ Based in Merrillville, Indiana, in Rep. Visclosky's district, the lawmaker was instrumental in securing the original \$6.9 million that financed PRPNI's construction and he has continued to support the project.³¹ The goal of PRPNI was to create a space for fledgling businesses to get their start, expand, and eventually move out to more permanent space, but after four years and millions in investments, PRPNI is one-quarter empty.³²

²¹ Alex Knott, FEC Approves Money for Visclosky Staffers, *CQ Politics*, August 27, 2009 (Exhibit 17).

²² Visclosky for Congress Committee, FEC Form 3, July Quarterly Report 2009, July 15, 2009, pp. 39, 40 (Exhibit 18).

²³ Keven Nevers, Visclosky May Use Campaign Funds for Legal Fees in Federal Probe, *Charleston Tribune*, June 18, 2009 (Exhibit 19).

²⁴ Kirkpatrick and Savage, *New York Times*, Apr. 4, 2009.

²⁵ John Bresnahan, Visclosky Subpoenaed by Federal Grand Jury, *Politico*, May 29, 2009 (Exhibit 20).

²⁶ Fitzpatrick, *Washington Post*, Jun. 2, 2009.

²⁷ Id.

²⁸ Ind. Rep. Visclosky Drops Private Firm Earmarks, *Associated Press*, April 10, 2009 (Exhibit 21).

²⁹ Id.

³⁰ Visclosky Secures \$2 Million to Complete Expansion of Purdue Technology Center of Northwest Indiana, *Business Wire*, July 23, 2007 (Exhibit 22)

³¹ Id.; Christine Kraly, Is Purdue Tech Center Living Up To Promise?, *NWTimes.com*, May 5, 2009 (Exhibit 23).

³² Id.

Instead of serving as an incubator for struggling new businesses, PRPNI has hosted satellite offices of established government contractors and PMA Group clients.³³ At least five current or former PRPNI tenants -- 21st Century Systems, NuVant Systems, Inc., ProLogic, Inc., Sierra Nevada Corporation, and ACT-1 -- are former clients of the PMA Group.³⁴ Sierra Nevada, one of the first companies recruited by Rep. Visclosky, has closed its office in the Park.³⁵

Employees of the five firms as well as the corporate PACs of three of the companies have made donations to Rep. Visclosky's campaign committee or political action committee:

Employees of Omaha, Nebraska-based 21st Century Systems, which develops software for a variety of applications,³⁶ has donated \$36,850 to Rep. Visclosky's campaign committee since 2005³⁷ and its PAC has donated \$16,100 to Rep. Visclosky's campaign committee and PAC since 2006.³⁸

Employees of Crown Point, Indiana-based, NuVant Systems, which develops fuel cell technologies,³⁹ has donated \$16,700 to Rep. Visclosky's campaign committee since 2006.⁴⁰

³³ Kirkpatrick and Savage, *New York Times*, Apr. 4, 2009.

³⁴ <http://www.purdueresearchpark.com/companies/cosearchnwi.asp>; The PMA Group, Lobbying Registration 2002, Client: 21st Century Systems, Secretary of the Senate, Office of Public Record; The PMA Group, Termination Report 2009, Client: 21st Century Systems, Secretary of the Senate, Office of Public Record; The PMA Group, Lobbying Registration 2005, Client: NuVant Systems, Secretary of the Senate, Office of Public Record; The PMA Group, Termination Report 2009, Client: NuVant Systems, Secretary of the Senate, Office of Public Record; The PMA Group, Lobbying Registration 2000, Client: ProLogic, Inc., Secretary of the Senate, Office of Public Record; The PMA Group, Termination Report 2009, Client: ProLogic, Inc., Secretary of the Senate, Office of Public Record; The PMA Group, Lobbying Registration 2002, Client: Sierra Nevada Corporation, Secretary of the Senate, Office of Public Record; The PMA Group, Termination Report 2009, Client: Sierra Nevada Corporation, Secretary of the Senate, Office of Public Record; Tiron, *The Hill*, Apr. 3, 2009 (Exhibit 24).

³⁵ Kraly, *NWITimes.com*, May 5, 2009.

³⁶ <http://www.21csi.com/about/locations>; <http://www.21csi.com/> (Exhibit 25).

³⁷ Visclosky for Congress, FEC Form 3 Reports, 2005-2009 (pages listing contributions attached, Exhibit 26).

³⁸ 21st Century Systems Inc, FEC Form 3, April Quarterly Report 2008, April 18, 2008, pp. 10-12; 21st Century Systems Inc, FEC Form 3, April Quarterly Report 2006, April 25, 2007, pp. 9-11 (Exhibit 27).

³⁹ <http://www.nuvant.com/about/us.html>; <http://www.nuvant.com/contact/us.html> (Exhibit 28).

⁴⁰ Visclosky for Congress, FEC Form 3, Pre-Primary Report 2006, April 20, 2006, pp. 51, 52, 60; Visclosky for Congress, FEC Form 3, April Quarterly Report 2007, March 18, 2009, pp. 52, 53; Visclosky for Congress, FEC Form 3, July Quarterly Report 2008, July 24, 2008, pp. 34, 35 (Exhibit 29).

Employees of West Virginia-based ProLogic, Inc., which provides defense electronics,⁴¹ has donated \$65,750 to Rep. Visclosky's campaign committee and PAC since 2002,⁴² and its PAC has donated \$15,500 to Rep. Visclosky's campaign committee and PAC.⁴³

The political action committee for Sierra Nevada Corporation, which manufactures defense electronics,⁴⁴ has donated \$52,000 to Rep. Visclosky's campaign committee and PAC since 2003.⁴⁵

Employees of Act-1, a Texas based firm,⁴⁶ have donated \$53,300 to Rep. Visclosky's campaign committee and PAC since 2004.⁴⁷

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.⁴⁸ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁴⁹

If, as it appears, Rep. Visclosky 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.

⁴¹ <http://www.prologic-inc.com/Home/index.asp> (Exhibit 30).

⁴² Visclosky for Congress, FEC Form 3 Reports, 2002-2009 (pages listing contributions attached, Exhibit 31); Calumet PAC, FEC Form 3 Reports, 2002-2009 (pages listing contributions attached, Exhibit 32).

⁴³ ProLogic Inc PAC, FEC Form 3, May Monthly Report 2007, May 21, 2007, p. 12; ProLogic Inc PAC, FEC Form 3, May Monthly Report 2006, May 18, 2006, p. 14; ProLogic Inc PAC, FEC Form 3, June Monthly Report 2005, March 1, 2006, p. 9; ProLogic Inc PAC, FEC Form 3, June Monthly Report 2003, June 21, 2003, pp. 8, 9 (Exhibit 33).

⁴⁴ <http://www.sncorp.com/> (Exhibit 34).

⁴⁵ Sierra Nevada PAC, FEC Form 3, June Monthly Report 2003, June 1, 2007, pp. 28, 29; Sierra Nevada PAC, FEC Form 3, April Monthly Report 2004, June 1, 2007, p. 14; Sierra Nevada PAC, FEC Form 3, June Monthly Report 2005, June 1, 2007, pp. 19, 20; Sierra Nevada PAC, FEC Form 3, April Monthly Report 2006, June 1, 2007, pp. 16, 18; Sierra Nevada PAC, FEC Form 3, March Monthly Report 2007, June 1, 2007, pp. 13, 14; Sierra Nevada PAC, FEC Form 3, April Monthly Report 2008, June 18, 2008, p. 35 (Exhibit 35).

⁴⁶ Ken Silverstein, Inappropriate Appropriations, *Harpers Magazine*, April 26, 2006 (Exhibit 36).

⁴⁷ Visclosky for Congress, FEC Form 3 Reports, 2004-2009 (pages listing contributions attached, Exhibit 37); Calumet PAC, FEC Form 3, July Quarterly Report 2005, July 11, 2007, pp. 11, 12; Calumet PAC, FEC Form 3, April Quarterly Report 2006, July 11, 2007, pp. 7, 8; Calumet PAC, FEC Form 3, July Quarterly Report 2005, July 11, 2007, pp. 11, 12; Calumet PAC, FEC Form 3, Pre-Primary Report 2008, July 11, 2008, p. 8 (Exhibit 38).

⁴⁸ 18 U.S.C. § 201(b)(2)(A).

⁴⁹ 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 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.⁵⁰ By using his position as a member of Congress to financially benefit clients of a lobbying firm that employed one of his former aides, and by earmarking federal funds in apparent exchange for campaign contributions, Rep. Visclosky 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, 1346.

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.⁵¹ 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.⁵²

If a link is established between Rep. Visclosky's earmarking federal funds for PMA Group clients 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.⁵³

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."⁵⁴ House Rule XXIII, clause 3, similarly provides:

⁵⁰ See *Information, United States v. Jack A. Abramoff*, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

⁵¹ 18 U.S.C. § 201(c)(1)(B).

⁵² *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

⁵³ *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).

⁵⁴ 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. Visclosky accepted campaign contributions from the PMA Group and its clients, 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.”⁵⁵ 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.”⁵⁶

By funneling federal funds to clients of the PMA Group, a lobbying firm employing a former staff member, Rep. Visclosky may have dispensed special favors and 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.”⁵⁷ This ethics standard is considered to be “the most comprehensive provision” of the code.⁵⁸ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th

⁵⁵ 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.

⁵⁶ Id.

⁵⁷ Rule 23, clause 1.

⁵⁸ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

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.⁵⁹ 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,⁶⁰ making false statements to the Committee,⁶¹ criminal convictions for bribery,⁶² or accepting illegal gratuities,⁶³ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁶⁴

If Rep. Visclosky 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.

⁵⁹ 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).

⁶⁰ 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).

⁶¹ 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).

⁶² 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)).

⁶³ 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).

⁶⁴ 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).

REPRESENTATIVE MAXINE WATERS

Representative Maxine Waters (D-CA) is a ten-term member of Congress, representing California's 35th congressional district. She is a senior member of the House Financial Services Committee. Rep. Waters' ethics issues stem from a meeting she arranged between officials at the Department of Treasury and OneUnited Bank, a bank with which she has financial ties. Rep. Waters was included in CREW's 2005 and 2006 congressional corruption reports for unrelated matters.

Meeting Between OneUnited and Treasury Officials

In September 2008, Rep. Waters asked then-Secretary of the Treasury Henry Paulson to hold a meeting for minority-owned banks that had suffered from Fannie Mae and Freddie Mac losses.¹ The Treasury Department complied and held a session with approximately a dozen senior banking regulators, representatives from minority-owned banks, and their trade association.²

Officials of OneUnited Bank, one of the largest black-owned banks in the country that has close ties to Rep. Waters, attended the meeting along with Rep. Waters' chief of staff.³ Kevin Cohee, chief executive officer of OneUnited, used the meeting as an opportunity to ask for bailout funds.⁴ Treasury, however, did not commit to a bailout.⁵ Former Bush White House officials stated they were surprised when OneUnited officials asked for bailout funds because they understood the meeting had been arranged to discuss the losses minority-owned banks endured when the federal government took over Fannie Mae and Freddie Mac.⁶

In December 2008, Rep. Waters intervened again, asking Treasury to host another meeting to ensure minority-owned banks received part of the \$700 billion allocated under the Troubled Asset Relief Program (TARP).⁷ Within two weeks, on December 19, 2008, OneUnited secured \$12.1 million in bailout funds.⁸

¹ Eric Lipton and Jim Rutenberg, Congresswoman, Tied to Bank, Helped Seek Funds, *New York Times*, March 13, 2009 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

⁶ Bennett Roth, Waters Denies Improperly Aiding Bank Where Husband Was Board Member, *CQ*, March 13, 2009 (Exhibit 2).

⁷ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

⁸ Binyamin Appelbaum, Lawmaker Tried to Aid Bank Partly Owned by Husband, *Washington Post*, March 14, 2009 (Exhibit 3).

Rep. Waters defended her actions by stating that the National Bankers Association, the trade association that represents minority banks, wrote a letter to her requesting the initial meeting.⁹ The letter was written by the incoming chairman of the organization, Robert P. Cooper, who also serves as senior counsel to OneUnited.¹⁰ Neither the current chairman nor president of the National Bankers Association were aware of the letter and the organization began an internal investigation.¹¹

This was not the first time Rep. Waters used her position to advance the interests of the bank.¹² Rep. Waters' spouse, Sidney Williams, became a shareholder in OneUnited in 2001, when it was known as the Boston Bank of Commerce.¹³ In 2002, Boston Bank of Commerce tried to purchase Family Savings, a minority-owned bank in Los Angeles.¹⁴ Instead, Family Savings turned to a bank in Illinois.¹⁵ Rep. Waters tried to block the merger by contacting regulators at the FDIC. She publicly stated she did not want a major white bank to acquire a minority-owned bank.¹⁶ When her efforts with the FDIC proved fruitless, Rep. Waters began a public pressure campaign with other community leaders.¹⁷ Ultimately, when Family Savings changed direction and allowed Boston Bank of Commerce to submit a winning bid, Rep. Waters received credit for the merger.¹⁸ The combined banks were renamed OneUnited.¹⁹

Rep. Waters has close financial ties to OneUnited.²⁰ In March 2004, she acquired OneUnited stock worth between \$250,001 and \$500,000, and Mr. Williams, purchased two sets of stock, each worth between \$250,001 and \$500,000.²¹ In September 2004, Rep. Waters sold her stock in OneUnited and her husband sold a portion of his.²² That same year, Mr. Williams joined the bank's board.²³ Rep. Waters' most recent personal financial disclosure statement, filed in

⁹ Eric Lipton and Jim Rutenberg, Congresswoman Lashes Out at Critics of a Bank Meeting, *New York Times*, March 14, 2009 (Exhibit 4).

¹⁰ Id.; <https://www.oneunited.com/AboutUs/Management.asp> (Exhibit 5).

¹¹ Lipton and Rutenberg, *New York Times*, Mar. 14, 2009.

¹² Appelbaum, *Washington Post*, Mar. 14, 2009.

¹³ Id.; Rep. Maxine Waters, Personal Financial Disclosure Statement for Calender Year 2001, filed May 15, 2002 (Exhibit 6).

¹⁴ Appelbaum, *Washington Post*, Mar. 14, 2009.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

¹⁹ Appelbaum, *Washington Post*, Mar. 14, 2009.

²⁰ Susan Schmidt, Waters Helped Bank Whose Stock She Once Owned, *Wall Street Journal*, March 12, 2009 (Exhibit 7).

²¹ Rep. Maxine Waters, Personal Financial Disclosure Statement for Calender Year 2004, filed May 13, 2005 (Exhibit 8).

²² Id.

²³ Schmidt, *Wall Street Journal*, Mar. 12, 2009.

2009, revealed her husband's stock value decreased to between \$100,001 and \$250,000.²⁴ Mr. Williams continues to maintain a separate holding at the bank valued between \$250,001 and \$500,000,²⁵ but in 2008, he stepped down from the board.²⁶ OneUnited Chief Executive Kevin Cohee and President Teri Williams Cohee have donated a total of \$8,000 to Rep. Waters' campaign committee since 2002.²⁷

Rep. Waters defended her actions in setting up meetings on OneUnited's behalf by describing herself as a long time "advocate for minority communities and businesses."²⁸ The minority owned bank called itself a "beacon of hope" in minority neighborhoods.²⁹ Also, in a September 6, 2008, letter to the Treasury Department the bank wrote, "Unlike majority banks, which principally focus on profit, the express mission of minority banks is to promote these under-banked, underprivileged communities," OneUnited's record, however, proves otherwise.³⁰ According to a regulatory report in 2007, OneUnited retreated from urban lending and completed a total of only three mortgages in its urban markets of Boston, Los Angeles, and Miami.³¹ As early as 2004, Chief Executive Cohee was quoted saying, "If we had participated in inner-city housing lending ... we would have been out of business."³² Rather than investing in minority communities OneUnited made several loans to wealthy developers and individuals in areas like Martha's Vineyard and other upscale locations.³³

On October 27, 2009, less than two months before OneUnited received a \$12 million bailout, the bank received a cease-and-desist order from the FDIC and bank regulatory officials in Massachusetts for poor lending practices and excessive executive compensation.³⁴ Regulators concluded that OneUnited "had poor standards for qualifying and documenting loans."³⁵ In addition, the bank provided excessive perks to its executives, including paying for Mr. Cohee's use of a \$6.4 million mansion in Santa Monica, California, and a Porsche SUV in Boston.³⁶

²⁴ Schmidt, *Wall Street Journal*, Mar. 12, 2009; Rep. Maxine Waters, Personal Financial Disclosure Statement for Calender Year 2008, filed May 15, 2009 (Exhibit 9).

²⁵ Id.

²⁶ Id.

²⁷ <https://www.oneunited.com/AboutUs/Management.asp>; Citizens for Waters, FEC Form 3, 2002 Year End Report, May 7, 2003, p. 5; Citizens for Waters, FEC Form 3, 2003 Year End Report, January 29, 2004, pp. 9, 10; Citizens for Waters, FEC Form 3, October Quarterly Report, October 14, 2005, p. 11 (Exhibit 10).

²⁸ Lipton and Rutenberg, *New York Times*, Mar. 14, 2009.

²⁹ Beth Healy, Black-Owned Bank Has Few Urban Loans; OneUnited Sought Aid as Community Beacon, *Boston Globe*, April 15, 2009 (Exhibit 11).

³⁰ Id.

³¹ Id.

³² Id.

³³ Healy, *Boston Globe*, Apr. 15, 2009.

³⁴ Damien Paletta and David Enrich, Political Interference Seen in Bank Bailout Decisions, *Wall Street Journal*, January 22, 2009 (Exhibit 12).

³⁵ Healy, *Boston Globe*, Apr. 15, 2009.

³⁶ Id.

Rep. Waters did not disclose her financial ties to OneUnited Bank to Treasury officials in her letters requesting meetings between regulators and bank officials.³⁷ A former Bush administration official who helped set up the meeting stated, “[Learning of the connection] was upsetting to me. This is something that was potentially politically explosive and embarrassing to the administration. They should have at least let us know.”³⁸ Treasury officials claimed that although OneUnited also requested a meeting with regulators regarding Fannie and Freddie Mac losses, it wasn’t until Rep. Waters intervened that the Treasury approved a meeting.³⁹

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.”⁴⁰ 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 her position to influence the Treasury Department to award OneUnited bailout funds it otherwise might not have received, thereby potentially increasing the value of – or at least protecting the value of – her husband’s investment in the bank, Rep. Waters 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 her official duties.⁴¹ To do so “would raise the appearance of undue influence or breach of the public trust.” Given her husband’s holdings in the bank, Rep. Waters’ use of her position to benefit OneUnited, appears to violate this prohibition.⁴²

³⁷ Lipton and Rutenberg, *New York Times*, Mar. 13, 2009.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 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.

⁴¹ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

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); House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H.Rep.No.

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.”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 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

Here, by arranging a meeting between Treasury Department officials and OneUnited bank officers under false pretenses, by claiming the National Bankers Association had asked her to request the meeting, when neither the chairman nor president of the association was aware of the request, and by asking for federal financial assistance for a bank in which her husband has a financial interest, Rep. Waters acted in a manner that does not reflect creditably on the House.

969-930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

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).

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).

REPRESENTATIVE DON YOUNG

Representative Don Young is a nineteen-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 111th Congress, Rep. Young lost his position as ranking member of the House Natural Resources Committee when House Minority Leader Rep. John Boehner did not support Rep. Young's efforts to maintain his leadership role on the 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 federal investigations for (1) his role in securing a \$10 million earmark for a road in Florida; (2) assistance he offered to convicted VECO Corporation CEO Bill Allen, and; (3) his ties to convicted lobbyist Jack Abramoff. At one time Rep. Young was being investigated for his financial relationship with convicted businessman Dennis Troha. Rep. Young was included in CREW's 2007 and 2008 congressional corruption reports.

Earmarking Transportation Funds to a Campaign Donor

In 2007, the Department of Justice was 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 have connected 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 stood 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

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

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).

⁶ Julio Ochoa, Report Shows Someone Edited Federal Transportation Bill, *Naples Daily News*, August 9, 2007 (Exhibit 5).

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 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 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, owned land in the Knik Arm and stood to profit if the project was completed.¹⁷ Mr. Nelson was a 10% owner in Point Bluff LLC, which owned 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 went from \$169,000 to \$180,000 and

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.

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.

the value of the 20-acre plot went 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 continued to back the proposed development.²²

Association with VECO Corporation

Rep. Young was the subject of a criminal inquiry into whether he accepted bribes, illegal gratuities or unreported gifts from VECO Corporation.²³

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 manufactured oil drilling technology and built natural gas pipelines.²⁵ The company long 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 was quoted as saying his company works to elect politicians that back mineral exploration, claiming “We put a lot of money into the effort.”²⁷ From 1997 to 2006, Mr. Allen, Mr. Leathard, Executive Vice President Roger Chan and Vice President Rick Smith 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

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).

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,

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 was opening the Arctic National Wildlife Refuge (ANWR) to oil drilling.³² Rep. Young was a long-time and leading proponent of opening the ANWR for oil drilling and the trans-Atlantic pipeline.³³ The congressman shepherded exploration legislation in 1995 and 2001.³⁴

Also helpful to VECO were earmarks obtained by then-Senator Ted Stevens and Rep. Young for a barge dock development and deep-water marine port construction in Port MacKenzie, Alaska.³⁵ The port would 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 received campaign contributions from employees of Florida-based construction firm PBS&J.⁴³ Former PBS&J chairman, H. Michael Dye, pleaded guilty to

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.

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 toward 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 project.⁴⁹

Ties to Jack Abramoff

Rep. Young's ties to convicted lobbyist Jack Abramoff were 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 California and the Mississippi Choctaws.⁵² In total, MSPAC received \$12,000 from Mr. Abramoff's tribal clients during the 2002 election cycle.⁵³

⁴⁴ Patrick Danner and Dan Christensen, Ex-PBS&J Exec Sentenced, *Miami Herald*, August 4, 2007 (Exhibit 29).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ See Alaskans for Don Young, FEC Form 3, April Quarterly 2003, February 28, 2005, pp. 44, 53, 71, 84.

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)

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).

Aide Involvement

Members of Rep. Young's staff also were 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 Secretary of Labor and Immigration for the Commonwealth of the Northern Mariana Islands (CNMI) 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 skybox tickets for two fundraisers, 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

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.

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.

trucking conglomerate, JHT Holdings, disagreed.⁶³ Despite the objections, the bill passed easing federal hauling regulations and directly benefitted 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 to President Bush's campaign.⁶⁶ Mr. Troha cooperated with the government in other unspecified investigations.⁶⁷

Legal Fees

In the first half of 2007, Rep. Young paid \$264,637 in legal fees.⁶⁸

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.⁶⁹ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁷⁰

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.

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 Id.

⁶⁸ 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).

⁶⁹ 18 U.S.C. § 201(b)(2)(A).

⁷⁰ 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. 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.⁷¹ 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, 1346.

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.⁷² 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.⁷³

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.

⁷¹ See *Information*, United States v. Jack A. Abramoff, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

⁷² 18 U.S.C. § 201(c)(1)(B).

⁷³ 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.⁷⁴

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.”⁷⁵ 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. 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.”⁷⁶ 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:

⁷⁴ *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).

⁷⁵ 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.

⁷⁶ 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.”⁷⁷

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).

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.”⁷⁸ “Anything of value” includes all in-kind contributions.⁷⁹ 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.⁸⁰

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.

House Rule 23

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.”⁸¹ This ethics

⁷⁷ Id.

⁷⁸ 2 U.S.C. § 431(8)(A)(i).

⁷⁹ 11 C.F.R. § 100.52(d)(1).

⁸⁰ 2 U.S.C. § 434(a)-(b).

⁸¹ Rule 23, cl. 1.

standard is considered to be “the most comprehensive provision” of the code.⁸² 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.⁸³ 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,⁸⁴ making false statements to the Committee,⁸⁵ criminal convictions for bribery,⁸⁶ or accepting illegal gratuities,⁸⁷ and accepting gifts from persons with interest in legislation in violation of the gift rule.⁸⁸

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

⁸² House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

⁸³ 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).

⁸⁴ 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).

⁸⁵ 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).

⁸⁶ 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)).

⁸⁷ 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).

⁸⁸ 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).

the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities.”⁸⁹

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.⁹⁰

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.⁹¹

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.

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

⁸⁹ 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).

⁹⁰ 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)).

⁹¹ House Comm. on Standards of Official Conduct, Statement of Committee regarding Disposition of Complaint Filed Against Tom DeLay.

Road.⁹² Congress split on how best to handle the inquiry, some members called for an external investigation while others argued that Congress itself was best equipped to handle the matter.⁹³ Ultimately, both the House and Senate voted to direct the DOJ to launch an investigation into the earmark.⁹⁴ 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.⁹⁵ Rep. Young’s office denied the fundraiser held by Mr. Aronoff was the motive for sponsoring the earmark.⁹⁶

Association with VECO Corporation

In 2008, the corruption probe of VECO, which included Rep. Young, was ongoing⁹⁷ and had led to the 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.⁹⁸ In December of 2007, former Alaska state representative Pete Kott was sentenced to six years in prison for his part in accepting bribes from VECO executives.⁹⁹ On July 29, 2008, Sen. Stevens was indicted on seven counts of failing to disclose gifts he received from VECO CEO Bill Allen.¹⁰⁰

Association with PBS&J

Three PBS&J executives were convicted for their part in a long-running scheme to circumvent campaign election laws.¹⁰¹ 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.¹⁰²

⁹² Susan Crabtree and Manu Raju, Reid Wants DOJ Probe of Coconut Road, *The Hill*, April 15, 2008 (Exhibit 44).

⁹³ Id.

⁹⁴ 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).

⁹⁵ Paul Kane, Congress May Seek Criminal Probe of Altered Earmark, *Washington Post*, April 17, 2008 (Exhibit 46).

⁹⁶ Kane, *Washington Post*, Apr. 17, 2008.

⁹⁷ Carrie Johnson and Paul Kane, Sen. Stevens Indicted on 7 Corruption Counts, *Washington Post*, July 30, 2008 (Exhibit 47).

⁹⁸ Steve Quinn, Aide to Former Governor Pleads Guilty to Fraud in Corruption Probe, *Associated Press*, March 4, 2008 (Exhibit 48).

⁹⁹ Lawmaker Jailed for Taking Bribes, *Edmonton Journal*, December 8, 2007 (Exhibit 49).

¹⁰⁰ Johnson and Kane, *Washington Post*, July 20, 2008.

¹⁰¹ Patrick Danner and Dan Christensen, Ex-PBS&J Boss Sentenced to Home Confinement, *Miami Herald*, May 9, 2008 (Exhibit 50).

¹⁰² Danner and Christensen, *Miami Herald*, May 9, 2008.

Ties to Jack Abramoff

Rep. Young argued he never had a close relationship with Jack Abramoff but records indicated the opposite.¹⁰³ 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.¹⁰⁴ The records related 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 Natural Resources Committee.¹⁰⁵ The records indicated 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.¹⁰⁶ 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.¹⁰⁷

When Rep. Young was forced by term limits to give up the chairmanship of the his 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."¹⁰⁸ 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 suggesting 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."¹⁰⁹

Ties to Dennis Troha

In March of 2008, Mr. Troha was sentenced to probation for his role in an illegal political donation scheme.¹¹⁰ Mr. Troha received a lighter sentence in exchange for his cooperation in the investigation.¹¹¹

Legal Fees

Rep. Young continues to pay legal fees in connection with several ongoing investigations. From July 2007 to July 2008, Rep. Young's campaign committee paid \$993,655.28 in legal

¹⁰³ Richard Mauer, Billing Records Expose Young, Abramoff Ties, *Anchorage Daily News*, April 20, 2008 (Exhibit 51).

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Mauer, *Anchorage Daily News*, Apr. 20, 2008.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ John Diedrich, Judge Gives Troha Probation, No Fine, *Milwaukee Journal Sentinel*, March 7, 2008 (Exhibit 52).

¹¹¹ Id.

fees.¹¹² By January of 2008, Rep. Young opened a legal defense fund,¹¹³ which, by July 2008, had paid out \$49,415.25 in legal fees.¹¹⁴

2009 UPDATE

Status of Investigations

In the 111th Congress, Rep. Young lost his position as ranking member of the House Natural Resources Committee after House Minority Leader Rep. John Boehner failed to support his efforts to maintain his leadership role on the committee.¹¹⁵ Despite the ongoing investigations, in June 2009, Rep. Young announced that he will run for re-election and seek a 20th term as Alaska's sole U.S. House member.¹¹⁶

Earmarking Transportation Funds to a Campaign Donor

As of November 2008, the \$10 million Coconut Road earmark inserted into the 2005 federal transportation bill had been redirected to finance the Interstate 75 interchange at Bonita Beach Road and Immokalee Road.¹¹⁷ Meanwhile, the status of the investigation into the Coconut Road earmark is unknown.¹¹⁸

Association with VECO Corporation

In October 2008, fellow Alaskan and former-Sen. Ted. Stevens was convicted of seven felony counts for failing to report improper gifts from VECO Corporation employees and for lying about it.¹¹⁹ Following his conviction, in November 2008, Sen. Stevens' lost his re-election bid.¹²⁰ In April 2009, after instances of prosecutorial misconduct and incompetence came to light, DOJ asked a federal judge to void Sen. Stevens' conviction.¹²¹ Soon thereafter, a federal judge

¹¹² 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).

¹¹³ 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).

¹¹⁴ Congressman Don Young Legal Expense Trust, filed July 30, 2008 (Exhibit 55).

¹¹⁵ Erika Bolstad, Young Bumped From His Top Spot, *Anchorage Daily News*, December 11, 2008 (Exhibit 56).

¹¹⁶ Rachel Kapochunas, No Retirement for Alaska's Don Young, *CQ Politics*, June 30, 2009 (Exhibit 57).

¹¹⁷ Charlie Whitehead, Coconut Road Earmark Redirected to Interchange, *Naples Daily News*, December 24, 2008 (Exhibit 58).

¹¹⁸ Id.

¹¹⁹ Matt Apuzzo and Jesse J. Holland, Stevens Convicted on All Counts, *Associated Press*, October 27, 2008 (Exhibit 59).

¹²⁰ Paul Kane, Ted Stevens Loses Battle For Alaska Senate Seat, *Washington Post*, November 19, 2008 (Exhibit 60).

¹²¹ Devlin Barrett and Nedra Pickler, Ted Stevens Conviction To Be Voided, *Associated Press*, April 1, 2009 (Exhibit 61).

ordered a probe into the DOJ's public integrity section – the group of prosecutors who originally won the conviction of the lawmaker – for mishandling evidence and witnesses.¹²²

During Sen. Stevens' trial, summaries of interviews between Bill Allen, the CEO of VECO, and FBI officials became public.¹²³ Mr. Allen disclosed to the FBI that VECO Vice President Rick Smith organized golf outings for Rep. Young where participants each contributed \$100 to the congressman as a "thank you."¹²⁴ Mr. Smith pled guilty to bribery and conspiracy.¹²⁵ When the DOJ investigation into VECO surfaced, Rep. Young's campaign wrote a \$37,626 check to reimburse Mr. Allen for the annual pig roasts.¹²⁶ The check was never cashed and the campaign subsequently gave the \$37,626 to the U.S. Treasury.¹²⁷

Rep. Young's office confirmed he is under investigation by the Department of Justice for his ties VECO.¹²⁸ The status of the investigation has been complicated by the voiding of Sen. Stevens' conviction; but DOJ claims that its investigation continues to move forward.¹²⁹

Ties to Jack Abramoff

In 2001, Rep. Young, as the new chairman of the Transportation Committee, hired Fraser Verrusio to serve as director of outreach for the committee.¹³⁰ The following year, Mr. Verrusio was promoted to policy director.¹³¹ In March 2009, Mr. Verrusio was indicted by a grand jury in the Abramoff lobbying scandal on charges of conspiracy and illegal gratuity for attending an all-expense paid trip to the World Series and failing to report the gift.¹³² The grand jury contends that in exchange for the trip to the World Series, Mr. Verrusio conspired with lobbyists, a Senate aide and an equipment rental company to alter a federal highway bill.¹³³ Mr. Verrusio was the second

¹²² Del Quentin Wilber, Judge Orders Probe of Attorneys in Stevens Case, *Washington Post*, April 8, 2009 (Exhibit 62).

¹²³ Lisa Demer, Summaries Lay Out What Allen Said, *Anchorage Daily News*, October 31, 2008 (Exhibit 63).

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Demer, *Anchorage Daily News*, Oct. 31, 2008.

¹²⁸ David Espo and Matthew Daly, Alaska's Young Gives Up Key Resources Post, *Associated Press*, December 11, 2008 (Exhibit 64).

¹²⁹ Richard Mauer, Is Alaska Corruption Investigation Still Alive?, *Anchorage Daily News*, May 23, 2009 (Exhibit 65).

¹³⁰ Richard Mauer, Former Young Aide is Indicted in Lobbying Scandal *Anchorage Daily News*, March 7, 2009 (Exhibit 66).

¹³¹ Id.

¹³² Id.

¹³³ Id.

Rep. Young aide to be charged in the Abramoff scandal; committee lawyer Mark Zachares pled guilty in 2007 to bribery charges.¹³⁴

Legal Fees

Rep. Young continues to pay legal fees to defray the costs of the various investigations.¹³⁵ Since August 2008, Rep. Young's campaign committee has paid four law firms a combined \$60,101 in legal fees.¹³⁶ Rep. Young's campaign committee also reported debts to one of the law firms totaling \$46,042.62.¹³⁷

Rep. Young's legal defense fund, which was set up to defray the costs of the various investigations, has received \$28,000 in donations since July of 2008 and has paid out \$24,000 to Akin, Gump, Strauss & Feld - the firm handling the lawmaker's criminal investigations¹³⁸ though the records do not indicate whether the fees were related to any specific investigation.¹³⁹ In the last two years the Rep. Young has paid out over \$1.1 million in legal fees.¹⁴⁰

Alaska Railroad

Rep. Young has continued to use his position in Congress to fund pet-projects.¹⁴¹ He has redirected millions in funding – originally set aside for urban mass-transit programs – to the largely rural Alaska Railroad.¹⁴² In 2008, Rep. Young's "technical amendment" to the 2005 highway bill steered \$19 million in funding to the Alaska Railroad.¹⁴³ Rep. Young's 2005 amendment changed the eligibility formula by which railroads are measured when receiving federal mass-transit funds.¹⁴⁴ Instead of receiving federal funding based on passenger load like other mass-transit systems do, Rep. Young's amendment awards money to the Alaska Railroad

¹³⁴ Mauer, *Anchorage Daily News*, Mar. 7, 2009.

¹³⁵ John Bresnahan, Don Young Sizable Legal Bills Stack Up, *Politico*, July 14, 2009 (Exhibit 67).

¹³⁶ Alaskans for Don Young, FEC Form 3, July Quarterly Report 2009, July 14, 2009, pp. 55, 79, 80, 81, 86; Alaskans for Don Young, FEC Form 3, April Quarterly Report 2009, April 14, 2009, p. 47; Alaskans for Don Young, FEC Form 3, Post General Report 2008, December 3, 2008, pp. 86, 90; Alaskans for Don Young, FEC Form 3, October Quarterly Report 2008, October 15, 2009, pp. 106, 117 (Exhibit 68).

¹³⁷ Alaskans for Don Young, FEC Form 3, July Quarterly Report 2009, July 14, 2009, p. 86 (Exhibit 69).

¹³⁸ Congressman Don Young Legal Expense Trust, filed October 29, 2008; Congressman Don Young Legal Expense Trust, filed November 18, 2008; Congressman Don Young Legal Expense Trust, filed March 31, 2009 (Exhibit 70); Erika Bolstad, Young Continues to Pay Legal Bills From Campaign Funds, *Anchorage Daily News*, July 15, 2009 (Exhibit 71).

¹³⁹ Bolstad, *Anchorage Daily News*, Jul. 15, 2009.

¹⁴⁰ Bresnahan, *Politico*, Jul. 14, 2009; Kapochunas, *CQ Politics*, Jun. 30, 2009.

¹⁴¹ Jonathan Allen, Will Don Young Lose Earmark for Railroad to Nowhere?, *CQ Politics*, June 30, 2009 (Exhibit 72).

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Four Things You Need to Know About the 'Bridge to No-Where', *State News Service* September 9, 2008 (Exhibit 73).

based on the number of miles of track it has.¹⁴⁵ Effectively, the change gave the Alaska Railroad more urban mass-transit money than cities like Houston, Kansas City and Orlando.¹⁴⁶ If unchallenged, Rep. Young's technical amendment would steer more than \$100 million in urban transportation funds to the Alaska Railroad over the next five years.¹⁴⁷ Since, 2001 executives of the Alaska Railroad have donated \$2,350 to Rep. Young's campaign committee.¹⁴⁸

¹⁴⁵ Id.

¹⁴⁶ Allen, *CQ Politics*, Jun. 30, 2009.

¹⁴⁷ Id.

¹⁴⁸ Alaskans for Don Young, FEC Form 3, Year-End Report 2001, January 28, 2002, pp. 74, 75; Alaskans for Don Young, FEC Form 3, July Quarterly Report 2002, July 11, 2002, p. 53; Alaskans for Don Young, FEC Form 3, Pre-Primary Report 2002, September 8, 2002, p. 16; Alaskans for Don Young, FEC Form 3, October Quarterly Report 2003, October 13, 2003, p. 40; Alaskans for Don Young, FEC Form 3, July Quarterly Report 2004, November 14, 2004, p. 61; Alaskans for Don Young, FEC Form 3, Pre-Primary Report 2004, November 4, 2004, p. 20; Alaskans for Don Young, FEC Form 3, October Quarterly Report 2005, October 11, 2005, p. 29; Alaskans for Don Young, FEC Form 3, October Quarterly Report 2006, October 6, 2006, p. 14 (Exhibit 74).

MEMBERS OF THE SENATE

SENATOR ROLAND BURRIS

Senator Roland Burris (D-IL) is a first-term senator from Illinois, appointed to the U.S. Senate in December 2008 by former Governor Rod Blagojevich to fill the vacancy created by the resignation of then-President-elect Barack Obama. Sen. Burris' ethics issues stem from the circumstances surrounding his appointment.

Conflicting Statements on Senate Appointment

On December 9, 2008, former Gov. Blagojevich was arrested by federal agents for what was described at the time as a "political corruption crime spree."¹ One of the central allegations against the governor was that he attempted to sell an appointment to the Senate seat vacated by then President-elect Obama.²

Sen. Burris was elevated to the Senate seat by the governor on December 30, 2008.³ When questions were raised about the appointment, Sen. Burris proclaimed, "I don't have any taint from Gov. Blagojevich."⁴ Over the next several months, Sen. Burris offered at least three different explanations under oath of how he came to be appointed to the Senate.⁵

On January 5, 2009, Sen. Burris voluntarily submitted an affidavit to the Illinois House of Representative's Special Investigative Committee looking into impeaching Gov. Blagojevich.⁶ In that disclosure, Sen. Burris claimed "there was not any contact between myself or any of my representatives with Governor Blagojevich or any of his representatives regarding my appointment to the United States Senate."⁷

On January 8, 2009, Sen. Burris appeared in front of the Special Investigative Committee to explain his relationship with Gov. Blagojevich.⁸ At that hearing, Sen. Burris admitted that prior to the November election he had told Gov. Blagojevich's former chief of staff he was interested in the Senate seat should it become open.⁹

¹ Jeff Coen, Rick Pearson, John Chase and David Kidwell, Illinois Gov. Rog Blagojevich Arrested on Federal Charges, *Chicago Tribune*, December 10, 2008 (Exhibit 1).

² Id.

³ Rick Pearson and Ray Long, Gov. Rod Blagojevich Picks Former Attorney General to Replace Obama, *Chicago Tribune*, December 31, 2008 (Exhibit 2).

⁴ Id.

⁵ Id.

⁶ Monica Davey, Burris Now Says He Was Asked to Donate, *New York Times*, February 15, 2009 (Exhibit 3); Affidavit of Roland W. Burris, filed January 5, 2009 (hereinafter "Burris Affidavit, Jan 5, 2009") (Exhibit 4).

⁷ Burris Affidavit, Jan 5, 2009.

⁸ Ray Long and Ashley Rueff, Roland Burris Asked ex-Rod Blagojevich Aide About Senate Seat, *Chicago Tribune*, January 9, 2009 (Exhibit 5).

⁹ Id.

On February 4, 2009, Sen. Burris submitted an affidavit to “supplement” his responses to questions posed by the Special Investigative Committee.¹⁰ In that document, Sen. Burris admitted to speaking with Rob Blagojevich - the governor’s brother - three times throughout October and November.¹¹ Sen. Burris said he was asked to raise money for the governor.¹² In the affidavit, Sen. Burris claimed he told Mr. Blagojevich he could “not contribute to Governor Blagojevich because it could be viewed as an attempt to curry favor.”¹³ Sen. Burris did not mention these discussions at the impeachment panel hearing despite being specifically asked about speaking to Mr. Blagojevich.¹⁴

The Senate Ethics Committee launched an investigation into Sen. Burris on February 17, 2009, for repeatedly altering his statements regarding his appointment to the Senate and his contacts with Gov. Blagojevich and the governors’ associates.¹⁵

On May 26, 2009, transcripts of a conversation between Sen. Burris and Rob Blagojevich, captured on a federal wiretap related to the corruption probe of Gov. Blagojevich were released.¹⁶ In the transcripts, Sen. Burris mentioned his interest in the Senate seat and potentially raising money for the governor.¹⁷ Sen. Burris offered to “give him [Gov. Blagojevich] a check” and “do something at the [Burris’] law firm.”¹⁸ Later in the conversation he pledged to “personally do something.”¹⁹ Sen. Burris also discussed having his attorney make a donation – potentially in violation of Illinois election law – but the attorney later advised against it.²⁰

For several months, the Illinois State’s Attorney for Sangamon County investigated Sen. Burris’ testimony to state lawmakers regarding whether Sen. Burris offered to fundraise for Gov. Blagojevich before he was appointed to the Senate.²¹ On June 19, 2009, the prosecutor decided

¹⁰ Letter from Timothy W. Wright III, Counsel to Senator Roland Burris, to Rep Barbara Flynn Currie, State Representative, 25th District, February 5, 2009; Affidavit of Roland W. Burris, filed February, 4 2009 (hereinafter “Burris Affidavit, Feb. 4, 2009”) (Exhibit 6).

¹¹ Davey, *New York Times*, Feb. 15, 2009.

¹² Id.

¹³ Burris Affidavit, Feb. 4, 2009.

¹⁴ Davey, *New York Times*, Feb. 15, 2009.

¹⁵ Monica Davey and Dirk Johnson, 2 Investigations Into Burris Are Begun, *New York Times*, February 17, 2009 (Exhibit 7).

¹⁶ Jeff Coen and John Chase, Burris Talks Cash on Wiretap, *Chicago Tribune*, May 27, 2009 (Exhibit 8).

¹⁷ Id.

¹⁸ In re: Motion to Disclose Intercepted Communication to the United States Senate Select Committee on Ethics, No. 08 CR 888, (N.D.IL 2008) (Exhibit 9).

¹⁹ Id.

²⁰ Coen and Chase, *Chicago Tribune*, May 27, 2009.

²¹ Andrew Harris, Illinois Prosecutor Reviews Burris’ Statements to Lawmakers, *Bloomberg*, February 18, 2009 (Exhibit 10).

Sen. Burris' statements were "insufficient" to charge him with perjury.²² The Senate Ethics Committee inquiry, however, remains open.²³

In the first half of 2009, Sen. Burris did not report paying legal fees. His campaign reported raising \$41,230, but carried \$138,085 in debt.²⁴ On April 9, 2009, Sen. Burris revealed that he had "rung up" \$500,000 in legal expenses resulting from the investigation into his ties with the indicted governor.²⁵ According to a spokesperson, Sen. Burris began setting up a legal defense fund but is awaiting Senate approval.²⁶

Perjury

Although a prosecutor found insufficient evidence to file state charges against Sen. Burris for perjury, federal perjury charges may still lie. Under federal law, anyone who takes an oath that he will testify, declare or offer written testimony that he subscribes to be true, but deliberately offers untrue statements about a material matter is guilty of perjury. 18 U.S.C. § 1621. If Sen. Burris was questioned by federal investigators in the course of the prosecution of former Gov. Blagojevich and provided false information regarding conversations he may have had about potential campaign contributions to the governor in return for appointment to the Senate seat, he may have committed perjury.

False Statements

Anyone who knowingly and willfully falsifies, conceals, covers up or makes a material false representation regarding any matter within the jurisdiction of the United States government is guilty of making a false statement in violation of 18 U.S.C. § 1001. Sen. Burris, by lying to members of the Senate regarding his efforts to persuade Gov. Blagojevich to appoint him to the Senate seat, and by deliberately lying about his conversations with the governor and his brother about funds Sen. Burris might raise for the governor in return for the appointment, may have made false statements in violation of 18 U.S.C. § 1001.

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

²² Perry Bacon, Prosecutor Says Sen. Burris Will Not Face Perjury Charge, *Washington Post*, June 19, 2009 (Exhibit 11).

²³ Id.

²⁴ Burris for Senate, FEC Form 3, July Quarterly Report 2009, Jul. 13, 2009, pp. 1-4 (Exhibit 12).

²⁵ Burris' Legal Fees Top \$500,000, *Associated Press*, April 9, 2009 (Exhibit 13).

²⁶ Ray Gibson, Sen Burris to Hold Chicago Fundraiser, *Los Angeles Times*, April 17, 2009 (Exhibit 14).

as improper conduct that may reflect upon the Senate.”²⁷ This rule is intended to protect the integrity and reputation of the Senate as a whole.²⁸ 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 . . .”²⁹ Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.³⁰

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd who was censured for converting campaign funds to personal use.³¹ In 1990, the Senate denounced Senator David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.³² And, as previously stated, in 1995, the Committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.³³

Just last year, the Committee issued letters of admonition to two senators, Larry Craig and Pete Domenici for improper conduct reflecting discreditably upon the Senate. In February 2008, the Committee found Sen. Craig engaged in improper conduct by committing disorderly conduct in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.³⁴ In April 2008, the Committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Sen. Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.³⁵

On some occasions, the Committee has stopped short of finding alleged conduct was “improper conduct reflecting upon the Senate,” but has found “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”³⁶ For example, the Committee has found that a senator’s “interven[tion] with regulators gave the

²⁷ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108th Cong. 2003 ed.).

²⁸ Id.

²⁹ Id. at 433; and fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

³⁰ Senate Ethics Counsel, The Packwood Report, *Times Books* (1995), p. 28 (citing S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954)).

³¹ Senate Ethics Manual at 434.

³² Id. at 434-35.

³³ Id. at 432.

³⁴ Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

³⁵ Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

³⁶ Id. at 435.

appearance of being improper and was attended with insensitivity and poor judgement,” that a senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner . . .”³⁷ Most recently, the Committee severely admonished Senator Robert Torricelli for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.³⁸

Sen. Burris, by deliberately lying to senators about the conversations he had with Gov. Blagojevich and others connected to the governor in order to be appointed to a seat in the Senate, clearly engaged in improper conduct reflecting upon the Senate.

³⁷ Id., fn. 19.

³⁸ Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.

SENATOR JOHN ENSIGN

Senator John Ensign (R-NV) is a two-term senator from Nevada. His ethics issues stem from an extramarital affair with a former campaign staffer.

Affair with Campaign Committee Staffer

On June 16, 2009, Sen. John Ensign announced he had engaged in extramarital affair with an unnamed former campaign staffer from December 2007 until August 2008.¹ The staffer was later identified as Cynthia Hampton, whose husband Doug Hampton, was a close friend and top aide to the senator.²

In a letter to FOX News anchor Megyn Kelly, Mr. Hampton stated that although the two families had been “lifelong friends,” Sen. Ensign pursued and engaged in a relationship with Mr. Hampton’s wife.³ He said Sen. Ensign’s “conduct and relentless pursuit of my wife led to our dismissal in April 2008.”⁴ Mr. Hampton further stated that because of Sen. Ensign’s conduct, Mr. Hampton’s family “lost significant income, suffered indescribable pain and emotional suffering. We find ourselves today with an overwhelming loss of relationships, career opportunities and hope for recovery.”⁵

Mr. Hampton confronted Sen. Ensign several times about the affair, including once in February 2008 at “C Street,” a secretive group-home for Christian lawmakers.⁶ There, in the presence of Sen. Tom Coburn (R-OK) and others close to Sen. Ensign, Mr. Hampton “endured an emotional meeting” on forgiveness.⁷ According to Mr. Hampton, at that meeting Sen. Coburn suggested Sen. Ensign pay off the mortgage on the Hamptons’ Las Vegas home and move them to Colorado.⁸

Both Doug and Cynthia Hampton received payments from Sen. Ensign after leaving his employ. After his departure, Mr. Hampton received \$6,000,⁹ an amount Sen. Ensign’s office

¹ Molly Ball and Steve Tetreault, Ensign Admits Affair with Ex-Campaign Staffer, *Las Vegas Review-Journal*, June 16, 2009 (Exhibit 1).

² Id.

³ Letter from Doug Hampton to Megyn Kelly, June 11, 2009, reprinted in *Las Vegas Sun*, June 19, 2009 [hereinafter “Hampton Letter”] (Exhibit 2).

⁴ Id.

⁵ Id.

⁶ Id.; Manuel Roig-Franzia, The Political Enclave That Dare Not Speak Its Name, *Washington Post*, June 26, 2009 (Exhibit 3); Behind the Closed Doors on C Street, *Las Vegas Sun*, July 19, 2009 (Exhibit 4).

⁷ Hampton Letter; Roig-Franzia, *Washington Post*, Jun. 26, 2009.

⁸ Jon Ralston, Face to Face, *Las Vegas 1*, July 8, 2009 (available at: <http://www.lasvegassun.com/videos/sets/2009/jul/08/exclusive-interview/>) (Exhibit 5); J. Patrick Coolin and Lisa Mascaro, Hampton Portrays Ensign as Relentless, *Las Vegas Sun*, July 9, 2009 (Exhibit 6).

⁹ Paul Kane, Ensign Defends Payments to Woman He Had Affair With, *Washington Post Capitol Briefing*, June 19, 2009 (Exhibit 7).

claimed was “equal to 12 days of unused vacation,” and was not a severance package,¹⁰ an understanding confirmed by Mr. Hampton.¹¹

Cynthia Hampton was paid \$1,885 a month, working for both Sen. Ensign’s campaign and his leadership political action committee, Battle Born PAC.¹² In January 2008, a month after their affair began, Mrs. Hampton’s salary doubled after she took on increased responsibilities with the re-election committee and took over as treasurer for the PAC.¹³ An individual close to Sen. Ensign’s family said that after the senator confessed the affair to his wife, reconciled with her and attended counseling, he fired Ms. Hampton, providing her with a severance payment paid from his own pocket.¹⁴

On July 8, 2009, Mr. Hampton said Sen. Ensign had personally paid Ms. Hampton over \$25,000 in severance.¹⁵ Sen. Ensign’s attorney, Paul Coggins, quickly contradicted that claim, stating Sen. Ensign’s parents paid Ms. Hampton and her family \$96,000 after they had learned of the affair.¹⁶ Mr. Coggins insisted the payments were not made from campaign or official funds, nor were they related to any campaign or official duties. Rather, he explained, the April 2008 payments were “gifts made out of concern for the well-being of long-time family friends during a difficult time.”¹⁷ Each of Sen. Ensign’s parents made out four checks in the amount of \$12,000 to Cynthia Hampton, her husband and two of their children.¹⁸ Sen. Ensign’s office claimed the alleged \$25,000 severance payment was part of his parents’ \$96,000 “gift.”¹⁹

Additionally, the National Republican Senatorial Committee, which Sen. Ensign chaired, paid the Hamptons’ 19-year-old son \$1,000 a month from March through August of 2008 for his work as an intern.²⁰

¹⁰ Id.

¹¹ Jon Ralston, Face to Face, *Las Vegas 1*, July 9, 2009 (available at: <http://www.lasvegassun.com/videos/sets/2009/jul/09/exclusive-interview-part-2/>) (Exhibit 8).

¹² Kane, *Washington Post*, June 19, 2009.

¹³ Id.

¹⁴ Jim Rutenberg and Steve Friess, After Affair, Senator Resigns Leadership Job, *New York Times*, June 18, 2009 (Exhibit 9).

¹⁵ Ralston, *Las Vegas 1*, July 8, 2009.

¹⁶ Press Release, Fish & Richardson P.C., Statement on Behalf of Senator John Ensign, July 9, 2009 (Exhibit 10); David Stout, Senator’s Parents Gave Mistress Thousands, *New York Times*, July 10, 2009 (Exhibit 11).

¹⁷ Press Release, Fish & Richardson P.C., Statement on Behalf of Senator John Ensign, July 9, 2009.

¹⁸ Dan Eggen and Chris Cilliza, Ensign’s Parents Made Payments to Mistress, Her Family, *Washington Post*, July 10, 2009 (Exhibit 12).

¹⁹ Al Kamen, Hillary Clinton, Back After a Break, *Washington Post*, July 15, 2009 (Exhibit 13).

²⁰ Kane, *Washington Post*, June 19, 2009; Zachary Roth, Timeline Suggests Ensign Help for Hampton Was Hardly Routine, *TPMMuckraker*, June 19, 2009 (Exhibit 14).

Sen. Ensign originally indicated he went public because he was being extorted.²¹ He later admitted, however, that he went public because he had learned Mr. Hampton had written to FOX News with details of the affair, asking the network to investigate the matter and downgraded the alleged extortion to a legal demand.²² Sen. Ensign's spokesman, Tory Mazzola, stated "Within the past month, Doug Hampton's legal counsel made exorbitant demands for cash and other financial benefits on behalf of his client. Doug Hampton's outrageous demand was referred to Senator Ensign's legal counsel, who is handling the matter going forward."²³

Sexual Harassment

The Senate Select Committee on Ethics previously has held sexual harassment is a form of sex discrimination that violates the Official Code of Conduct.²⁴ In fact, Senate Rule 42 specifically applies the rights and privileges of the Civil Rights Act of 1964 to employment with the United States Senate.²⁵ The rule provides:

No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof --

- (a) fail or refuse to hire an individual;
- (b) discharge an individual; or
- (c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

-- on the basis of such individuals's race, color, religion, sex, national origin, age, or state of physical handicap.²⁶

It is well established that sexual harassment is a form of sex discrimination under Title VII.²⁷ In fact, the Senate has previously investigated a senator for sexual harassment. On May 17, 1995, the Select Committee on Ethics unanimously adopted a resolution calling for an

²¹ John Stanton, Ensign Scandal Rattles Senate, *Roll Call*, June 18, 2009 ("According to several Republicans, Ensign told colleagues and others close to him that he was the subject of a blackmail scheme because of the affair.") (Exhibit 15); Domenico Montanaro, Ensign Admits Affair, Claims Extortion, *MSNBC.com*, June 16, 2009 ("NBC News has confirmed that Ensign told other senators earlier today that the reason he decided to go public about the affair is that his ex-mistress was indeed trying to extort money out of him.") (Exhibit 16).

²² Kane and Kurtz, *Washington Post*, June 21, 2009; see also Lisa Mascaro, Ensign's Office: Woman's Husband Approached Media With Story, *Las Vegas Sun*, June 18, 2009 (Exhibit 17).

²³ Kane and Kurtz, *Washington Post*, June 21, 2009.

²⁴ Senate Select Committee on Ethics, Senate Ethics Manual, 108th Cong. 1st Sess. (2003 ed.), p. 194.

²⁵ *Id.* at 330.

²⁶ *Id.*

²⁷ See *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976); see also *Calder v. Planned Community Living*, 1995 U.S. Dist. Lexis 10773, *21 (S.D.N.Y. 1995) (sexual relationship between supervisor and another employee may have created a sexually-biased hostile work environment preventing plaintiff from performing her job); 29 C.F.R. § 1604.11(g).

investigation into sexual harassment by Senator Robert Packwood.²⁸ The committee found it had jurisdiction under section 2(a)(1) of S. Res. 338, 88th Congress, to determine whether Sen. Packwood abused his Senate office by engaging in sexual misconduct and concluded he had.

Similarly, in 1989, in the House of Representatives, the Committee on Standards of Official Conduct issued a public letter of reproof to Rep. Jim Bates after finding he had sexually harassed two women on his personal staff.²⁹ The House also found Rep. Gus Savage had made improper sexual advances toward a female Peace Corps worker.³⁰

If, as it appears, Mr. and Ms. Hampton were discharged directly because of Ms. Hampton's affair with the senator, Sen. Ensign may have engaged in discrimination on the basis of sex in violation of Title VII and Senate Rule 42.

Campaign Finance Law Violations

Given that Sen. Ensign may personally have paid Ms. Hampton some amount of severance, that payment constitutes an in-kind contribution to either his campaign committee or PAC, or perhaps both. The Federal Election Campaign Act ("FECA") requires such contributions be reported,³¹ yet neither the campaign committee nor the PAC reported such a contribution by Sen. Ensign. A knowing and willful failure to report a contribution of over \$25,000 is a criminal violation subject to 5 years in jail.³² Thus, by failing to report his contribution to the campaign to pay Ms. Hampton, Sen. Ensign may have committed a criminal campaign finance law violation. Moreover, if Sen. Ensign paid Ms. Hampton more than \$5,000, which seems likely, he also may have made an illegal excessive contribution to the PAC, which prohibits contributions of over \$5,000.³³

The FECA limits an individual to contributing \$2,400 per election to a principal campaign committee such as Ensign for Senate.³⁴ Similarly, the Act limits an individual to contributing \$5,000 per year to a leadership PAC such as the Battle Born PAC.³⁵ Accordingly, the maximum amount Sen. Ensign's parents, Michael and Sharon Ensign, together could contribute to Ensign for Senate in the current election cycle is \$9,600. The maximum amount both Michael and Sharon Ensign could have contributed to the Battle Born PAC in 2008 was \$10,000. Accordingly, there is no way Michael and Sharon Ensign could have both made \$12,000 severance payments to Cynthia Hampton without violating the dollar limits of the

²⁸ Senate Ethics Counsel, *The Packwood Report*, *Times Books* (1995), p. XVI; *see also* Resolution for Investigation.

²⁹ *House Ethics Manual*, (110th Cong. 2008 ed.), p. 268-69 (*citing In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101st Cong., 1st Sess. (1989)).

³⁰ H. Rep. No. 101-397, 101st Cong., 2d Sess. (1990).

³¹ 2 U.S.C. § 434(b)(3)(A).

³² 2 U.S.C. § 437g(d)(1)(A)(i).

³³ 2 U.S.C. § 441a(a)(1)(C); *see also* Advisory Opinion 2003-12, p. 8.

³⁴ 2 U.S.C. § 441a(a)(1)(A).

³⁵ 2 U.S.C. § 441a(a)(1)(C).

FECA. As a result, the payments made by the Ensigns may constitute illegal excessive in-kind contributions to Ensign for Senate and the Battle Born PAC.

In addition, neither Ensign for Senate nor the Battle Born PAC reported receiving any in-kind contributions from either Michael or Sharon Ensign. The failure to report an in-kind contribution is a violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.13.

Improper Conduct That May Reflecting Upon the Senate

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 that may reflect upon the Senate.”³⁶ This rule is intended to protect the integrity and reputation of the Senate as a whole.³⁷ 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 . . .”³⁸ Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.³⁹

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Sen. Thomas Dodd who was censured for converting campaign funds to personal use.⁴⁰ In 1990, the Senate denounced Sen. David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Sen. Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.⁴¹ Perhaps most relevant, in 1995 the committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.⁴²

Last year, the committee issued letters of admonition to two senators, Larry Craig and Pete Domenici for improper conduct reflecting discreditably upon the Senate. In February 2008, the committee found Sen. Craig engaged in improper conduct by committing disorderly conduct

³⁶ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108th Cong. 2003 ed.).

³⁷ Id.

³⁸ Id. at 433; and fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

³⁹ Senate Ethics Counsel, The Packwood Report, *Times Books* (1995), p. 28 (citing S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954)).

⁴⁰ Senate Ethics Manual at 434.

⁴¹ Id. at 434-35.

⁴² Id. at 432.

in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.⁴³ In April 2008, the committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Sen. Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.⁴⁴

By conducting an affair with a campaign staff member, conducting an affair with a campaign staff member married to a member of his Senate staff, terminating both staff members because of the affair, using his position as the chair of the NRSC to hire and pay the son of his mistress and her husband, failing to report the contribution he or his parents made to his campaign committee and/or PAC, potentially making an illegal excessive contribution to the PAC, perhaps improperly using official Senate funds to increase the final payment made to the improperly terminated husband, and by attempting to elicit sympathy by characterizing a legitimate effort to settle a dispute as blackmail without ever reporting the alleged crime to law enforcement authorities, Sen. Ensign has engaged in improper conduct that reflects upon the Senate.

⁴³ Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

⁴⁴ Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

SENATOR MITCH MCCONNELL

Senator Mitch McConnell (R-KY) is a five-term senator from Kentucky. He is the minority leader in the 111th 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 and the misuse of his nonprofit McConnell Center for Political Leadership at the University of Louisville. Sen McConnell was included in CREW's 2007 and 2008 congressional corruption reports.

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.⁵ In addition, the senator rewrote legislation to help another Bates Group client, UPS Inc.⁶ All of these companies have made substantial contributions to Sen. McConnell's campaigns.⁷

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.⁸ 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 Id.

⁶ Id.

⁷ Id.

⁸ 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 2003.⁹ Soon after E-Cavern hired Bates Capitol, Sen. McConnell earmarked \$1 million for the underground project in the fiscal year 2005 Omnibus Appropriations Conference Report.¹⁰ In 2005, Sen. McConnell inserted an additional \$1.5 million earmark for E-Cavern into the fiscal year 2006 Transportation, Judiciary and Housing and Urban Development Appropriations Conference Report.¹¹ In 2006, Sen. McConnell earmarked \$1 million for E-Cavern in the fiscal year 2007 Transportation, Treasury, and Housing and Urban Development Appropriations bill.¹² In July of 2007, Sen. McConnell took credit for another \$1 million earmark for the E-Cavern project in the fiscal year 2008 Senate Financial Services and General Government Appropriations bill.¹³

Between July 2003 and December 2006, E-Cavern paid Bates Capitol \$460,000 for lobbying.¹⁴ In August of 2005, E-Cavern president Mark Roy and executive James Philpolt each contributed \$1,000 to the McConnell Senate Committee.¹⁵ Between August of 2004 and August 2006, Mr. Philpolt and Mr. Roy donated \$8,500 to the McConnell Senate Committee and Sen. McConnell's leadership PAC, the Bluegrass Committee.¹⁶ FEC records reflect that neither Mr. Philpolt nor Mr. Roy previously contributed to Sen. McConnell's campaign committee or PAC.

Boardpoint LLC

Boardpoint LLC hired Bates Capitol in early 2004, paying between \$280,000 and \$290,000 in lobbying fees through December 2006.¹⁷ 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.¹⁸ Just

⁹ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

¹⁰ Sen. McConnell Secures Funding For E-Cavern Project, *US Fed News*, November 22, 2004 (Exhibit 5).

¹¹ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006; *States News Service*, Nov. 18, 2005.

¹² Congress Passes Transportation, Treasury, Housing, And Urban Development Appropriations Measure, *US Fed News*, June 17, 2006 (Exhibit 6).

¹³ Senator McConnell Secures Funding For Two University Of Kentucky Financial Services Projects, *States News Service*, July 12, 2007 (Exhibit 7).

¹⁴ Bates Capitol Group, LLC, Lobbying Reports 2003-2006, Secretary of the Senate, Office of Public Record (Exhibit 8).

¹⁵ McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 270, 282 (Exhibit 9).

¹⁶ 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.

¹⁷ The Bates Capitol Group LLC, Lobbying Report 2004-2006, Secretary of the Senate, Office of Public Record (Exhibit 12).

¹⁸ McConnell Secures \$95 million In Funding for Kentucky in FY'06 DOD Appropriations Bill, *States News Service*, December 22, 2005 (Exhibit 13).

two months earlier, Boardpoint Director Joe Coons donated \$2,100 to the McConnell Senate Committee.¹⁹

Voice for Humanity

Voice for Humanity a non-profit organization,²⁰ was originally formed by two Lexington businessmen to spread the word of Christ throughout the world.²¹ 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.²² The company began creating small audio devices that are sent to third world countries to play messages promoting democracy and warning about the dangers of HIV/AIDS.²³

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 2006.²⁴ In October 2003, Sen. McConnell delivered a speech on the Senate floor praising Voice for Humanity.²⁵ Between 2003 and December 2005, Sen. McConnell steered \$8.3 million in federal funds to the organization from the State Department for devices to be sent to Afghanistan and Nigeria.²⁶ A program evaluation conducted by USAID found that the organization's programs produced mixed results.²⁷ Nevertheless, Sen. McConnell recommended an additional \$15 million for Voice for Humanity to extend its work into Iran and North Korea.²⁸

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.²⁹ 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

¹⁹ McConnell Senate Committee FEC Form 3, Year End Report 2005, January 1, 2006, p. 15 (Exhibit 14).

²⁰ Voice for Humanity, IRS 2005 Form 990, October 27, 2006 (Exhibit 15).

²¹ Linda B. Blackford, Voice For Humanity Finds Friendly Ears In Washington, *Lexington Herald-Leader*, December 18, 2005 (Exhibit 16).

²² Id.

²³ Id.

²⁴ The Bates Capitol Group LLC Lobbying Report 2003-2006, Secretary of the Senate, Office of Public Record (Exhibit 17).

²⁵ Blackford, *Lexington Herald-Leader*, Dec.18, 2005.

²⁶ Id.

²⁷ Id.

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

²⁹ 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).

McConnell Majority Committee.³⁰

Appriss Inc.

Appriss Inc. is a Louisville based company that sells communication technology to law enforcement and owns VINE, the National Victim Notification Network.³¹ VINE was the largest data network providing victim notification systems in the country.³² Appriss has been providing technology such as VINE since 1994.³³ VINE data network technology did not become widely used, however, until after Appriss hired Bates Capitol.³⁴

After Appriss hired Bates Capitol in 2004, Sen. McConnell praised Appriss in a 2004 news conference.³⁵ Between 2004 and 2006, Appriss paid Bates Capitol \$320,000.³⁶ During the same period, Sen. McConnell sat on a small Senate budget negotiations team that earmarked \$17 million in the Department of Justice's budget to purchase victim notification systems.³⁷ Between January and September 2006, four states signed contracts to use VINE and Appriss expected to add six more state-wide contracts by the end of 2006.³⁸ The increase in VINE contracts can be attributed to the increase in federal funding earmarked for victim-notifications programs.³⁹

Since 2004, ApprissPAC as well as individual Appriss employees and their spouses contributed \$55,000 to Sen. McConnell's leadership PAC, joint fundraising committee, and campaign committee.⁴⁰ Dating back to 1997, Appriss CEO Douglass Cobb and his wife, Gena

³⁰ McConnell Senate Committee, FEC Form 3, April Quarterly Report 2007, April 13, 2007, pp. 223, 331 (Exhibit 20); McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, p. 107 (Exhibit 21).

³¹ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³² <http://www.appriss.com/sitedocs/VINECutSheet.pdf> (Exhibit 22).

³³ <http://www.appriss.com/> (Exhibit 23).

³⁴ Sarah Jeffords, Appriss Adds Contracts, Products, Workers, *Business First of Louisville*, September 25, 2006 (Exhibit 24).

³⁵ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³⁶ The Bates Capitol Group LLC, Lobbying Report, Mid Year 2004 through Year End 2006 (Exhibit 25).

³⁷ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

³⁸ Jeffords, *Business First of Louisville*, Sept. 25, 2006.

³⁹ Id.

⁴⁰ Appriss Inc. PAC, FEC Form 3, April Quarterly Report 2007, April 16, 2007, p. 8 (Exhibit 26); Bluegrass Committee, FEC Form 3, April Quarterly Report 2004, April 15, 2004, pp. 6, 10 (Exhibit 27); Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, pp. 11, 73, 74, 83 (Exhibit 28). All 2004 contributions but the Appriss PAC contribution to the Bluegrass Committee were marked EIO; Bluegrass Committee, FEC Form 3, July Quarterly Report 2006, July 14, 2006, pp. 29, 30 (Exhibit 29). Both 2006 contributions to the Bluegrass Committee were marked EIO; McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, pp. 33, 42, 115, 133, 164, 169 (Exhibit 30); McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, pp. 122, 173, 243, 278, 291, 330, 331 (Exhibit 31); McConnell Senate Committee, FEC Form 3, April Quarterly Report 2007, April 13, 2007, pp. 259, 395, 422 (Exhibit 32).

Cobb, have contributed \$29,000 to Sen. McConnell: \$12,000 between 1997 and 2002, \$6,000 in 2003, and \$11,000 since early 2004.⁴¹ Appriss director David Grissom donated \$5,000 to Sen. McConnell's Bluegrass Committee in 2003 and donated \$3,000 to the McConnell Senate Committee in 2005.⁴²

UPS

UPS has been a Bates Capitol client since 2003, having paid the firm \$320,000 as of the end of 2006.⁴³ In 2004, Sen. McConnell lobbied President Bush to include the UPS pension fund in a bill that allowed large employers to delay pension fund contributions for two years because of stock market losses.⁴⁴ The UPS PAC contributed \$10,000 to the McConnell Senate Committee between July 2004 and August 2005⁴⁵ and the company has donated \$400,000 to the McConnell Center for Political Leadership at the University of Louisville.⁴⁶

The McConnell Center for Political Leadership

The McConnell Center for Political Leadership was founded by Sen. McConnell in 1991⁴⁷ as a non-profit organization for which the senator raises funds.⁴⁸ The University of Louisville Foundation was sued by the *Courier Journal* of Louisville, Kentucky because the center insisted on maintaining the anonymity of its donors.⁴⁹ In November 2004, a Kentucky court ordered the foundation to release the names of corporate donors, including donations made

⁴¹ Bluegrass Committee, FEC Form 3, Year-End Report 1997, January 30, 1998, p. 4 (Exhibit 33); Bluegrass Committee, FEC Form 3, Mid-Year Report 1999, July 30, 1999, p. 7 (Exhibit 34); Bluegrass Committee, FEC Form 3, Year-End Report 2003, January 30, 2004, p. 54 (Exhibit 35); Bluegrass Committee, FEC Form 3, October Quarterly Report 2004, October 15, 2004, pp. 73, 74 (Exhibit 36); Bluegrass Committee, FEC Form 3, October Quarterly Report 2006, October 13, 2006, pp. 29, 30 (Exhibit 37); McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, p. 33 (Exhibit 38); McConnell Senate Committee, FEC Form 3, Year-End Report 2001, January 31, 2002, p. 23 (Exhibit 39); McConnell Senate Committee, FEC Form 3, July Quarterly Report 2003, July 15, 2003, p. 1 (Exhibit 40); McConnell Senate Committee, FEC Form 3, October Quarterly Report 2005, October 14, 2005, p. 173 (Exhibit 41).

⁴² Churchill Downs Incorporated Conducts 2007 Annual Meeting, *Business Wire*, June 28, 2007 (Exhibit 42); Bluegrass Committee, FEC Form 3, Mid-Year Report 2003, July 15, 2003, p. 9 (Exhibit 43); McConnell Senate Committee, FEC Form 3 October Quarterly Report 2005, October 14, 2005, p. 291 (Exhibit 44).

⁴³ The Bates Capitol Group LLC, Lobbying Report 2003-2006, Secretary of the Senate, Office of Public Record (Exhibit 45).

⁴⁴ Cheves, *Lexington Herald-Leader*, Oct. 22, 2006.

⁴⁵ United Parcel Service Inc. PAC, FEC Form 3, August Monthly Report 2004, August 19, 2004, p. 151 (Exhibit 46); United Parcel Service Inc. PAC, FEC Form 3, September Monthly Report 2005, September 19, 2005, p. 331 (Exhibit 47).

⁴⁶ Mark Pitsch, Foundation Releases Donor List; U Of L Includes McConnell Center Gifts, *Courier-Journal*, December 14, 2004 (Exhibit 48).

⁴⁷ <http://louisville.edu/mcconnellcenter/about/> (Exhibit 49).

⁴⁸ The Money Funnels, *www.kentucky.com*, October 15, 2006 (Exhibit 50).

⁴⁹ Pitsch, *Courier-Journal*, Dec. 14, 2004.

to the McConnell Center.⁵⁰ Sen. McConnell and the University of Louisville Foundation had maintained that donors' identities were kept confidential at the request of donors, although an official from at least one corporate donor, Toyota Motor Manufacturing of North America, said, "Toyota's never made any secret of our contribution to the McConnell program."⁵¹ Two of the largest donors to the McConnell Center are Ashland Inc. and UPS, which have donated \$500,000 and \$400,000 respectively.⁵² Some donations to the McConnell Center have been delivered to Sen. McConnell's Capitol Hill office.⁵³

Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.⁵⁴ It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.⁵⁵

If, as it appears, Sen. McConnell accepted donations to his campaign and political action committees in direct exchange for earmarking federal funds to clients of Bates Capitol, he may have violated the bribery statute. Similarly, if he provided legislative assistance in return for contributions to the McConnell Center he may have violated the bribery statute.

Honest Services Fraud

Federal law prohibits a member of Congress from depriving his constituents, the United States Senate, and the United States of the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.⁵⁶ By using his position as a member of Congress to financially benefit clients of a lobbying firm owned by his 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, 1346.

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

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ www.kentucky.com, Oct.15, 2006.

⁵⁴ 18 U.S.C. § 201(b)(2)(A).

⁵⁵ McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

⁵⁶ *See Information*, United States v. Jack A. Abramoff, CA 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

or because of any official act performed or to be performed by such official.⁵⁷ In considering this statute, the Supreme Court has held that a link must be established between the gratuity and a specific action taken by or to be taken by the government official.⁵⁸

If a link is established between Sen. McConnell's actions to earmark funds for clients of Bates Capitol and the campaign donations and donations made to his PAC by Bates Capitol's clients, or if a link is established between contributions made to the McConnell Center and legislative assistance provided by Sen. McConnell, Sen. McConnell would be in violation of 18 U.S.C. § 201(c)(1)(B).

5 U.S.C. § 7353

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the Congress, officers, and employees from asking for anything of value from a broad range of people, including "anyone seeking official action from, doing business with, or . . . conducting activities regulated by the individual's employing entity; or whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."

If Sen. McConnell sought campaign contributions from either Bates Capitol or any of the organizations for which he inserted earmarks, including E-Cavern, Boardpoint, Voice for Humanity or Appriss, Inc., in exchange for those earmarks, he may have violated 5 U.S.C. § 7353. Similarly, if he sought contributions for the McConnell Center in return for legislative assistance, Sen. McConnell may have violated 5 U.S.C. § 7353.

5 C.F.R. § 2635.702(a)

5 C.F.R. § 2635.702(a) prohibits government employees, including members of the Senate from "taking any official actions for the prospect of personal gain for themselves or anyone else." Specifically, 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, provides:

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

By funneling federal funds to clients of Bates Capitol, the lobbying firm of his former aide, Gordon Hunter Bates, Sen. McConnell may have dispensed special favors in violation of 5 C.F.R. § 2635.702(a).

⁵⁷ 18 U.S.C. § 201(c)(1)(B).

⁵⁸ United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999).

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”⁵⁹ This rule is intended to protect the integrity and reputation of the Senate as a whole.⁶⁰ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . .”⁶¹

In 1991, the Senate Select Committee on Ethics concluded that Sen. Alan Cranston had engaged in improper conduct which reflected on the Senate by “engaging in an impermissible pattern of conduct in which fund raising and official activities were substantially linked.”⁶² Although the committee found that none of Sen. Cranston’s activities violated any particular law or Senate rule, the committee nonetheless found Sen. Cranston’s conduct “violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate . . .”⁶³ As a result, the committee issued a reprimand to Sen. Cranston.⁶⁴

In addition, the Senate Select Committee on Ethics’ Rules specifically list the Code of Ethics for Government Service as a source for committee jurisdiction.⁶⁵ The code states that a person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”⁶⁶

If Sen. McConnell accepted campaign contributions or contributions to the McConnell Center from companies such as E-Cavern, Boardpoint, Voice for Humanity, Appriss and UPS in return for legislative assistance, he may have engaged in improper conduct which reflects upon the Senate.

⁵⁹ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

⁶⁰ Id.

⁶¹ Id. at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

⁶² Senate Ethics Manual, p. 434.

⁶³ Id. at 435.

⁶⁴ Id.

⁶⁵ Id. at 436.

⁶⁶ Id. (citing H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12)).

2008 UPDATE

BAE Systems Earmarks

Since 1997, Sen. McConnell has earmarked \$336 million for United Defense,⁶⁷ a defense contracting firm purchased by BAE Systems in 2005.⁶⁸ In October 2007, 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.⁶⁹ BAE Systems is now under investigation by the Justice Department for bribery.⁷⁰

Prior to its acquisition by BAE, United Defense's corporate PAC donated \$9,000 to Sen. McConnell's campaign committee between 2001 to 2004.⁷¹ United Defense's PAC donated an additional \$9,000 to Sen. McConnell's PAC in 2003 and 2004.⁷² Finally, employees of United Defense donated \$6,275 to Sen. McConnell's campaign committee from 2001 through 2005⁷³ and gave \$5,000 to his leadership PAC in 2003.⁷⁴ United Defense pledged \$500,000 to the McConnell Center at the University of Louisville,⁷⁵ making it one of the top donors.⁷⁶

Since 2005, after BAE Systems purchased United Defense, employees of BAE have donated \$7,000 to Sen. McConnell's campaign committee.⁷⁷ BAE's corporate PAC has donated

⁶⁷ James Carroll, Funds for Naval Guns Questioned, *Courier-Journal*, November 4, 2007 (Exhibit 51).

⁶⁸ Id.

⁶⁹ John Cheves, McConnell Marks Funds for Contractor: Firm Under Investigation for Bribery, *Lexington Herald-Leader*, October 27, 2007 (Exhibit 52).

⁷⁰ Id.

⁷¹ 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).

⁷² 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).

⁷³ 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).

⁷⁴ Bluegrass Committee, FEC Form 3, Year-End Report 2003, June 8, 2003, pp. 66, 70, 73-75 (Exhibit 56).

⁷⁵ Cheves, *Lexington Herald-Leader*, Oct. 27, 2007.

⁷⁶ Pitsch, *Courier-Journal*, Dec. 14, 2004.

⁷⁷ 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).

\$10,000 Sen. McConnell's campaign committee⁷⁸ and \$12,000 to his leadership PAC since 2005.⁷⁹

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 continued to retain the lobbying services of the Bates Capitol Group according to 2008 lobbying records.⁸⁰

Appriss, Inc

Executives and employees of Appriss, Inc have donated \$10,000 to Sen. McConnell's joint fund raising committee in the 2008 cycle.⁸¹

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.⁸²

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.⁸³ 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."⁸⁴ Though the court ruled that the identities of 62 donors who requested their donations be

⁷⁸ 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).

⁷⁹ 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).

⁸⁰ Bates Capitol Group LLC, Lobbying Reports 2008, Secretary of the Senate, Office of Public Record (Exhibit 60).

⁸¹ McConnell Majority Committee, FEC Form 3, April Quarterly Report 2007, April 12, 2007, pp. 29, 38, 42, 115, 133, 184 (Exhibit 61).

⁸² McConnell Senate Committee '08, FEC Form 3, October Quarterly Report 2007, October 15, 2007, pp. 184, 185 (Exhibit 62).

⁸³ 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).

⁸⁴ Id., *8.

anonymous need not be revealed, future donors will not be permitted to make anonymous donations.⁸⁵

2009 UPDATE

BAE Systems

The Department of Justice's (DOJ) investigation into British defense contractor, BAE Systems, concerning allegations that the company bribed members of the Saudi Royal family, including the Saudi Ambassador to the United States, in support of an arms-for-oil barter, is ongoing.⁸⁶ Press reports from August 2008 and February 2009 indicate that the DOJ may have come close to reaching a deal with BAE, but the agency has refused to comment publicly.⁸⁷

The United Kingdom's Serious Fraud Office (SFO), which was also investigating BAE over those same allegations of bribery, dropped the investigation when ordered to do so by then Prime Minister Tony Blair in 2006, amid concerns that it would tread too close to members of the Saudi Royal family and endanger national security.⁸⁸ After the SFO tried to access Swiss bank records, including those of the Saudi Royal family, the Saudi government allegedly threatened to "withdraw terrorism-related intelligence cooperation" and to cancel a then-pending sale of British fighter-jets to the Kingdom.⁸⁹ Approximately half of BAE's business is now done with the United State government, but the decision of the SFO to drop its investigation into the company has hampered the DOJ's probe.⁹⁰ The United States government lodged two official diplomatic protests over the scuttling of the SFO's investigation.⁹¹

The Austrian government, is expected, however, to bring charges in connection with its investigation of BAE.⁹² That investigation concerns the action of an Austrian aristocrat who secretly worked for the defense contractor and made "aggressive incentive payments to key decision-makers."⁹³

For fiscal year 2010, Sen. McConnell requested three earmarks for BAE worth a

⁸⁵ Id., *14.

⁸⁶ CONGRESSIONAL RESEARCH SERVICE, SAUDI ARABIA: BACKGROUND AND U.S. RELATIONS, CHRISTOPHER M. BLANCHARD, at 18 (July 9, 2009) (Exhibit 64).

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ David Leigh, BAE Judgement: Firm's Future: US Investigators Continue to Pursue New Regime, *Guardian*, July 31, 2008 (Exhibit 65).

⁹¹ Swiss Confirm BAE Investigation, *New York Times*, May 14, 2007 (Exhibit 66).

⁹² David Leigh and Rob Evans, Austria Set to Prosecute Over BAE Arms Sales, *Guardian*, June 19, 2009 (Exhibit 67).

⁹³ Id.

combined \$17 million dollars.⁹⁴ The requests are for various gun assemblies manufactured by BAE at its Louisville, Kentucky facility.⁹⁵ Since the third quarter of 2008, employees of BAE system have donated \$3,400 to Sen. McConnell's campaign committee.⁹⁶

G. Hunter Bates

According to lobbying disclosures Mr. Bates joined the C2 Group, LLC., as a lobbyist beginning in September 2007.⁹⁷ Mr. Bates brought at least two of his former clients to his new firm, Appriss Inc.,⁹⁸ and Boardpoint.⁹⁹ As of July 2009, Mr. Bates had donated \$2,700 to Sen. McConnell's PAC.¹⁰⁰ FEC records do not indicate that employees of Appriss or Boardpoint made contributions to Sen. McConnell's campaign committee or PAC in this cycle.

McConnell Center for Political Leadership

Since winning its lawsuit in 2008,¹⁰¹ the *Courier-Journal* has maintained an online database of all donations made to the University of Louisville Foundation, which manages all donations made to the school, including those made to the McConnell Center.¹⁰² Funding for the McConnell Center has dropped precipitously, according to the database it has only received \$31,125 in contributions since 2004.¹⁰³

⁹⁴ Press Release, Office of Sen. Mitch McConnell, Senator Mitch McConnell's FY 2010 Appropriations Requests (Exhibit 68).

⁹⁵ Id.

⁹⁶ McConnell Senate Committee 08, FEC Form 3, October Quarterly Report 2008, October 15, 2008, p. 885; McConnell Senate Committee 08, FEC Form 3, Pre-General Report 2008, December 4, 2008, pp. 83, 145, 166 (Exhibit 69).

⁹⁷ C2 Group, LLC., Lobbying Registration 2007, Client: Appriss Inc., Senate Office of Public Record, Secretary of the Senate (Exhibit 70).

⁹⁸ Id.

⁹⁹ C2 Group, LLC., Lobbying Registration 2007, Client: Broadpoint, LLC., Senate Office of Public Record, Secretary of the Senate; C2 Group, LLC., Lobbying Termination 2009, Client: Broadpoint, LLC., Senate Office of Public Record, Secretary of the Senate (Exhibit 71).

¹⁰⁰ Bluegrass Committee, FEC Form 3, Pre-Special Election Report 2009, March 19, 2009, p. 14 (Exhibit 72).

¹⁰¹ See Cape Publications, Inc. v. University of Louisville Foundation, Inc., Case No. 2005-SC-000454-DG, 2008 KY Lexis 176 (Ky. August 21, 2008).

¹⁰² <http://datacenter.courier-journal.com/uofldonors/> (Exhibit 73).

¹⁰³ Id.

EXHIBITS

To view all the exhibits cited in this report, please visit www.CREWsMostCorrupt.org.