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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

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(202) 225–7103

November 18, 2004

The Honorable Chris Bell
U.S. House of Representatives
216 Cannon House Office Building
Washington, D.C. 20515

Dear Colleague:

As you know, last month the Committee made a number of decisions regarding the complaint you filed against Representative Tom DeLay on June 15, 2004, but the Committee deferred decision on the issue of whether your complaint violated Committee Rule 15(a)(4). That provision states that a complaint "shall not contain innuendo, speculative assertions, or conclusory statements."

As detailed in this letter, the Committee finds that your complaint violated Committee Rule 15(a)(4) in a number of respects. Because you personally signed and this complaint and transmitted it directly to the Committee under Committee Rule 14(a)(1), you are responsible for the contents of the complaint in their entirety, and thus you are responsible for these violations.

This is a serious matter. The House Code of Official Conduct provides that a House Member, officer or employee "shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof." House Rule 23, cl. 2. In addition, the Committee Rule implicated here is an important one, the purposes of which, quite clearly, are to maintain a level of decorum in Committee proceedings and to discourage use of the Committee for political purposes. Indeed, it appears there is no purpose for including excessive or inflammatory language or exaggerated charges in a complaint except in an attempt to attract publicity and, hence, a political advantage. This improper political purpose was highlighted in this instance by the various efforts you undertook to promote your complaint publicly, by including such excessive or inflammatory language or exaggerated charges in press releases and other public statements. The fact that the Committee ultimately determined to issue a letter of admonition to Representative DeLay on bases other than the materials specified below does not mitigate your violation.

The specific respects in which your complaint violated the rule include the following. To begin with, ¶ 7 of the complaint asserted that,

> Congressman DeLay violated 18 U.S.C. §201(b)(2), as well as clause 3 of House Rule XXIII (the Code of Official Conduct), by soliciting campaign contributions from Westar Energy in return for legislative assistance on the energy bill.

The statute that is referred to in this paragraph, 18 U.S.C. §201(b)(2), is the federal criminal statute on bribery. There can hardly be a more serious charge against a public official than that he or she solicited a bribe, *i.e.*, something of value that is given or received specifically in exchange for an official act. Yet as the Committee noted in its analysis of Count I, the facts relating to Westar that were alleged in the complaint did not come even close to supporting this extremely serious claim.[1]

Other assertions made in the complaint that constituted innuendo, speculative assertions, or conclusory statements include the following:

- Paragraph 4 of the complaint stated, "Since first assuming a position in the House Leadership, Representative Tom DeLay has engaged in a concerted and relentless effort to use the official resources of office to advance and underwrite a program of blatantly partisan political activities in violation of rules, statutes and standards of conduct applicable to Members." This broad allegation of serious misconduct spanning a period of years was not supported by the facts alleged in the complaint.

- Paragraph 17 asserted that "the Standards of Official Conduct Committee should . . . find that Rep. DeLay was 'dispensing special favors' [to Westar] in violation of the House Rules." However, while the complaint made allegations regarding actions taken on the legislative provision sought by Westar, it alleged no action whatsoever taken by Representative DeLay with regard to that legislation.[2]

- A footnote to ¶ 19 of the complaint referred to contributions received by Representative DeLay from Bacardi U.S.A. and its PAC and asserts that, "In return for Bacardi's financial support, DeLay has pushed a piece of legislation . . . that would alter U.S. trademark rules to benefit Bacardi." However, no facts supporting the allegation that Representative DeLay's actions on this matter were "[i]n return for" the contributions were asserted.

In addition, the complaint made a number of allegations against Representative DeLay with regard to his staff's contacts with the Federal Aviation Administration and the Department of Justice, and assertedly those allegations were based on the reports issued by the Inspectors General of Departments of Justice and Transportation respectively. However, those allegations did not correctly reflect the information set out in those reports, and specifically,

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[1] The facts alleged in the complaint with regard to Westar are summarized and discussed on pp. 6-8 and 14 of the memorandum that the Committee released on October 6, 2004.

[2] The facts alleged in the complaint with regard to this matter are summarized and discussed on pp. 8 and 22 of the Committee memorandum.

- Paragraph 50 of the complaint described the activities undertaken by the FAA with regard to the particular aircraft involved, and the clear implication of this paragraph was that all of those activities resulted from the contact from Representative DeLay's office.[3] In fact, the report of the DOT IG attributes the described agency activities to all of the contacts it had received regarding the particular aircraft, including those received from the Texas Department of Public Safety, and not solely to the contacts from Representative DeLay's office. In addition, according to the report, the FAA safety "alert" that was referenced in ¶ 50 was the result of an inquiry from the Texas DPS, not from Representative DeLay's office.

- Paragraph 51 of the complaint alleged that counsel to Representative DeLay contacted a Justice Department official "requesting the Department's assistance in enforcing the 'arrest' warrant issued by the Texas Sergeant-at-Arms" and contacted the United States Attorney for the Western District of Texas. However, according to the pages of the DOJ IG report that were cited in this paragraph of the complaint, Representative DeLay's counsel did not make such a request of the Justice Department official, and he did not contact the U.S. Attorney.

- Paragraph 52 alleged that Representative DeLay contacted the Federal Bureau of Investigation, as well as the FAA and the Justice Department, but the report of the DOJ IG reflects no contact made by Representative DeLay's office with the FBI.

Finally, one allegation against Representative DeLay, made in ¶ 13, was based on a misstatement of the law. That paragraph alleged, in part, the following:

> If Mr. DeLay sought political donations from Westar in return for his support of the Westar amendment, he violated . . . the federal gratuity statute, 18 U.S.C. 201(c), which provides that a public official who demands, seeks or agrees to receive anything of value for or because of any official act performed or to be performed by such official is guilty of an offense.

While this allegation purported to paraphrase the illegal gratuity statute, it omitted the term "personally," which appears in the statute after the phrase "anything of value." Because of this term in the statute, it is well established that a bona fide campaign contribution cannot be the subject of an illegal gratuity charge, as such a contribution is not a benefit that is received "personally."[4]

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[3] Paragraph 49 of the complaint makes allegations regarding the DeLay staff contact with the FAA, and ¶ 50 states, "According to the Department of Transportation's Inspector General, the request for information regarding the location of Rep. Laney's airplane required at least 13 FAA officials at several different facilities to check records and contact other FAA officials in an effort to locate the plane. H.R. Rep. 108-220 at 8. The FAA instituted a safety 'alert' on the Laney plane for the region covered by the FAA's Dallas-Ft. Worth Control Center. Under the alert, a message was sent to all 29 air traffic control facilities and airport towers in the region asking if they had any information about the aircraft."

[4] U.S. Dep't of Justice, *Criminal Resources Manual* § 2045; *United States v. Brewster*, 506 F.2d 62, 77 (D.C. Cir. 1974).

At the time that we, in our capacities as Chairman and Ranking Minority Member, performed our initial review of your complaint under Committee Rule 16(a), we had the option to determine, on the basis of the above considerations, that your complaint did not satisfy "the requirements of the Committee's rules for what constitutes a complaint" and to return the complaint to you under Committee Rule 16(e). We elected not to do so for essentially two reasons. First, while your complaint contained innuendo, speculative assertions and conclusory statements, it also contained allegations that warranted Committee consideration. In addition, while this Committee rule has been in force for over 10 years, the Committee had not previously rejected any complaint for violating this rule, and the Committee had not previously issued any interpretations of the rule.

This letter is being released publicly, and by its issuance, the Committee is putting all Members on notice of the need to comply with Committee Rule 15(a)(4), as well as all of the other provisions of Committee Rule 15, when submitting a complaint to the Committee. All Members are also now on notice that violation of any of those rules is a basis for summarily rejecting a complaint under Committee Rule 16(e) and depending on the circumstances, may also be the basis for initiating disciplinary action against the Member who makes the filing.

* * *

We also wish to bring to your attention a separate matter regarding the Committee's consideration of your complaint against Representative DeLay. In a newspaper article that appeared on September 15, 2004, a member of your staff, Eric Burns, was quoted as follows:

> The Republicans on the committee know DeLay would not survive a full investigation, so they're trying to protect their party boss. The committee faces a very clear choice: They can stand up for the integrity of the House, or they can protect politics as usual.[5]

We have not inquired of your staff member whether he was quoted accurately, and we do not assume that he was. Nevertheless, we also wish to make the point to you – and, by public release of this letter, to all House Members and staff – that it is highly improper, and a basis for the initiation of disciplinary action, for any House Member or staff person to attack the integrity of this Committee or any of its members.

Sincerely,

Joel Hefley
Chairman

Alan B. Mollohan
Ranking Minority Member

[5] Bresnahan and Chappie, "DeLay Probe Faces Deadlock," *Roll Call*, Sep. 25, 2004, p. 23.