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APPENDIX

TO

A REPORT

IN THE MATTER OF REPRESENTATIVE JOHN W. JENRETTE, JR.

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WASHINGTON : 1980

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E. BARRETT PRETTYMAN, JR., *Special Counsel*
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PENDING BUSINESS

THURSDAY, NOVEMBER 20, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to other business, at 10:52 a.m. in Room 2237, Rayburn House Office Building, Hon. Charles E. Bennett (chairman) presiding.

Present: Representatives Bennett, Hamilton, Preyer, Rahall, Spence, Hollenbeck, Livingston, Thomas, Stokes, Sensenbrenner, and Cheney.

Also present: Representative Henry B. Gonzalez. E. Barrett Prettyman, Jr., and Allen Snyder, Special Counsel; Representative John W. Jenrette, Jr. Kenneth Robinson, Counsel; Dennis Hart, Co-counsel. John M. Swanner, Staff Director.

The CHAIRMAN. The committee will come back into session.

At this point I would like to ask, since the question has been asked of me by other people, whether Congressman Jenrette and his counsel wish or do not wish to have this in open session.

Mr. ROBINSON. We specifically request that we have open session so everyone can hear all the testimony and arguments and questions of the committee members.

The CHAIRMAN. May I ask Mr. Jenrette, is that your desire?

Mr. JENRETTE. Yes, sir.

The CHAIRMAN. All right, then it will be open session. Do you wish to have the TV in here at the same time?

Mr. JENRETTE. We have no objection.

Mr. ROBINSON. Anyone who wants to attend, we welcome him here except us.

The CHAIRMAN. I have no objection to the media coming in. Somebody can advise them they can come in if they want to.

[Bench conference.]

The CHAIRMAN. We are ready to proceed.

This hearing at this time is to allow Mr. Jenrette to make any statement he would like to make before the committee.

Mr. ROBINSON. Mr. Chairman, on behalf of Mr. Jenrette, as discussed previously, at this time prior to any decision on Mr. Jenrette's part as to whether or not he will make a statement at this time, we would like to raise three motions which we filed this morning. Copies, I believe, have been submitted to the Members of Congress and should be before you.

The CHAIRMAN. They havn't been submitted to me, to my knowledge.

Mr. SWANNER. Yes, sir.

Mr. ROBINSON. They should be before you there, Your Honor.

The CHAIRMAN. I beg your pardon. I see they are on my desk.

Mr. ROBINSON. I apologize for having filed them this morning, but one of our complaints is that we are moving too hastily in this matter. We had just gotten notice, as the committee knows, last week that we would be here today. We filed something in writing. On Monday we got the printed record and these little gray books yesterday, which is the, purportedly, trial transcript, part of it is.

The CHAIRMAN. An expeditious way of handling it would be for you to read each motion. We will take action on the motion. Why don't you read the motion.

Mr. ROBINSON. I will do that, but I would like to first state, if it please this committee, I feel that, first, that these 12 members, you 12 Members of Congress, are sitting here as sort of a combination of judge and jury. You are either a jury or you are a court sitting en bank. I notice that two members are not here, and I feel that before we proceed any further, that it would be appropriate for each member of the committee to recess quietly and read the motions, so that there can be questions asked.

This motion which we have dealing with deferring preliminary inquiry or deferring disciplinary hearings until another time deals with some very serious legal matters. I don't think we can discuss those, Mr. Chairman, by me reading them out loud, and then having a voice vote. I don't think any jury nor does any court of appeals or trail court or 3-judge panel ever rule in such a way. They digest what is there, and I am not trying to be critical, but if I have to be critical, I have to speak on Mr. Jenrette's behalf. This is an important moment here, and I really think that there should be a brief recess so that you all might review what has been filed.

There is some very serious matter in these particular motions, and I don't think that we should have to make any kind of decision at this point on whether or not Mr. Jenrette will or will not make a statement, until we have some clear rulings on the record, with even a polling of the jury, so to speak, as to who has read what, so that when we go to the Congress, if we have to end up up there sometime, that the members of the Congress can see that any decision by this committee was made by votes of each committee member, based on certain matters that each committee member had reviewed, and we don't want the wrong impression to be communicated, that everyone has read and reviewed everything, unless it is a matter of record.

I am not trying to be critical, but that is what lawyers are supposed to do.

The CHAIRMAN. Without any effort, you are doing pretty well.

Mr. ROBINSON. I know, but some lawyers have to be critical to serve the cause of justice.

The CHAIRMAN. The final decision, however, rests with me, and I already told you the procedure I wanted you to follow.

Mr. ROBINSON. You want me to read these motions?

The CHAIRMAN. I want you to read one motion at a time. As to what we do after you read it is another matter, but that is what I want you to do.

Mr. ROBINSON. All right.

The CHAIRMAN. Or you can have somebody else read it for you, if you desire.

Mr. ROBINSON. I will read. I am not as good a reader as Mr. Hart, but he can help me on some of the big words:

REQUEST FOR EXTENSION OF TIME IN WHICH TO SUBMIT RESPONDENT'S PROPOSALS FOR INCLUSION IN THE OFFICIAL RECORD

Respondent John W. Jenrette respectfully petitions the Committee for an extension of time in which to submit documents for inclusion in the Official Record before the Committee. As grounds for such request, respondent would show that:

1. Special Counsel has set November 20, 1980 as the cutoff point for the submission of material for inclusions of material.

2. It has been the consistent position of respondent's counsel that all portions of the District Court proceeding must be included in the Committee's Official Record for an informed judgment by this Committee. It is the position of special counsel Mr. Prettyman that self-designated portions of the District Court proceedings are "not important" enough to justify their inclusion in the bound version of the record now before the Committee. As a consequence, it has become the respondent's burden to supply the portions of the District Court proceedings which special counsel has deemed "not relevant." This can be done only after an examination of the printed record to discover what portions have been omitted. Counsel for respondent obtained this printed record at 3:00 p.m. on November 19, 1980 and has been unable to complete the required examination and subsequent duplication of the required pages.

3. Special counsel has refused to include in the printed record the proceedings held in District Court on November 12 and 13, 1980. The transcript of these proceedings are not yet available for inclusion.

4. Significant testimony on material issues still awaits the December hearings scheduled by Judge Penn for December in United States District Court.

I might clarify, the hearings are set for December 17 through December 20:

Respondent John W. Jenrette believes that simple fairness requires the record before the Committee to be held open until such time as all of the evidence can be presented. Any decision made without all of the evidence present can be termed neither fair nor impartial.

The CHAIRMAN. All right. Now, the procedure we will follow at this point is, I will ask Mr. Prettyman to respond.

Mr. PRETTYMAN. Yes.

First of all, you will note that counsel says that he obtained the printed record on November 19th. Actually, the entire record was available in my office on October 17th, a month ago, and you will see from a letter of mine of that date which will be introduced shortly as Exhibit F, that I told Mr. Robinson that the record was available and asked him to come and cross designate those portions of it which he wished to cross designate.

When he told me in response that he wanted the entire record in, I objected to—I thereupon included in this printed record all of the trial testimony, all of the evidence, including some I might say which I thought was entirely irrelavant and immaterial.

But, in any event, it is there.

The only things left were the pleadings, the bench conferences, the arguments out of the hearing of the jury, Mr. Stowe's attorney summation, matters of that sort, but the evidence is all here.

What counsel is really trying to do when he talks about all portions of the District Court proceeding is to include not only the pre-trial motions and the bench conferences and arguments, but also the proceedings that are still going on, which, of course, I submit to you as we

faced in the Myers case, are not relevant to the matter for consideration before this committee.

The essential matters for consideration before this committee today I would remind you are whether offenses have been committed which are within the jurisdiction of the committee and I submit that you can determine that from the evidence that was introduced at the trial, all of which is now before you.

The CHAIRMAN. Then the procedure we will follow at this point would be that I would like you to read the next one you want to read.

Mr. ROBINSON. Is it inappropriate for me to have an opportunity to make a brief reply to what was said?

The CHAIRMAN. You can reply.

Mr. ROBINSON. Thank you.

I would say first that Mr. Prettyman knows that on October 17th I was still engaged in trial before the same Judge Penn. Now, the Jenrette matter ended October 7th. Judge Penn made me begin a four-week sports betting conspiracy case before him two days after the Jenrette verdict, over my very strong objections.

I was in trial until I think the verdict came in the day after the election, November 5, 1980. I was in trial before Judge Penn. I do not have the privilege of having a 200-man law firm, I almost called him Mr. Carter—Mr. Prettyman has. We have certain time problems.

Secondly, he says, Mr. Prettyman says much of what I want admitted is irrelevant and immaterial.

Of course I challenge Mr. Prettyman when was the last time he tried a jury trial in a criminal case? He doesn't know what is irrelevant and immaterial. He doesn't know what a Federal Judge ruled was relevant and material. The Judge admitted questions. The Judge had some serious questions at the bench——

The CHAIRMAN. But it has all been put in?

Mr. ROBINSON. No, it hasn't. Mr. Prettyman says all. Mr. Prettyman, with all due respect, is a downtown civil lawyer. He is not an uptown versus a criminal lawyer. He does not try these kinds of cases.

He doesn't have the ability to interpret what is crucial to a conspiracy case and what constitutes violations of law. Judge Penn has serious questions about whether Jenrette did anything wrong or not, and he hasn't ruled whether to set aside the verdict.

That wasn't a matter before the committee on the Myers case. The judgment, notwithstanding the verdict, as members and judges know, is a very serious negotiation. Usually they are denied willy-nilly because there is insufficient evidence to go to a jury.

Judge Penn still hasn't ruled on whether or not to set aside this verdict because of insufficient evidence.

I think for Mr. Prettyman to say it is irrelevant and immaterial is to improperly assure this committee he has made a wise decision.

Mr. PRETTYMAN. What I said was apparently misinterpreted. What I said was that all of the evidence in the case is in here, even though I personally regard some of it as irrelevant and immaterial.

But Mr. Robinson is quite right, what I regard as irrelevant and immaterial makes no difference because the Judge decided; he allowed it in; it is here.

The only thing that has been left out, as I have said, are arguments and matters that were out of the hearing of the jury and I would submit to you that as in the Myers case, those matters are not proper for consideration for this committee.

This committee is interested in the evidence in the case.

Mr. ROBINSON. Of course, as any trial lawyer or any trial judge, or any knowledgeable person in the criminal law knows, rulings in the case, whether at the bench or in the open courtroom, have a reflection on what evidence is heard in the case. That is why the judge is there, to make rulings; that is why there is an appellate process.

This case is far different than Mr. Myers' case, with all due respect to Mr. Myers.

There is little question what Mr. Myers did to anybody who watches the videotapes; he just opened up his pockets and said, "which pocket do you put it in?"

There was no defense. He didn't raise any of these defenses. We had serious matters discussed. The judge raised serious questions at the bench.

He found it inherently incredible that there are no written records, no paper trail in the ABSCAM cases, memos back and forth from the field back to the headquarters, even a testimony by a leading FBI official before the Congress over the ABSCAM matter and over the FBI charter as to whether or not there is a paper trial.

We had in a hearing last week the head FBI agent admit there are 25 volumes six feet high that are in existence and Mr. Puccio's prosecutor, in the New York office's previous representations were made at the bench in Jenrette's case, said that there is no paper trail; there are no written documents.

Somebody has committed perjury. I think those are matters that this committee has a right and obligation to subpoena and review. Because, if we have perjury as to how Mr. Jenrette got tangled up in this mess and what he did or did not do and what happened to certain tape recordings that have disappeared according to sworn testimony which they say conveniently don't affect Mr. Jenrette, we have a question about whether or not you have an adequate, proper, fair verdict in this case.

So I very strongly oppose any statement that what is said at the bench is not relevant and material to this matter.

We had substantial hearings—two days of hearings last week before Judge Penn. He was disturbed. He told one of the prosecutors you will be a witness in all likelihood here in December because I want to know why I was told there were no written records and now there are 25 volumes. Be here.

He admonished one of the prosecutors that the prosecutor was told not to speak to the witness overnight. The prosecutor violated a court order.

We have shown on major witnesses that there have been some perjury.

I dare say Mr. Webster, we tried to make Mr. Webster come and testify in the case before Judge Penn but he hid behind the rules that say he cannot be subpoenaed. He can be subpoenaed here. He should

have to come here and be questioned by this committee on what he did because Mr. Webster and others have committed perjury before the Congress last year on the ABSCAM hearing.

If they didn't commit perjury, then the witnesses at the ABSCAM trial committed perjury.

Somebody has lied.

So I object very much. I am sorry I get carried away.

I object very strongly and I will try to do it more subdued, to going forward. We are not trying to delay. I know that is what everyone thinks, we are trying to buy time until Congress adjourns. That is not what we are doing.

We have moved to have a trial back in April or May of '80. We filed with Chief Judge Bryant a motion to go to trial on information, waive the indictment proceeding process. The government opposed it. They opposed it. So we were stuck going to trial right before the election.

The CHAIRMAN. I am not sure that is relevant to this hearing.

Mr. ROBINSON. It is relevant to you all to know—I will quit trying to call you all "you all " but you recall. Anyway, it is not relevant if you think we are trying to delay time.

The CHAIRMAN. There has never been any——

Mr. ROBINSON. I know, but underneath it all.

The CHAIRMAN. I have never made that comment in any conversation.

Mr. ROBINSON. I never had the opportunity to speak to you. I am not accusing any committee member.

I think Mr. Prettyman maybe thinks we are trying to delay. He can comment if he does.

But, anyway, to answer the points, we think all the matters should be before this committee, especially these 25 volumes.

Judge Penn told the FBI that he anticipates reviewing personally all 25 volumes, six feet of material.

There are rules, the Congress writes the Jencks Act; the Congress writes these rules and we believe they were violated in our trial. We are finding this out now.

This committee, I don't think, can make a learned judgment on Mr. Jenrette in progress of any matters against him until the committee has all the evidence. So that is my response on Point 1.

The CHAIRMAN. Any further comments?

Mr. PRETTYMAN. No. It goes into his due process point which we will speak to shortly and it is very similar to the one——

The CHAIRMAN. That being so, we will then go vote and come back and when we come back we will address the next motion that you want to address.

Mr. ROBINSON. Thank you.

[Recess.]

The CHAIRMAN. A quorum being present, I will ask the counsel for Mr. Jenrette to addres the next motion, whichever one you wish.

Mr. ROBINSON. Very well. There are some exhibits that we had here that are available to be put into the record. Would the committee want to address that after the motions?

The CHAIRMAN. With regard to the next motion or the one we just completed?

Mr. ROBINSON. It really is probably tied to the previous motion. Some of the items we are able to present to the committee now.

The CHAIRMAN. If you want to submit something for introduction in the record, this would be a proper time with regard to the motion we just had considered.

Mr. ROBINSON. I would ask Mr. Hart be perimtted to address what exhibits we have and move their admission.

This is Dennis H. Hart who works with me.

Mr. HART. Mr. Chairman, we have several exhibits which we have already shown to special counsel and they have copies of them.

We only have one full set for the committee. We can make others if the committee needs them.

The first thing we have are what we call the Shick records, hospital records of Congressman Jenrette from his hospitalization in 1979.

The CHAIRMAN. Do they relate to the first motion? I don't remember health being placed in the first one.

Mr. ROBINSON. Health was a matter that was an issue in all of the proceedings in the trial, the matter which was a part of the defense.

Mr. HART. I should explain, Mr. Chairman, that this was an exhibit introduced by the defense at trial.

It is Mr. Prettyman's position that he would allow certain exhibits to be reproduced in the record and that those that he decided were not relevant was the burden of Congressman Jenrette to produce.

Our problem is, we cannot produce all of them by this date. The ones we can produce we would like to produce now.

Mr. PRETTYMAN. In regard to that exhibit, I would like to correct what was just said.

Counsel wanted to designate for inclusion in the printed record selected pages from the so-called Shick records. I told him that I had no objection to the Shick records going into the printed volume, but that I thought the entire Shick records should go in, rather than have counsel select out certain pages which they thought were to their advantage when in fact the entire Shick record had gone into the trial record.

The response was that the congressman had determined that he would prefer to have one copy of the entire record be made a part of the committee's records, but not be made part of the printed record.

That is why we are where we are.

Mr. ROBINSON. The reason for this, these are matters that deal with this public record now, Mr. Jenrette's alcoholism, that he was being treated for before ABSCAM came at him and during ABSCAM, while they had not surfaced. There are some very personal matters in here.

We were wanting the committee to have opportunity to review the dates on these visits to an alcoholism center, and the treatment and diagnosis and the fact he was suffering from blackouts at that time. We didn't think we had to put in a bound volume for the world to see the degree of these personal matters.

The counsel for the committee has repeatedly said well, we have to worry about the cost factor, we have to worry that this book is getting too thick.

All right, the book is getting too thick, but here are records that would make it much thicker.

All we wanted was the cover sheet, or some things that deal with the exact admission, records, dates, diagnosis and treatment. We didn't think you had to get into statements——

The CHAIRMAN. Are you offering something for the record now?

Mr. ROBINSON. Yes, sir, we are offering the entire Shick records but only one copy for the committee that will not be in the bound volume. You all can do as you wish with them. I think they should be matters that the committee should consider. We didn't think they should be in these bound volumes that everyone can purchase over the——

The CHAIRMAN. Any objection?

Mr. PRETTYMAN. I have no objection.

The CHAIRMAN. All right. There is no objection. That will be admitted.

[The document referred to was marked Exhibit A for identification and received in evidence.]

The CHAIRMAN. What is the next one?

Mr. ROBINSON. We have an exhibit dealing with some insurance policies; these were admitted in the trial. Apparently Mr. Prettyman—Mr. Prettyman is aware, I am sure, of these exhibits. I understand that they have not been shown to him.

If he wanted to look them over during lunch, they are basically copies of insurance documents and were admitted in the trial, that Mr. Jenrette was getting his affairs in order during the ABSCAM matter on his insurance because he had reason to believe he was going to be killed by people who turned out to be FBI agents.

There is very strong evidence about the defense of duress which the Judge did not instruct on, but he left the evidence in for the jury.

I think it is very compelling evidence, just what Mr. Jenrette's state of mind was at that time.

The CHAIRMAN. Any objection?

Mr. PRETTYMAN. I was not informed that this would be offered, but I have no objection.

The CHAIRMAN. It will be admitted without objection.

[The document referred to was marked Exhibit B for identification and received in evidence.]

The CHAIRMAN. Next.

Mr. ROBINSON. We have a transcript of an interview with FBI agent David Burch. Now he is the witness who testified a couple of times at the trial. He ran the video camera at the W Street Townhouse.

When he came on February 2nd to interview Jenrette, unknown to him Rita Jenrette tape recorded, and unknown to Mr. Jenrette as well, she ABSCAMED him and tape recorded the conversation at the top of the stairs.

In there we have a transcript prepared; I believe we have the tape as well for the committee. It basically shows that when the FBI—this came into evidence at the trial—that when the FBI identified themselves and the FBI said it was an undercover operation, Mr. Jenrette's reaction was he was glad, which was consistent with our theory that he thought he was in danger from the Mafia and he was relieved that whether or not he was involved in something that is going to cause all these problems caused, he was real happy that they weren't Mafia.

The CHAIRMAN. Do you have objection?

Mr. PRETTYMAN. Yes. I have offered to make part of the record the tape itself. However, the tape, parts of it were very difficult to understand and Mr. Vardaman, one of Mr. Jenrette's attorneys, made his own version of what he thought the tape said. That is what he is trying to offer.

It was not offered at the trial. It was not made a part of the trial record. It is outside of the trial record.

I have no objection to the tape itself being offered. That was an exhibit at the trial.

Mr. ROBINSON. The government prepared this much, I guess that is about ten inches of transcripts on the ABSCAM video and audio tapes.

A crucial conversation in this case is December 3, 1979. That is when the co-defendant, John Stowe, went to a meeting with Amoroso and Weinberg in which he was supposed to say whether or not Mr. Jenrette was going to come and take a bribe.

In that conversation a $3,000 piece of tape recording equipment was being utilized on the body of Amoroso. The government has a copy of that that was offered at trial.

You can't understand anything on this crucial tape except for the fact that it was clear from what you hear on that tape at one point Stowe says Jenrette does not know why he is coming which is very important. If he is coming and doesn't know he is going to be offered a bribe, it would go to the morality and the issues involved.

We agreed to let parts of those transcripts in. We used this transcript on the Rita Jenrette tape recording at the trial, not shown to the jury, but got to use it with the witness as I recall, and when the tape recording was listened to.

This committee of twelve congressmen is more inclined, I hope, to be able to give the proper weight to any transcript than would a jury be able to do.

We have a tape recording. This is a great aid, I feel, to any member who is listening to a tape that is hard to listen to at times. I concede that we can't help it if we didn't have a $3,000 piece of equipment when the FBI came, but it is of assistance.

You can play it back time and time again and compare it to the transcription. We think that to do otherwise, if you are going to listen to it, is just throw up your hands and say I can't make heads or tails out of this tape recording, and you should make heads or tails out of this tape recording conversation because it shows John Jenrette was scared and he was relieved that ABSCAM happened to be FBI agents rather than Mafia figures.

I don't see how counsel for the committee can be prejudiced by assisting you all and listening and reading what happened on that tape.

The conversation was interpreted by Mr. Jenrette and Mr. Burch, who testified at trial—Burch, of course, denies, the agent denied under oath that any of these things were said. That is probably the reason why Mr. Prettyman doesn't want you to raise it, because it shows once again an agent fudged on the truth, but unfortunately we don't have a Grand Jury.

Mr. PRETTYMAN. I am not attempting to prevent the committee from seeing anything that is properly before it, but what has just been said is totally irrelevant to the point that I have made, namely, that the

prior conversation and tape that he refers to which was difficult to hear the trial Judge thought was sufficiently audible to come into evidence and it was in evidence and it is in here.

The one that he is now referring to is something entirely out of the trial record. It was not admitted. It is not part of the trial record. I submit to you it would be improperly considered under Rule 14 by this committee.

Mr. ROBINSON. If it please Your Honor—Mr. Chairman, sir, the tape was admitted; the jury heard the tape two or three times. The transcript was prepared as an aid to the person or people or the committee or the jury or the judge that judges what is on the tape. That is what the law is.

If need be, we will get a memorandum of law to the committee. The purpose of the admissibility of transcripts is to aid the fact finder in what he is listening to.

The CHAIRMAN. Was it admitted or wasn't it admited, Mr. Prettymen?

You said it wasn't.

Mr. ROBINSON. The transcript was not admitted.

Mr. LIVINGSTON. The tape?

Mr. ROBINSON. The tape was admitted.

Mr. LIVINGSTON. Did the jury hear the tape?

Mr. ROBINSON. Oh, yes, sir.

Mr. LIVINGSTON. Then it should be in the transcript, in this transcript.

Mr. ROBINSON. You mean what was played for the jury?

Mr. LIVINGSTON. Yes.

Mr. ROBINSON. No. Because what they do, I object to it. The stenographer takes a break and says a tape was made.

Mr. PRETTYMAN. That particular transcript was not allowed in although most transcripts were because the Judge ruled——

The CHAIRMAN. Have you anything in the record to show that because you have diametrically opposed statements?

Mr. PRETTYMAN. There is testimony about this whole incident.

As I say, I have no objection at all to the tape coming in and to the committee listening to it; that was part of the trial.

Mr. ROBINSON. This committee can sit and get nauseated listenting to this tape. You have to listen and play it back, listen and play it back.

We have a transcript that has been prepared by Mr. Vardaman——

The CHAIRMAN. Who is Mr. Vardaman?

Mr. ROBINSON. A partner with Mr. Edward Bennett Williams law firm, previous counsel to Mr. Jenrette. The government has had access to it: they never said it was not an accurate transcript. I don't understand what the objection is.

The CHAIRMAN. What would be the problem about just letting the tape is? Is that a problem?

Mr. ROBINSON. Well——

The CHAIRMAN. I guess we are about as competent as Mr. Vardaman to listen to the tape.

Mr. ROBINSON. He spent a lot of time, probably more time. You have twelve sets of ears here. It is going to create work for this com-

mittee. It is going to create you having to play it back and forth.

Is Mr. Prettyman contending what is on the transcript is not accurate? Is he saying that? Or is he saying he hasn't had an opportunity to review it?

I thought the purpose in having hearings was to get at the truth and assist this committee and not delaying the procedure so the committee can hear all the evidence and make a valuable interpretation of what the committee should do based on the facts.

Now, if we have a transcript here that the government and Mr. Prettyman has had access to for months, I can't see how it is being prejudicial in any way, so we offer it.

Mr. PRETTYMAN. Was that transcript offered at trial, Mr. Robinson?

Mr. ROBINSON. It probably was offered, I am not sure. It was not admitted. I used it.

Mr. PRETTYMAN. All right. It either was not offered or was not admitted. That certainly shows that there is some problem with that transcript. That is number one.

The second thing is, as I say, this committee, I believe, should not be considering matters under Rule 14 outside the trial transcript except the testimony that it hears here today.

Mr. ROBINSON. This is why the bill is $250,000. We are quibbling over nothing.

I don't see why this will hurt anyone to have the transcripts available to review when he listens to the tape. If you don't hear that, you can push it aside——

The CHAIRMAN. Nobody has offered a tape yet.

Mr. ROBINSON. I offer the tape first, sir.

The CHAIRMAN. All right. I am going to rule because I do want to go forward.

Without objection, the tape will be admitted as speaking for itself, something that has been before the court, and I am going to admit also with the background of what has been said about the transcript, that it was prepared by the lawyer for Mr. Jenrette, for what value the committee wants to assign to it.

I am reluctant to say no new evidence can be submitted in this trial, in this proceeding. I think it can. Therefore, both items will be admitted, having had the background, unless there is objection.

Yes?

Mr. THOMAS. Could we have the proviso that we listen to the tape before we look at the transcript?

It concerns me that you would be reading the transcript rather than listening to the tape if it was difficult to hear.

I would prefer that the members have the opportunity to hear the tape and then look at the transcript so that the prompting will occur after you have heard the tape rather than at the time you are hearing the tape.

The CHAIRMAN. I don't think that is a thing we need to rule on here. I think we can handle that ourselves.

Mr. SENSENBRENNER. Reserving the right to object, Mr. Chairman, it seems that there ought to be some testimony by the person who prepared the transcript stating to its accuracy before it is admitted since it was not admitted into evidence at the trial.

Given this dispute, I am not prepared to accept anybody's statement that the transcript that is being placed before us is an accurate transcript.

Mr. ROBINSON. That would be a nice predicate. I would agree with the committee member as to one point.

Mr. SENSENBRENNER. Mr. Robinson, I am not debating with you. I am reserving the right to object when the Chairman asked if there was objection in this committee.

Mr. ROBINSON. I appreciate that.

Mr. SENSENBRENNER. I think that is for the members of the committee to decide. We have heard quite a bit from you on the entire issue of this transcript and I am just making the point, not for your edification, but for the edification of my colleagues on the committee.

Mr. ROBINSON. Thank you. I think we are entitled to be edified as much as you are.

The CHAIRMAN. There being objection to the admission of both of these items, since they were lumped together in my request for unanimous consent, therefore the transcript, as it now stands, is not going to be admissible.

Is there any objection to admitting the entire tape?

There being none, that will be admitted.

If you submit also the affidavit in due course setting out the veracity of the thing from the attorney, we will then consider that at that time and I will ask again at that time if there is any objection.

[The document referred to was marked Exhibit C for identification and received in evidence.]

Mr. ROBINSON. So until we have the opportunity to get the affidavit from Mr. Vardaman or whoever in his office prepared that transcript, the record will not be closed, until that is permitted——

The CHAIRMAN. No, you can't make that assumption.

Mr. ROBINSON. How can we have a finding of fact based on how far we go until we get the record complete?

The CHAIRMAN. I am not going to state for you the procedures I am going to follow. When the issue comes up, I will make a decision at that point.

Mr. ROBINSON. All right, sir.

I just say with all due deference I do not see any purpose in me going out and trying to get an affidavit as we come into that, giving a whole day from some person in Mr. Vardaman's office and when I get here be told that the committee has already closed the fact-finding process and I have wasted my time, time I might add, I am not being paid. I know Mr. Jenrette's problem with money. I am doing it for free.

The CHAIRMAN. I have already ruled.

Do you have another thing you wish to submit?

Mr. ROBINSON. We have a tape recording dated December 3. This is the tape recording that was submitted into evidence at the trial and which was played. It is quite inaudible. We think it is important that the committee hear how inaudible it is because it goes to the alleged sinister motives of Mr. Amoroso.

Mr. PRETTYMAN. No objection.

The CHAIRMAN. Without objection it is submitted.

[The document referred to was marked Exhibit D for identification and received in evidence.]

Mr. ROBINSON. We have a December 9, 1979 tape made by Melvin Weinberg, the informal—of the Weinberg-Stowe conversation admitted and played to the jury and the trial. I believe there is a transcript Exhibit 81 which was admitted into evidence—it is in the bound volume.

Mr. PRETTYMAN. I think all these are already part of the—have already been submitted—all the tapes that were admitted at trial have been placed before the committee.

Mr. ROBINSON. I do not think Q–386 was placed before the committee. This is a conversation, December 9, after the bribes supposedly occured, that Mr. Stowe told Mr. Weinberg that if in fact you help Mr. Jenrette on this Aristo Island deal, you will be in the driver's seat, a very important piece of evidence which shows they weren't in the driver's seat because they knew that Jenrette had not gotten the bribe.

Mr. PRETTYMAN. Was that an exhibit that was marked but not introduced?

Mr. ROBINSON. It was marked and introduced and played. I even used it in final argument.

Mr. PRETTYMAN. I have no objection to it. I think we already have it.

Mr. ROBINSON. Can we put it in and risk duplication?

Mr. PRETTYMAN. What exhibit number would that be?

Mr. ROBINSON. It is Q–386. We will have to cross-index it.

The CHAIRMAN. Without objection it is admitted.

[The document referred to was marked Exhibit E for identification and received in evidence.]

The CHAIRMAN. What is the next one?

Mr. ROBINSON. This is a Jenrette-Stowe tape recording conversation of February 3 or 4, 1980, in which Mr. Jenrette talked to Mr. Stowe after ABSCAM broke and they discussed who got the money. It is quite clear Mr. Stowe got the money.

Mr. PRETTYMAN. I do not think that was introduced at the trial.

Mr. ROBINSON. Now you see this is an example. That was not introduced at trial because Stowe had an absolute right not to testify, he was a co-defendant. This is a statement recorded after the death of the conspiracy under the law. The conspiracy is November 15, 1979 up to and through February 9, 1980. Any statement by a co-defendant during the life of a conspiracy is admissible as an exception to the hearsay rule.

After the conspiracy ends, statements by co-conspirators are not admissible under the hearsay exception unless you can show a better predicate.

Mr. Jenrette, had he been tried alone, would have been permitted to put this tape recording conversation into evidence because it is a conversation he had in which he was personally involved. But Mr. Stowe's attorney objected to the admissibility of this conversation because he argued that it would have in effect forced him to put his client on the stand. And he had a Fifth Amendment right not to testify.

The bottom line of all that is that Judge Penn ruled what we could use in this tape recording and this tape recording is important because it showed Stowe got the money. If this had been put in before the jury, we probably would have won the case.

Mr. LIVINGSTON. What is the date of that tape?

Mr. ROBINSON. February 3 or 4. It is the Sunday after the Saturday that the ABSCAM broke. It is a phone conversation in which Mr. Jenrette says, you know I didn't get the money and Stowe doesn't rebut it. So——

Mr. PRETTYMAN. I would submit to you that with all deference I think the committee is setting a dangerous precedent by allowing Mr. Robinson in effect to retry his trial and to submit additional materials which were not offered and accepted at the trial. There is no limit to the amount of information that was not admitted by the trial for one reason or another, and for different reasons in each case. But there were hundreds and hundreds of tapes.

I can see arguments about witnesses' exhibits, tapes, all kinds of matters that he might want to bring in. It was my understanding, and the committee has discussed this before, that under rule 14 the committee confines itself to the trial record plus the statement that Mr. Jenrette will make here today. That is my understanding of how the committee itself interpreted its rules, which is not to say it can't reinterpret them.

Mr. ROBINSON. Mr. Chairman, I just heard you say no less than ten minutes ago, nor more than ten minutes ago, that new evidence can be introduced in here. You made that statement yourself. I don't want to take it out of context. That is basically what I heard being said by you as chairman.

Mr. Jenrette was caught in a dilemma, between a rock and a hard spot because he had a co-defendant. He tape-recorded a conversation that, if interpreted the way we say it can be interpreted, shows he is innocent. He didn't get the bribe.

If this committee is going to judge this man's misconduct and has a tape recording where he talks to the co-conspirator after ABSCAM breaks in which it is conceded Jenrette didn't get the bribe, which that attorney conceded for the co-defendant by the way in final argument, that Stowe got the money, I can't think of anything more relevant to these hearings and I can't think we can hide behind the danger of precedents when we are trying to put Mr. Jenrette possibly on a historical pitchfork, or being expelled from Congress, when we have a tape recording that may very well show he is innocent.

Mr. SENSENBRENNER. Have you made a motion in the District Court to separate the trial of Congressman Jenrette and Mr. Stowe?

Mr. ROBINSON. No. Mr. Stowe made that motion. We wanted a trial to dispose of this case, we wanted to go to trial, we were ready for trial.

Mr. SENSENBRENNER. You did not make a motion to separate the two trials?

Mr. ROBINSON. I made a motion—I concurred that Stowe should not be there with us. And then I made a motion when Stowe was about to testify that there should be a severance but I did not want a mistrial.

Now I do not know, sir, if—well, it doesn't matter. But as far as background in criminal trials, if I move for a mistrial, ordinarily I get served. If I move for a severance I get severed. My client gets severed. The effect of that is that all the work, all the resources, all we thought was going well is dashed, pounded away, it is gone. Mr. Stowe would have been left there for trial purposes. We would have been out.

I made the decision not to do that, but that has nothing to do with whether or not John Jenrette took a bribe.

Mr. SENSENBRENNER. Yes; but Mr. Robinson, you just said that if that tape was allowed to be played in the court the jury would have found your client innocent, and yet you did not make the motion to sever out the trial of Congressman Jenrette from the trial of Mr. Stowe. Aren't you asking to have your cake and eat it too?

Mr. ROBINSON. No; I am not asking to eat any kind of cake and I object to that reaction by this committee member. I object to you turning your head in distaste of me.

Mr. SENSENBRENNER. I have been listening too as you have been insulting Mr. Prettyman and the members of this committee. I do not take back that statement.

Mr. ROBINSON. I do not recall insulting any member of this committee in here this morning. I say if I have not done a good job as trial counsel, let Mr. Jenrette raise ineffective assistance on me. I can take it on my shoulders.

I am saying, this is a body determining what to do with a fellow Member of Congress, a human being. There is a tape recording here where he did not get the money. What does it matter what kind of motions I have made.

Mr. LIVINGSTON. If I can interrupt, I think Mr. Sensenbrenner raised a very good point. If the guilt or innocence of your client hinged on the tape that was inadmissible because you were being tried with a codefendant, then it was incumbent upon you to sever the trial and have your man tried separately. The fact that you chose not to mean that that tape in your opinion was not vital to the defense of your client.

Mr. ROBINSON. That is not true.

Mr. LIVINGSTON. In my opinion you can't have both ends against the middle.

Mr. ROBINSON. That is not true. Mr. Jenrette was in a political dogfight. He was going to the election process on November the 4th. We are in trial in October of 1979, or 1980, whatever it was, 1980. We are in trial, and in the first place I thought the judge would admit the document. Stowe was trying to get severances all through the trial. I thought he would let Stowe go. Maybe I was wrong. I was wrong. I don't have any problems saying when I am wrong. What bothers me is you have got to understand, surely this committee understands, you are all politicians. You are elected.

Mr. Jenrette had been smeared in Abscam. He had gotten through a primary and a runoff. We had to have him acquitted or convicted before the general election, and we had confidence that we would win, and there is a tape recording that shows that he didn't get the money,

and I just can't see how, whether you are a former prosecutor or a congressional member, and I have been both prosecutor and defense lawyer, we are not here trying to prejudice any jury. We have 12 individuals that are members of Congress that can give appropriate weight to what is on this conversation, and if this is appropriate and true and you have a conversation between the co-conspirators in which Jenrette says, "I didn't get the money" and Stowe doesn't rebut it and this committee makes any kind of decision, I would say it would be the most uninformed, unfair decision that could ever be made. You can call all that rhetoric.

The CHAIRMAN. Without objection, if there is objection we will have to take a vote on it. But without objection this will be admitted. It is my feeling when a man is in a serious hearing, that he should be allowed to submit by his own testimony and to whatever extent the committee can allow the evidence that he has that he is innocent. So, without objection, it will be allowed in.

Mr. ROBINSON. Thank you. I think that is the extent of the exhibits that we have available at this time for purposes of admission, sir.

The CHAIRMAN. All right.

Mr. ROBINSON. Shall I read the next motion? It is a one-page motion requesting the attendance of witnesses pursuant to Rule 11(a)(2)(d).

Congressman John W. Jenrette hereby petitions the Committee on Standards of Official Conduct, pursuant to its Rules, to require by subpoena or otherwise, the attendance of certain witnesses.

By way of letter to the Committee's counsel, dated November 17, 1980, the Committee was informed of Mr. Jenrette's desire to call as witnesses the following individuals:

William Webster, Federal Bureau of Investigation
Benjamin Civiletti, Department of Justice
Phillip Heymann, Department of Justice
John Good, Federal Bureau of Investigation.

Mr. Good, by the way, is the one that is testifying before Judge Penn right now in the due process motion.

Petitioner submits that it is only through the examination of these witnesses that the Committee can properly conduct a complete and impartial hearing into the actions of John W. Jenrette. The above named individuals were the architects and guiding forces behind the investigative conduct which created the crimes for which John W. Jenrette now stands charged. Any examination of conduct without these witnesses can only be judged as incomplete and ineffective as a disciplinary proceeding.

I would be willing, sir, if you would like, to read the next motion before you take a vote, since the next motion is a longer motion.

The CHAIRMAN. We will probably have a discussion in executive session about the disposition of these motions.

Mr. ROBINSON. All right, sir.

The CHAIRMAN. We don't want to be peremptory, so if you would submit any statement you would like to make. Of course, that is pretty self-explanatory. Do you have any observation?

Mr. PRETTYMAN. Yes, I do, briefly, Mr. Chairman. The key sentence is here, "The above named individuals were the architects and guiding forces behind the investigative conduct which created the crimes for which John W. Jenrette now stands charged."

The testimony of these gentlemen are along the lines of the due process hearings that are now being held in District Court. They go to

matters of governmental misconduct and other matters which, if they properly belong in Congress at all, should be before the Judiciary Committee. They do not affect what is in these volumes. As a matter of fact, in my own view you could take Mr. Jenrette's testimony alone in these volumes, and come to some conclusion about his conduct, but be that as it may, these gentlemen are obviously, if they were brought here would be questioned about how Abscam came about, about whether documents were missing, about all kinds of matters, which I submit to you are outside the realm of what you should be considering in this very narrow type of hearing that you are having today.

Mr. ROBINSON. Mr. Chairman, very briefly I can state that they are very important witnesses that go much deeper than any kind of due process matter which, by the way, we of course believe is pertinent to these hearings. We have had testimony from Mr. Good just last week that he knew in November of 1979 that John Jenrette, when they came at John Jenrette for the Abscam undercover operation, that is the date they give, they are wrong but we will accept that for the time being that he knew that Mr. Jenrette was under investigation in South Carolina on an old problem of a place called Harrington Shores. He knew Mr. Jenrette had substantial financial problems, and he knew Mr. Jenrette was under great stress at the time. That contradicts Amoroso's testimony at the trial, who said, of course, he didn't know any of these things, they just didn't know about it. But I think this committee, in determining what to do in his case, should hear from these people who pulled the strings behind the scenes, Mr. Webster, Civiletti, Heymann and Good, so that they can see just what the Bureau did here and determine what, if any, guilt there is on Mr. Jenrette's part.

If the Justice Department and the FBI knew, and we know they knew, and we can prove it, that Mr. Jenrette had severe alcoholism as an illness that he was being treated for at that time, he was under severe financial stress, that he had just testified for a friend in a criminal trial, in South Carolina and the Justice Department was hammering away at him and telling his attorney Mr. Varderman at that time that he may very well be indicted in the near future, and then the department, with all that knowledge and all the stress, whether it is right or wrong, having put that on Mr. Jenrette's shoulders, goes to him and gives him a miracle opportunity to take $50,000 to solve his problem, and Mr. Jenrette still doesn't take the money, I say it shows you something about some high quality and morality in the man.

The CHAIRMAN. I read this voluminous transcript, and it does address the question you referred to, it stresses about the alcoholism and it stresses about finances. Most of what you have said, if not all you have said, it seems to me is in this transcript.

Mr. ROBINSON. Well, some of it is. The problem is, sir, that John Good has testified they knew all these things that I just referred to. All the witnesses at the trial before the jury said they didn't know these things. We tried to prove they knew it and couldn't prove it. Mr. Good wouldn't talk to me. I wanted to call him as a hostile witness, so to speak, and he wouldn't talk to me.

The CHAIRMAN. But it is clear from the transcript that there was knowledge, it seems to me.

Mr. ROBINSON. I wish it had been clearer to the trial jury, but if it was that clear——

The CHAIRMAN. It seems to be clear.

Mr. ROBINSON. I don't concede that they shouldn't come in.

The CHAIRMAN. I am not addressing the merits of your motion. I am just trying to say to you that we are not without evidence in this with regard to the trials and stresses of Mr. Jenrette.

Mr. ROBINSON. Yes.

The CHAIRMAN. But we will address that later when we address the motion.

Any further discussion on that?

Then we will turn to the long—I would like everybody to stay here during all these proceedings. At one o'clock we will go back to the small chamber that we have for discussion among ourselves about these motions, and then at two o'clock we will come back to hear further.

Mr. THOMAS. Mr. Chairman, what is before me? And I apologize for not being here at our last meeting; I was out of the country. Review for me the motion of the committee in considering the Jenrette case. Was it under Rule 14?

The CHAIRMAN. Yes.

Mr. PRETTYMAN. Yes.

Mr. THOMAS. It was under Rule 14?

Mr. PRETTYMAN. Yes, sir.

Mr. THOMAS. The similar rule we adopted in the Myers case?

Mr. PRETTYMAN. Yes, sir.

Mr. THOMAS. And not Rule 16?

Mr. PRETTYMAN. Yes, sir.

The CHAIRMAN. Address the next motion.

Mr. ROBINSON. May I inquire, is Mr. Stokes going to be in attendance today, or is that unknown?

The CHAIRMAN. It is not known to me personally.

Mr. SWANNER. He will be——

The CHAIRMAN. He has certainly been notified. We can't guarantee the attendance of everybody. We follow the rules.

Mr. ROBINSON. I am not being critical.

The CHAIRMAN. Will you address the next motion.

Mr. ROBINSON. Yes, sir. This is a 9-page motion.

Motion by Congressman Jenrette to Defer Preliminary Inquiry, or, in the Alternative, to Defer Disciplinary Hearing.

The CHAIRMAN. We are listening.

Mr. ROBINSON [reading].

The Committee on Standards of Official Conduct has determined to proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction if any to recommend to the House of Representatives on Representative Jenrette as a result of a jury verdict of guilty for bribery and conspiracy. In the course of this determination, the Committee through Mr. Prettyman has indicated that Congressman Jenrette must proceed to hearing forthwith despite the fact that (1) he has not been sentenced; (2) due process motions are still very much in issue; (3) a motion for judgment not withstanding the verdict has not been ruled upon. Moreover, evidentiary hearings held in connection with these pending motions reveal more and more evidence of government perjury that is being uncovered each week.

The Committee is apparently listening to its counsel without all the facts. In its consideration of the Myers inquiry, the Committee used three factors: (1) even if the trial court would conclude that the government's conduct in the case violated the Congressman's rights under a due process guarantee, such a decision

would not impact on the evidence reviewed by the Committee; (2) that the jury verdict of guilty constitutes a "conviction" within the meaning of Rule 14 of the Committee's Rules despite the fact that the due process issue has not yet been addressed by the trial court; and (3) that in view of the impending Congressional adjournment, Congressman Myers had failed to show cause for departing from that interpretation.

Congressman Jenrette and his codefendant as well as all "ABSCAM" defendants raised the issue of due process violations pre-trial, contending that such violations mandated the dismissal of the indictment. All the trial courts have deferred hearings on the due process issues until after a verdict. (The Courts also rejected the defense contention that the due process defense should be submitted to the jury. In the typical criminal trial matters of due process are determined before trial. For some reason these "ABSCAM" cases have generated new rules and procedures as if Congressmen do not qualify under the inscription above the U.S. Supreme Court—"Equal Justice Under The Law.")

That is a little too flowery, so I apologize, but I wrote it.

The hearing in Congressman Jenrette's case on this issue has not yet been completed. Some facts relevant to this issue were established at trial. A substantial record on the issue was developed in connection with related cases in Philadelphia and New York. However, there are still important facts to be established in this case at the due process hearing.

The essence of the due process defense is that the nature and extent of the government involvement in the crime were so overreaching as to *bar* prosecution. *United States* v. *Twigg*, 588 F.2d 373, 377 (3d Cir. 1978). The Congressman has asserted before the district court that the criminal conduct alleged in the indictment was the product of government overreaching in that the acts were inextricably intertwined with a scheme initiated, planned, and executed by the Government.

The Courts have acknowledged a need for judicial sensitivity to the problems presented by such law enforcement activity.

Infiltration of criminal operations by informers and undercover agents is an accepted and necessary practice. Yet, this court cannot "shirk the responsibility that is necessarily in its keeping . . . to accommodate the dangers of overzealous law enforcement and civilized methods adequate to counter the ingenuity of modern criminals."

United States v *Twigg*, *supra*, quoting *Sherman* v. *United States*, 356 U.S. 369, 381 (Frankfurteer, J., concurring-in result).

Prosecutors and their agents naturally tend to assign great weight to the societal interest in apprehending and convicting criminals; the danger is that they will assign too little to the rights of citizens to be free from government-induced criminality.

United States v. *Archer*, 486 F.2d 670, 677 (2d Cir. 1973).

It is the position of John Jenrette that the conduct of the government in this case was so outrageous that the government should have been precluded from bringing the charges against him. *This issue has not yet been decided in the first instance by any trial judge.* While the Court decided that the issue should be resolved after the jury returned its verdict, that verdict remains, in a very real and significant sense, a contingent verdict. It was for this reason that counsel moved to keep open stage one of the disciplinary procedure. In law and in fact. there has been no conviction because the case has not yet been completed.

Our position is supported by Rule 32(b)(1) of the *Federal Rules of Criminal Procedures* which clearly refers to a judgment of conviction as being entered after sentence is imposed.[1]

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[1] "Of course, sentencing cannot take place until after the resolutions of the due process issue. Judge Penn intends to review 25 volumes of written memorandum which are six (6) feet in height. Prior to hearings on November 12, 1980, the prosecutors had misled the judge or at a minimum misstated the truth based on information given them by Justice Department and FBI sources close to the ABSCAM cases *re* the total absence of written documents on the case(s)."

(A) judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. "*See United States* v. *Lee*, 509 F.2d 400, 405 (D.C. Cir. 1974) ; *Thomas* v. *United States*, 121 F.2d 905, 907 (D.C. Cir. 1941) ; *Crawford* v. *United States*, 41 F.2d 979, 980 (D.C. Cir. 1930) ("it takes the judgment of the Court on the plea or verdict to constitute a conviction"). *See also*: Rule 4(b) Federal Rules of Appellate Procedure (Appeals in Criminal Cases). Rule 58 Federal Rules of Civil Procedure (Entry of Judgment). The distinction between verdict and conviction should not be ignored. Therefore, it is respectfully submitted that the Committee erred in finding that a jury verdict of guilty constitutes a conviction within the scope of Rule 14 of the Committee's Rules. Mr. Prettyman has no law to support the argument he has presented *ex parte* to the Committee. Clearly, the intent of Congress has always been that a conviction means sentencing. The bribery statute itself, 18 USC § 201 *et seq.* provides such language and the penalty of any convicted public official "may be removed from Congress." That provision when read with Supreme Court cases about what constitutes a conviction, renders unescapable the conclusion that Congress intended for the sentencing and appellate process to be exhausted before a member of Congress could be removed from Congress.

The critical nature of the distinction between a verdict and a judgment of conviction is more than a mere technicality in the present case. The Supreme Court has written that a judgment of conviction can be "imposed only after the whole process of the criminal trial and determination of guilt has been completed."

Corey v. *United States*, 375 U.S. 169, 174 (1963)

There should be no dispute that the criminal trial of John Jenrette is not now complete as to the fundamental matters at issue. As the Supreme Court noted: "Final judgment in a criminal case means sentence. The sentence is the judgment."

Berman v. *United States*, 302 U.S. 211, 212.

In fact, in its present intermediate posture, the questions and issues raised by Mr. Jenrette cannot, under the rules be subject to any form of appellate judicial review.

Korematsu v. *United States*, 319 U.S. 432, ——

The CHAIRMAN. Would you like to correct it? It is out of ours too. You are adding a phrase there?

Mr. ROBINSON. I see there must have been a mistake.

The CHAIRMAN. You don't know what the words are?

Mr. ROBINSON. "The Committee's attempt . . ."

The CHAIRMAN. In other words, everybody will write into that "the Committee's attempt". All right, proceed.

Mr. ROBINSON [reading].

The Committee's attempt to leap-frog the accepted process of criminal jurisprudence casts serious doubt on the Congress' respect for its own legislation.

Mr. Jenrette is before the Committee because of a verdict of guilty on a bribery case. The Congress passed 18 USC § 201 (bribery) outlining the crime and the penalty. The penalty provided, in part, for expulsion—if convicted—and the Congress passed federal rules of criminal procedure which at Rule 32(b)(1) defined a conviction as after sentencing. There is no escaping the historical precedents in law and Congressional intent *supra*. Therefore, this Committee is, with all due deference, flagrantly defying the intent of the entire Congress, the federal courts, its own drafted federal rules and all fair play when it (the Committee) gives itself the power to apply Rule 14 (Committee Rules) rather than Rule 12 and calls Mr. Jenrette's present verdict—still under review by the presiding judge (pursuant to Rule 33)—a conviction. No lawyer of experience would make such an outrageous determination as this Committee is attempting to do to Mr. Jenrette and as its counsel has thus far done without legal or legislative authority in *ex parte*, unrecorded proceedings.

Our position is supported by the cases interpreting Rule 609 of the Federal Rules of Evidence. Rule 609 allows a party to attack the credibility of a witness

with evidence that he or she has been *convicted* of a crime punishable by death or imprisonment in excess of one year or involving dishonesty or false statement. Several courts have faced the issue of whether a jury verdict of guilty upon which judgment has not been entered qualifies as a "conviction" for impeachment purposes. Although a number of courts have found that there is no distinction between a jury's finding of guilty and the entry of a judgment of conviction for impeachment purposes,[1] the rationale of these decisions requires a different conclusion in the circumstances of this case.

The most significant operative fact on which the courts rely in allowing impeachment by proof of a guilty verdict prior to judgment is that "the entry of judgment is unusually nothing more than a ministerial act . . ." *United States* v. *Vanderbosch*, 610 F.2d 95, 97 (2d Cir. 1979). This is so because a verdict of guilty carries an assurance of finality.

"Because the judgment of a jury is favored in our law, a court may not lightly disturb a jury's verdict." *United States* v. *Klein*, 560 F.2d 1236, 1241 (5th Cir. 1977).

In this case, there are significant issues to be resolved before the entry of judgment becomes purely ministerial. The pendency of these issues belies the finality of the jury's verdict. The trial of Mr. Jenrette is not yet complete. Judge Penn has ordered the post-trial motions to continue. We have had two days of testimony post-verdict and have three set for December. The motion for new trial is still under advisement which means there is merit to our claim that there was insufficient evidence to justify the case having been sent to the jury. Under these circumstances, it is respectfully submitted that it is erroneous to treat the verdict of guilty as a conviction for purposes of Rule 14 of the Committee.

Moreover, the suggestion, by the Committee in its resolution that dealt with Congressman Myers' due process rights, that such an infringement of basic rights would neither impact on nor detract from the evidence ignores the significance of such a finding. As Justice Powell observed in *Hampton* v. *United States*, 425 U.S. 484, 495 n. 7 (1976) (Powell, J., concurring).

"Police overinvolvement in crime would have to reach a demonstrable level of outrageousness before it could bar conviction."

Thus, a determination by the District Court that the government violated Congressman Myers' or any other person's right to due process would necessarily include a finding of egregious government conduct. See *United States* v. *Twigg*, 588 F.2d 373, 381 (3 Cir. 1978). "This egregious conduct on the part of the government agents generated new crimes by the defendant merely for the sake of pressing criminal charges against him when, as far as the record reveals, he was lawfully and peacefully minding his own affairs. Fundamental fairness does not permit us to countenance such actions by law enforcement officials and prosecution for a crime so fomented by them will be barred").

Congressman Jenrette's case is far different from that of Mr. Myers. The Committee proposes to look solely at the activities of John Jenrette. Yet it fails to recognize that it was the action of the government agents which was the exclusive cause of the defendant's reactions. To separate the action-reaction and to limit an examination only to the reaction is to view the facts with such limited perspective so as to make an informed judgment impossible. Moreover, if one of the circumstances surrounding his involvement is "outrageous" conduct by government agents, it is most certainly relevant to the sanction determination. To deny Congressman Jenrette the right to have his conduct evaluated in that light is to deny him his constitutional rights merely because he is a Congressman. And to suggest that the impending adjournment of the House necessitates haste in this matter renders the opportunity to be heard a mockery.

Prior to the expulsion of Mr. Meyers, no Congressman had been expelled since 1861. That means Senator Brewster who was convicted of bribery was permitted to exhaust his appeals and be dealt with at the polls. Eventually Mr. Brewster was successful on appeal and he is not "convicted" to this day. Mr. Diggs was permitted to exhaust his appeals. Others, including Mr. Bauman were not even brought before the Committee. It is only the ABSCAM cases that have caused the Committee to misread. misapply and misuse the rules. The reason is clear, Congress is concerned with its image due to some of its members having been video-

[1] See *United States* v. *Vanderbosch*, 610 F.2d 95, 97 (2d Cir. 1979); *United States* v. *Duncan*, 598 F.2d 839, 864–65 (4th Cir. 1979); *United States* v. *Klein*, 650 F.2d 1236, 1239–41 (5th Cir. 1977); *United States* v. *Rose*, 526 F.2d 745, 746–47 (8th Cir. 1975).

taped taking money in exchange for promises of favors. Regardless of the due process claims, Congress and its image has been hurt in the eyes of many. Nonetheless, the Congress writes the laws and it cannot stampede a Member's rights to due process simply because to do so would look good to the public. It is indeed dangerous to turn loose a Committee and its counsel in a race to expel a man from Congress who has not exhausted the rights which the Congress and our forefathers named Jefferson and Adams, etc., gave him. And the Supreme Court observed in Senator Brewster's case:

"The process of disciplining a Member in the Congress is not without countervailing risks of abuse since it is not surrounded with the panoply of protective shields that are present in a criminal case. An accused Member is judged by no specifically articulated standards and is at the mercy of an almost unbridled discretion of the charging body that functions at once as accuser, prosecutor, judge, and jury from whose decision there is no established right of review. In short, a Member would be compelled to defend in what would be comparable to a criminal prosecution without the safeguards provided by the Constitution. Moreover, it would be somewhat naive to assume the triers would be wholly objective and free from considerations (408 US 520) of party and politics and the passions of the moment."

The passions of the moment in the present case must not be permitted to control this Committee's actions.

There is other evidence which must be reviewed. The trial court denied counsel's motion to call William Webster and others during trial. The legitimate defense of 'duress' was rejected by the Court. That was reversible error. Many areas of relevance were rejected by the trial judge before the jury. There are aspects of double jeopardy and due process here. The counsel for the Committee has improperly been permitted to appear *ex parte* before the Committee which may very well try and sentence Mr. Jenrette. That violates every canon of ethics, right to due process, congressional intent in federal rules and federal court case law. We cannot be rushed to a November 20, 1980 hearing with the record as it now exists.

The CHAIRMAN. Do you want to address anything further to it? I refer to Mr. Prettyman.

Mr. PRETTYMAN. A brief response, Mr. Chairman. In regard to the due process issue, I have previously responded to a deferral motion on identical grounds which was made by Mr. Myers on September 11, 1980, and renewed on September 22, 1980. On September 16 the committee adopted a resolution denying Mr. Myers' original motion on the ground that "The due process arguments which have been made to the courts on behalf of the Congressman even if accepted do not impact upon or detract from the basic evidence reviewed by the Committee."

The same is true in this case. Mr. Jenrette's due process arguments do not impact upon the issues before the committee. On September 24, 1980, the committee denied Mr. Myers' renewed motion. In addition, during the floor debate, the House itself rejected a motion to defer by Representative Stokes which was based in part on the pendency of the due process motion.

In regard to the conviction issue, on September 3, 1980 in the Myers case the committee unanimously voted to construe conviction to mean a finding of guilt by a jury.

On September 22, 1980 Mr. Myers filed a motion seeking deferral of the committee's proceedings in part on the ground that no conviction had yet occurred. Special Counsel responded in writing on September 23rd.

On September 24th the committee denied Mr. Myers' motion.

Rule 31(C) of the Federal Rules of Criminal Procedure suggests that a conviction occurs when the defendant is found guilty. Similar-

ly, Rule 32(E) suggests that conviction occurs before sentence and judgment. A judgment of conviction which is deferred to in Rule 32(B) is not the same as a conviction.

In the following three cases which have not previously been cited to the committee, conviction was construed to mean a guilty verdict. *United States* v. *Branic*, 495 F. 2d 1066, *United States* v. *Lock*, 409 Fed. Supp. 600.

Mr. ROBINSON. Would you give the circuit?

Mr. PRETTYMAN. The first case is D.C. Circuit 1974. *United States* v. *Lock*, 409 Fed. Supp. 600, 603, District of Idaho 1976; *United States* v. *Carter*, 255 Fed. Supp. 566, 567, District Court here in the District, 1964. United States 18 U.S.C., Sec. 203 which provides for mandatory disqualification, it has been held that the disqualification attaches upon conviction despite the pendency of an appeal. That is *McMullin* v. *United States*, 100, Court of Claims, 323, 338, 339, 1943.

In any event, the Supreme Court has held that a disqualification provision such as that which appears in 18 U.S.C. Section 201 does not itself opt to expel a Member of Congress, Burton v. United States, 202 U.S. 344, 369, 1906. Thus, it can hardly be said that the disqualification provision of 18 U.S.C., Section 201 was intended to limit the expulsion power of the House in any way.

I would like to refer briefly just to two statements in the motion.

On page 7 there is the statement that, "It was the action of the government agents which was the exclusive cause of the defendant's reaction." That is in effect an entrapment contention. Entrapment was pleaded by Congressman Jenrette at his trial.

There was extensive evidence on the issue of entrapment. Entrapment was part of the instructions given to the jury. They were told that they were not to convict if they did not find the requisite factors and, of course, they did convict.

The second statement on the same page is that "Outrageous conduct by government agents is most certainly relevant to the sanction determination."

Even if that were true, which I contend it is not, it is premature to the hearing today. We are not into the sanction stage.

Let me take just one more moment to read to you what I think is not entirely irrelevant to the statements made by Mr. Robinson, because it is my view that this committee can interpret its own rules in any way it sees fit with or without precedent from statutes or court cases. And I am going back a long way, but I am referring to a statement by John Quincy Adams during the second Senate expulsion case. He said:

> In examining the question whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that Senatorial authority which the Senate of the United States possesses over the conduct of its members, let us assume as the test of their application either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents domestic or foreign, and your committee believes that the result would be the same, that the power of expelling a member must in its nature be discretionary, and in its exercise always more summary than the tiered practices of judicial tribunal.

Thank you, Mr. Chairman.

The CHAIRMAN. Any further discussion?

I think I have set the time too sharply. I think we will come back not at the other meeting but here at 1:30, and I think we ought to go into executive session at 1:30 here and as soon as we can get out of that executive session we will come into open session.

Possibly it will be as early as 2, but I think you might stand by in Mr. Jenrette's office. Probably the best thing we could do is call you.

Mr. ROBINSON. At that time I will be able to respond to Mr. Prettyman's statements?

The CHAIRMAN. You can respond to anything you want to. The committee will decide.

Mr. ROBINSON. To this immediate statement of Mr. Prettyman?

The CHAIRMAN. Oh, you can do it right now.

Mr. ROBINSON. I will try to be brief.

In the first place, put aside the quote from Mr. Adams. I suppose he said it. I never heard it said. I don't question that it was said, but one doesn't have to look too far to know what Jefferson and the others wrote in the Bill of Rights in the Constitution, and so I don't think if you are going to refer back to John Quincy Adams' comments in the 18th Century that we can forget the Bill of Rights and the Constitution. I know you won't do that.

More pertinently in this matter, the action versus reaction is an important matter before this committee in determining what the defense was at this trial. I don't think from what I have heard Mr. Prettyman say, maybe I am incorrect, he fully grasped what our defense was at the trial.

Our defense was not entrapment as a first defense. In the first place, the District of Columbia is a unique circuit. In the District of Columbia you don't have to admit you did the crime to raise entrapment. It is probably the only Federal Circuit where you don't have to do that. Our main defense was duress.

We gave a 20 page in camera ex parte, with the government's approval, opening statement proper to Judge Penn back in July of 1980 telling him what our defense would be. It was basically the duress aspects, that John Jenrette was put between a rock and a hard spot. With all his illness and all of his alcoholism and all the pressures upon him, he thought he was dealing with some bad people, some Mafia people, and there is a clear instruction in law of the lesser of two evils, that if in fact John Jenrette really believed that he was in the hands of Mafia figures and had an inescapable route to go, even if he had taken the bribe he should be acquitted. That is the law.

Judge Penn ruled we could not have that instruction, and the case will be reversed.

Now you say, well, what has that got to do with this matter. It has to do with what happened at trial. You have to have all the evidence of the government before you could see and judge whether John Jenrette acted as a criminal.

You can't just say that the verdict means he is a criminal. That is not what the verdict means. It means that that jury, based on the facts that judge lets them have, said guilty. But the judge is still trying to decide whether or not to set aside that verdict, not just on due process but based on all the issues raised and on the insufficiency of the evidence.

I dare say, I know that Congressman Preyer has been a Federal judge and can tap down on his experience as a Federal judge, that judges ordinarily when a motion for judgment notwithstanding a verdict is made ordinarily deny it on the spot. They seldom have any kind of holding in abeyance of those decisions.

There are serious factual problems with this conviction that they call a conviction. It is not a conviction. There is no conviction until a man is sentenced.

Mr. Prettyman has referred to several cases. I ask the members——

The CHAIRMAN. I don't want to cut you off but we have already decided that.

Mr. ROBINSON. I say that you have not had us here to assist you in further arguments on that decision, sir. The Congress in 1970, that is the most recent congressional action on the bribery statute, it set out what the penalty is, and it set out what a conviction is. And the rules cited in our motion say what a conviction is.

With all due respect to counsel for Mr. Myers, these points were not raised. They just weren't raised in here, and the committee, just because the committee made a ruling on interpreting the word——

The CHAIRMAN. It was raised about whether or not the conviction took place.

Mr. ROBINSON. Right, but not for the reasons we have cited.

The CHAIRMAN. I think you are right. I think there is something else that has been added here, which is the question of a motion to postpone. What is the motion that you had there?

Mr. ROBINSON. The motion for judgment notwithstanding the verdict.

The CHAIRMAN. And it is still standing?

Mr. ROBINSON. That is still standing.

The CHAIRMAN. That is different. That the committee could decide if the committee wanted to be consistent—of course, it doesn't have to be consistent, I guess, but if it wants to be consistent, the conviction has taken place. The question is whether or not it makes a difference because of that motion which is still pending. That is something I agree.

Mr. ROBINSON. That is different, and more importantly, sir, 1970 is the last time the Congress redrafted the bribery statute, 18 U.S. Code 201.

That said, I mean that was the intent of Congress. Congress said this is what bribery is and this is how you interpret it. This is what the penalties are.

The CHAIRMAN. I am not deciding it one way or the other. The whole committee has to do it. I am not deciding in this case what you have is different so we should make a different decision; the committee will have to decide that, but it is a little different than the Myers case in that there is a pending decision by the Judge.

As to these other matters, however, the committee has decided and I think it wants to live by its precedents, it wants to be consistent.

Anyway, they can change their mind if they want to.

I am trying to tell you that is not as strong an argument as the argument that the Judge is still thinking about it.

Mr. ROBINSON. I appreciate that.

I think the point I was raising about the interpretation of the congressional intent in the bribery statute itself drafted in 1970 was not raised either by Mr. Myers or his attorney. All he said was there can't be sentencing until after due process.

So we are raising two different points. There are different considerations. I know you have to go elsewhere at this moment. There are different matters, very important matters. There are distinctions in Myers and Jenrette cases when you consider the significance of the Judge still having under advisement the motion for judgment notwithstanding the verdict, you have to look at the facts.

The facts are that Jenrette, according to all evidence, and a three-inch thick file filed with the Judge, clearly shows he did not get the money. Myers clearly got the money. The gentleman in New York on trial, the video cameras show them leaving the room with someone who got the money.

Mr. Jenrette is the only person, the only congressman that they cannot put the money in the hands of, have that money leaving the room with Jenrette present. That is very important.

The CHAIRMAN. It may be important, but what is the importance with regard to this motion?

Mr. ROBINSON. It is important because these are facts which have not been brought to jury's attention which are bothering the trial judge, the sufficiency of the evidence.

Mr. Jenrette did not get the money. He didn't get the money. The judge is questioning the sufficiency of the evidence for the judgment of a guilty verdict by the jury. He did not get the money.

He did not do many things that Mr. Myers did. There are serious, serious facts that have not been brought to this committee's attention. I don't think if the committee interprets Rule 14, for example, conviction on the Myers case without the presence of all the parties, of course Mr. Myers was the only one before the committee, so we can't be critical, but Mr. Myers' case was different than the Jenrette case. Each case is different.

But, if you set a precedent on interpreting conviction for Rule 14 on the Myers case where there is just overwhelming, staggering evidence of impropriety where he himself said he should be treated in some respect by this committee, he should be censored or have some kind of sanction imposed, that has some impact on the decision the committee makes as to whether or not he is convicted and is before the committee.

So I think it is risky for the committee, without any minutes that I am aware of, without any discussion by the entire Congress or other people submitting an amicus brief, to make a precedent that in all matters that come before this committee here on after, into the year 2,000, a conviction, contrary to the Supreme Court law, contrary to the Federal Rules of Procedure passed by the Congress, contrary to the Bribery Statute passed by the Congress, contrary to the rules of the trial judges across America, this committee can say a conviction is A, B and C, when all those people and institutions I have referred to say a conviction is X, Y and Z.

It is very dangerous; it is very dangerous because of what is involved in ABSCAM, to have Mr. Jenrette suffer the consequences

without paying very careful attention, sir, to the precedents being set here.

There is no precedent for the ABSCAM investigation, for what the FBI did.

If we start getting actions out of the Congress, out of this committee with no predicate we are suddenly unraveling the rights of people who should have more rights.

I appreciate the opportunity.

Mr. PRETTYMAN. Mr. Chairman, I would like just a moment, if you please.

The principal difference in my view between the Myers case and the Jenrette case is that Mr. Myers did not, in addition to taking money himself, attempt to bargain for an additional $125,000 on the false claim that he could get the votes of Senator Strom Thurmond.

Secondly, there was plenty of evidence throughout this record, testimony by Mr. Jenrette, about duress, about the fact that he was frightened, about the fact that he was dealing with mobsters and certainly about his alcoholism.

Alcoholism was such a feature that the jury was each instructed on it and the jury nevertheless found him guilty.

Finally, I would point out that having construed conviction to mean a finding of guilt by a jury, I think you necessarily have to decide that all post-trial motions are irrelevant, regardless of their nature.

It is the finding of the guilt by the jury which you have decided will amount to a conviction which I remind you merely triggers this hearing and presents you with the record upon which you make your own determination.

Mr. ROBINSON. May I presently—I know we are ping-ponging back and forth here, but may I——

The CHAIRMAN. Yes, you may, but we are going to have to quit pretty quick.

Mr. ROBINSON. I understand.

To make a statement before we quit with such haste about the Thurmond evidence, knowing it would take me 30 minutes to put the Thurmond evidence in its proper perspective, is unfair.

The Thurmond evidence was clearly evidence, referring to Senator Thurmond that John Jenrette was trying to save his skin and threatened by Weinberg on the tape. To make that statement and sit back, and I have to look at the clock——

The CHAIRMAN. I must say I disregarded your remarks about some of the things which I thought were not pertinent to the motion. I will certainly disregard his too. In other words, the legal question is whether or not the committee wants to set a precedent by saying that this additional different kind of conviction will be a conviction under the rule or whether it won't be. That is the real basic gut decision. It is not the merits of the whole trial.

Mr. ROBINSON. The one point I would like to raise in this committee, before it makes any decision on how it is going to interpret Rule 14, I think in all fairness to Mr. Jenrette and to any congressman who ever comes before this committee from this day forth, there should be constitutional experts called here to give this committee testimony which is done any time the Congress sets precedents and passes laws on crim-

inal matters, judicial committee, any time this is done in the Congress or the Senate, Congress makes sure it moves cautiously so it doesn't erode the rights given us in the Constitution.

We should have experts on constitutional law. Don't take my word——

The CHAIRMAN. But you have already cited in your own motion here, Supreme Court language that says that the Senate and the House make their own rules about it. Yes, you did.

Mr. ROBINSON. I know.

The CHAIRMAN. Lengthy Supreme Court quotation said that. So it would be interesting to know what the constitutional lawyer said, but it would not indicate that the Constitution is violated because the Supreme Court itself, in your own motion, said that the Congress decides that.

I think we had better have a motion to go into executive session for this afternoon.

Mr. SPENCE. Mr. Chairman, pursuant to Rule XI 2(k)(5) and 2(g)(2)(B), I move we go into executive session, for today and one subsequent day.

The CHAIRMAN. The Clerk will call the roll.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Hamilton.

[No response.]

Mr. SWANNER. Mr. Hollenbeck.

Mr. HOLLENBECK. Aye.

Mr. SWANNER. Mr. Preyer.

Mr. PREYER. Aye.

Mr. SWANNER. Mr. Livingston.

Mr. LIVINGSTON. Aye.

Mr. SWANNER. Mr. Fowler.

[No response.]

Mr. SWANNER. Mr. Thomas.

Mr. THOMAS. Aye.

Mr. SWANNER. Mr. Stokes.

[No response.]

Mr. SWANNER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

Mr. SWANNER. Mr. Rahall.

Mr. RAHALL. Aye.

Mr. SWANNER. Mr. Cheney.

[No response.]

Mr. SWANNER. Eight members vote aye, four members absent.

The CHAIRMAN. At 1:30 we will come back to this room and it will be in executive session.

As soon as we get through with that discussion, we will have Mr. Jenrette.

I suggest Mr. Jenrette and his lawyer stay in their office and we will let you know.

[Whereupon, at 12:40 p.m., the committee adjourned, to reconvene at 1:30 p.m. the same day, in Executive Session on other business.]

AFTERNOON SESSION

The CHAIRMAN. The committee is in open session, having already been declared to be such at the end of the executive session. We are now in open session, and at this point I will announce that we took a vote on each of the motions, and each of the motions was rejected, that is, all three of those motions made by Mr. Jenrette's attorney.

I recognize Mr. Prettyman for putting exhibits, I believe, in the record.

Mr. PRETTYMAN. Yes, Mr. Chairman. I would move that the following exhibits be entered as part of the record in this matter. As Exhibit A, House Resolution 608. As Exhibit B, a memorandum order by the District Court filed September 18, 1980. As Exhibit C, a letter from me to Mr. Kotelly dated October, 1980.

I might say as an aside that each of you and Mr. Robinson have copies of these in front of them.

As Exhibit D, a letter to Mr. Janus from me dated October 10, 1980. As Exhibit E, a letter from me to Mr. Robinson dated October 10, 1980. As Exhibit F, a letter to Mr. Robinson from me dated October 17, 1980. As Exhibit G, a letter to Mr. Robinson from me dated October 30, 1980, including, enclosing a proposed stipulation. As Exhibit H, a letter to me from Mr. Robinson dated October 31, 1980. As Exhibit I, a letter to Mr. Robinson from me dated November 3, 1980. As Exhibit J, resolution passed by this committee opening the preliminary inquiry. As Exhibit K, a letter to Mr. Jenrette from me dated November 13, 1980. As Exhibit L, a letter to Mr. Robinson from me dated November 14, 1980. again attaching a proposed stipulation.

As Exhibit M, the stipulation actually entered into by Mr. Robinson and myself on November 17, 1980. As Exhibit N, a letter to Mr. Robinson from me dated November 17, 1980. As Exhibit O, a letter to me from Mr. Robinson dated November 17, 1980.

I also move the admission of the 5-volume set of committee print which includes the testimony at the trial of Mr. Jenrette, and I finally move the admission of the exhibits which are set forth in my letter of October 17, 1980, which is Exhibit F. Each of the exhibits that are there listed, I move that they be admitted under the number that they had at the trial.

The CHAIRMAN. Counsel for Mr. Jenrette, have you any objections to these?

Mr. ROBINSON. We had agreements. I may ask through the chairman, are all of these matters we stipulated to before?

Mr. PRETTYMAN. I am sorry, I didn't hear.

Mr. ROBINSON. Are the matters that have just been moved the ones in totality that we stipulated to before? Is there anything we didn't stipulate to?

Mr. PRETTYMAN. I would have to look again at the stipulation. I don't know that we stipulated—no, the stipulation does not address itself to the various letters between yourself and myself. It addresses itself really to the materials at trial. Otherwise, no departure.

Mr. ROBINSON. We object to any of it being admitted, period, if we are unable to admit the evidence that we moved for this morning through the motions. I am not quarreling with the decision. I am just putting it on the record that I don't think that anything that

the special prosecutor or Mr. Prettyman or special counsel seeks to admit should be admitted into evidence. I think that the only way to properly try this matter, in view of the ruling thus far, is to have the committee view and hear all the video and audio tapes, and some of the other exhibits in the case in the presence of all parties, so that we can be completely aware and assured that all of the facts are coming before the committee, so we object.

The CHAIRMAN. Any comment?

Without objection, these matters will be admitted into the record. There is no objection, so they will be admitted.

[The documents referred to were marked Exhibits A through Exhibit O, and Exhibit F, for identification and received in evidence.]

The CHAIRMAN. The next order of business is to ask Mr. Jenrette if he would like to make a statement. Normally we do swear people in, and if you would like to sit where you are or move or stand or however you want to handle it, have you any objection to taking the oath?

Mr. ROBINSON. May it please, Mr. Chairman, I would like to ask for permission to make a preliminary statement which will be the last thing I say before Mr. Jenrette announces his decision to testify or not testify, and it will be the last that the committee will hear from me today. I am using that as a bribe.

The CHAIRMAN. I am not sure I understood that.

Mr. ROBINSON. I said if you let me speak now, you won't have to hear from me now anymore today.

The CHAIRMAN. We may allow you to sum up, and probably will.

Mr. PRETTYMAN. Maybe Mr. Robinson is not aware that he and I will both be allowed, as I understand it——

The CHAIRMAN. Thirty minutes apiece.

Mr. PRETTYMAN. After the evidence is in to summarize our versions of the case.

Mr. ROBINSON. I guess what I need is some guidance here. We have lost on the motion we have presented, and Mr. Prettyman has put in what he calls the case before the committee, and if Mr. Jenrette makes a statement or doesn't make a statement, I assume that that is going to be the end of these hearings on this matter. Is that right?

The CHAIRMAN. No, that is not the end of the hearing.

Mr. ROBINSON. What is left?

The CHAIRMAN. Quite a bit. This is a preliminary hearing to see whether we go forward with the case. There will be another hearing. This is just a preliminary hearing.

Mr. ROBINSON. A preliminary hearing to determine what?

The CHAIRMAN. To determine whether or not a charge will be placed.

Mr. ROBINSON. A charge placed, at which time when the charge is placed, are we entitled to bring outside evidence at that time?

The CHAIRMAN. Yes.

Mr. ROBINSON. I understand Mr. Myers was not permitted to do that. We are entitled to bring witnesses at that time?

The CHAIRMAN. I have to consult with my attorney. We didn't do it in the Myers case, but we didn't deny him the privilege of doing it. We don't want to have a panoply of time-consuming nonproductive

evidence here, and we could opt not to have witness before us. My counsel is checking to see whether we have the right to admit other evidence. Of course, you would have the right to admit other evidence, in my opinion, on the floor of the House in a trial de novo at that point, which could occur.

If these proceedings don't proceed, as you know, any member of Congress can bring a matter up on the floor without relevance to the fact that we are now holding these hearings. There is nothing that stops that from occurring, and so it is to your advantage and your client's advantage as well as everybody's advantage to see to it that this proceeds expeditiously and is not time consuming.

Let's read the rule. The rule does not seem to contemplate any other evidence on the facts. The rule seems to contemplate only the decision by the committee that in fact there has been a conviction, and it is something over which the committee has jurisdiction, and they report back to the House.

Obviously with that rule standing there I would be very anxious to seek any counsel from the committee as a whole, if other evidence were to be submitted. Certainly, evidence as to mitigation and as to the nature of the sanctions that would be imposed is available. The rule really doesn't contemplate other witnesses coming in. I am not saying at this juncture that I wouldn't allow them. I would, of course consult the whole committee. I would not myself take it upon myself to decide that other witnesses be allowed.

Mr. ROBINSON. Am I to understand that the committee has voted in rejecting our motions that the interpretation of a conviction under Rule 14 still stands? That is the first thing.

The CHAIRMAN. That is correct.

Mr. ROBINSON. Secondly, are we proceeding now under Rule 11 of the rules?

The CHAIRMAN. We are proceeding under Rule 14.

Mr. ROBINSON. Rule 11 is being complied with at this time also, is it not, in which the Congressman may give a statement if he chooses; is that right?

The CHAIRMAN. Correct.

Mr. ROBINSON. And that is under 2(a); is that right?

Mr. PRETTYMAN. Mr. Chairman, if I might just state my own view, it is that under Rule 11 the Congressman is given a right to submit statement either in writing or in person, and he has been accorded that right by letter from me, has been notified of his right to do that, and in fact I was told that he was going to submit both.

I think the rule contemplates no other evidence from him at this stage. At the sanction stage, however, I think he is entitled to present evidence that bears upon sanctions. That is my own view.

The CHAIRMAN. I think that is a correct determination, and to what extent we would allow other evidence in at the sanction it would be up to the committee. Obviously it is not contemplated by the rule, but at this juncture, at this particular time, and through tomorrow when an action will be taken upon a report if a report is filed, we would not be taking any more witnesses other than Mr. Jenrette.

Mr. ROBINSON. I am trying to determine, are we under Rule 11 right now? Mr. Snyder led me to believe in conversations on the phone early

this week and last week that that is the provision whereby Mr. Jenrette is given the opportunity to testify here today.

The CHAIRMAN. That is correct.

Mr. ROBINSON. If he is able to testify under Rule 11(2)(a), that means (2)(b) is in effect, is that right? (b) follows (a). It is in the same rule.

The CHAIRMAN. There is a little word "may" there, and I have already given my interpretation.

Mr. ROBINSON. In other words, the committee, this is (a), "the responded an opportunity to present testimony," so they give him the right, and then under (b) " the committee may intervew witnesses." Is that what I understand?

Mr. LIVINGSTON. The staff may.

The CHAIRMAN. That is correct. That is what the language says.

Mr. ROBINSON. Who is the staff?

Mr. LIVINGSTON. Staff of the committee.

Mr. ROBINSON. Your committee staff, or is it counsel's staff, or both?

The CHAIRMAN. Committee staff.

Mr. ROBINSON. I make a request here before we go any further with whether Mr. Jenrette makes a statement that your committee staff interview the witnesses that I have been precluded from bringing here, at least through the interview procedure. I see I believe Jack Moriarity may be here. He is the head investigator.

The CHAIRMAN. I am chairman of the committee. I am ruling right now that the staff is not allowed to do that, sir.

Mr. ROBINSON. It is right in the rules, sir.

The CHAIRMAN. It may be, but I am telling you we are not going to do it.

Mr. ROBINSON. Why?

The CHAIRMAN. We have never done it and it is not designed to do that.

Mr. ROBINSON. Why do you have a rule that they may be interviewed, the defendant Mr. Jenrette can testify if, without any oral arguments or any pleadings, the chairman can say with no caucus or anything, "I am ruling that does not apply." It is not right. It is a violation of every right. I am not trying to be angry but it is annoying to come here and you say that Rule 11 applies, that Mr. Jenrette can make his statement, and then you say——

Mr. THOMAS. Mr. Chairman——

Mr. ROBINSON. Excuse me. It is wrong just to say he may not call witness before the committee staff to interview them. That is not right.

The CHAIRMAN. If you want me to take a show of hands in the committee, I have no objection to doing that.

Mr. ROBINSON. Who wrote these rules, I would like to know. Did this committee write the rules? What do they mean?

The CHAIRMAN. That is not pertinent to this.

Mr. ROBINSON. It is pertinent what the rules mean, sir. I am sorry. What do the rules mean?

The CHAIRMAN. If I say it is not pertinent, it is not pertinent.

Mr. ROBINSON. I disagree.

The CHAIRMAN. You can disagree.

Mr. THOMAS. Mr. Chairman.

The CHAIRMAN. It is not proper for you to tell me. It is proper for you to request but not to tell me.

Mr. ROBINSON. I apologize.

Mr. THOMAS. Mr. Chairman, as the counsel pointed out, (b) comes before (d). Can we do (b)?

The CHAIRMAN. I don't understand that.

Mr. THOMAS. 11(b) comes before 11(d), as the counsel quite correctly points out.

The CHAIRMAN. He is talking about (a), (b).

Mr. THOMAS. Where is the testimony?

The CHAIRMAN. He is talking about (d), not (b).

Mr. THOMAS. I misunderstood him.

The CHAIRMAN. We can discuss the issue before us, whether the counsel should be allowed or Mr. Jenrette be allowed to tell the committee that its staff must do this, and my own feeling is that that should come more properly in the full hearing, not at this point. That rule obviously is designed to provide that if there is some ambiguity about it, the staff could make further inquiry. It may do so. Mr. Livingston.

Mr. LIVINGSTON. Mr. Chairman, my reading of the entire rule reflects that Rule 11 directs us at this time to complete a preliminary inquiry to determine whether such a violation occurred. Now, of course, we have the conviction before us. We have the transcript. Under 11(a), Mr. Jenrette may elect either to give us a statement or not give us a statement. At this point you have within your jurisdiction, or discretion rather, or the committee's discretion, to interview additional witnesses to enlighten us as to whether or not a violation has occurred.

Now we have got a conviction. We have determined the conviction. If there are other witnesses which would indicate that that conviction is not warranted, then we can elect either to hear them out, but ultimately we have to get down to 11(e)(b) and reach a resolution of our own as to whether or not we have determined that a violation has occurred. That is really where we are.

Later on we go on. If in fact we decide after this day that a violation has occurred, then we go into the problem of sanctions. Mr. Myers, in our precedent, was granted the opportunity to give evidence and did present evidence, not only his own testimony but other witnesses, who testified that the sanction should not be as great as the one that he ultimately received. That would be the next step. But right now our purpose here is to determine whether a violation occurred, and that is really the sole purpose for us seeking whether or not Mr. Jenrette wishes to give testimony.

The CHAIRMAN. Then I will withhold a decision as to whether or not the staff will be allowed to make further inquiry until after we have finished hearing Mr. Jenrette.

Mr. ROBINSON. I would like to make this proffer, sir, before that determination is made. First, we are operating at pages 10 and 11 of Rule 11 by a concession of the committee itself earlier. Before there can be a determination under the final (b) on page 11, all of points 2(a), (b) (c), (d) and (e) must be complied with. These are the rules this committee wrote. That is the process. It has nothing to do with sanctions. It has to do with whether or not there is an alleged violation.

Before we make final arguments in this case, we are entitled to exhaust (a) through (e). That is your own rule, sir. Now, (a), you shall give Mr. Jenrette an opportunity to testify if he wishes to testify. You can't make him testify, but he has that right. We haven't decided on that yet. (b), the staff my interview witnesses and examine documents. We are making that request, and we dare say that Mr. Prettyman has made various requests as counsel for the committee, and I don't know of any request he has made that has been rejected.

Now, when he makes requests for documentation and to proceed with certain matters, he gets that as the prosecutor. We are the defense, and we are entitled to rebut Mr. Prettyman's evidence that he has brought forward, not having been rejected in his request.

(c). "The committee may order the testimony of witnesses to be taken under oath." We specifically request that opportunity. Mr. Prettyman, he doesn't want to call any witnesses. He wants to call a sterile record. We want testimony, because we know that you all, if you will just give us the chance, will vote your conscience and your hearts. This man is not guilty, and if you hear the evidence you will believe it. So (c) needs to be complied with, and I submit that you all can't make a decision here on (a), (b) and (c) just on a hand vote. You just can't do that, sir. This is a member of Congress. He is still a member of Congress. He is a human being.

Mr. PRETTYMAN. Mr. Chairman——

Mr. ROBINSON. I object to him interrupting.

Mr. PRETTYMAN. I didn't know I was. I apologize. I thought you were finished.

Mr. ROBINSON. (d). "The committee may require by subpoena or otherwise the attendance and testimony of witness and the production of such books and records, memoranda."

I have advised this committee, I will try to quit saying that, "you all." I have tried to advise this committee today there are 25 volumes six feet in height that tell not only what John Jenrette has done but what the evidence is in this case. The heads of the Judiciary Committee for the House and the Senate are in those volumes with the outrageous ays they pursued those men. The Speaker of the House, Republicans and Democrats, liberals and conservatives, the FBI was going crazy, and there are 25 documents and I finally pinned them last week that they are there, and an opportunity for this committee to find out the truth of who is corrupt and who is not corrupt, whether Jenrette is innocent or guilty is hidden in those documents, and I can't make anybody budge to get under the subpoena power that Your Honor has. You have that power. It is an awesome power.

The FBI is manipulating. They should not get by with this. Forget John Jenrette when we get to final arguments. His days are numbered until we win on appeal. He has been beaten at the election booth. You have the opportunity through his case to find out the truth of what John Jenrette did or did not do in 25 volumes six feet high that the FBI and the Justice Department denied until last week exist. That is what this is for.

I am convinced we have a member of the Judiciary Committee on this panel. We have a former Federal judge on this panel. I have great respect for you. My voice goes up: that does not mean I am mad at you.

The CHAIRMAN. My title is purely honorary.

Mr. ROBINSON. But the point—honorary—the point, sir, is you have these rules because it is an inquiry panel. You are going to inquire. You are not just going to say that a conviction, as you interpret it, is the end of the matter. If that was the case, Rule 11 wouldn't be in effect right now. You would just have Rule 14 and sanctions. You have Rule 11 because you know, I dare submit, that Rule 11 is meaningful. You are not going to recommend complaint and then perhaps get the sanctions until you give the accused a chance to speak, and his attorney on his behalf the opportunity to comply with (b), (c), (d) and (e), and we haven't had that opportunity, and you just can't vote by hand to say we are not going to do it in this case. (b), (c) and (d) should be complied with, sir. They could be complied with and we could be back here by December 1 on a Monday. I know Congress is going to recess tomorrow, but it could be done.

You have staff that could read this stuff while they are eating their turkey. They can do this work.

Point (e). "Any probative evidence may be used." Any probative evidence. Now, what does that mean? Probative evidence, probative evidence, what a nice phrase that is. Probative evidence means evidence that probes into what happened, and you have got 25 volumes that tell you exactly what happened, witnesses, and Mr. Prettyman wants five little GAO printed volumes for trial.

Mr. PRETTYMAN. Are you through Mr. Robinson?

Mr. ROBINSON. No, I am trying to collect myself. It is wrong if this committee says let Mr. Jenrette testify and then that is it. I know you have lower keyed people up here, but it is wrong to do this this way. Nothing should be done that speedily.

I am through.

The CHAIRMAN. Mr. Prettyman.

I didn't mean to cut you off.

Mr. ROBINSON. I am through.

Mr. PRETTYMAN. I think that Special Counsel is considered part of the staff under this rule, and I think I speak for the staff when I say that we have a 5,000-page trial record, 22 days of trial, and that since the rule is discretionary, I as part of the staff do not feel the necessity for going outside of this record to get any additional testimony that would relate to the matter before us.

As a matter of fact, I think even with one or two tapes you could decide the matter before you. But regardless, we have the entire record of the testimony and trial before you, and I do not think that it is necessary to go outside.

Mr. ROBINSON. Sir——

Mr. THOMAS. Mr. Chairman.

The CHAIRMAN. I would like to—all right, Mr. Thomas.

Mr. THOMAS. I would like also to participate. I have got my letters correct now. In Rule 14, and we do like to make sure that the numbers and the letters are clearly understood, Rule 14 says ". . . shall conduct," "The Committee shall conduct in accordance with Rule 11(a) of the committee rules." Rule 11(a) is "The determination under the Committee under Rule (b) that the allegations of a violation and complaint filed with the Committee merit further inquiry, the Committee"—once again—"shall conduct a primary inquiry."

"(2). In the preliminary inquiry," which we shall conduct based upon our findings which we have found (a) says, "The Committee shall," and after (a) and "shall) (b), (c), (d) and (e) are met, so that quite properly the committee in utilizing Rule 14 and requiring Rule 11(a) to be applicable, under 11(a) the only "shall" is the testimony, and that is (a), and that is first, so the "shall" provision of the testimony, the right should be accorded, and then we should move alphabetically to (b) determine whether or not we feel that is necessary, then to (c), (d), (e). So I would really like to talk about under Rule 14, Rule 11(a)(2)(a), "The Committee shall provide the respondent an opportunity."

Mr. ROBINSON. And then after we dispose of (a) we got to go to (b), (c), (d) and (e); is that correct?

Mr. THOMAS. Based upon what the counsel said earlier, (b) follows (a), (c) follows (b), and (d) follows (c), and I respect the counsel's logic on that and would like to follow it.

Mr. ROBINSON. Fine. Mr. Jenrette will not testify. Let's move to point (B).

The CHAIRMAN. All right, Mr. Jenrette.

Mr. ROBINSON. He will not testify.

The CHAIRMAN. He will not testify. Why?

Mr. ROBINSON. He will not testify because we do not feel he is being accorded the opportunity to be properly prepared at this hearing. Mr. Prettyman knows and has known that from September 2, 1980 through November 5, 1980, I was engaged in 10 consecutive weeks of trial before Judge Penn, five of which belonged to the John Jenrette case. Last week, just seven days after having gotten out of court, we were met with the matter in court, in which we were advised that we would be here today. We protested to that. I want to make this very clear. I am not trying to come up here and be difficult, but there is a degree of preparation, a degree of what is going to occur when you are dealing with something as fine as to whether or not Mr. Jenrette is going to take the place in history as a member that is going to be expelled from Congress.

He has a right to be prepared on his testimony. He has a right to believe that the members, his colleagues in this Congress to this moment have reviewed every document, have reviewed every tape, and can ask him questions. Take a week to question him if you wish to, but we are not prepared like that right now and we won't be prepared. I can with all due respect say that it has nothing to do with delay.

I am a Republican, a right wing Republican, representing this liberal Democrat for free. But I am bothered—and I am a former United States Assistant Attorney; Senator Thurmond got me the job and Harry Dent got me started out on a career, right wing Republicans.

It bothers me that John Jenrette is being rushed in here to give testimony because he should be given that privilege and yet we have no compliance or opportunity to meet and resist these charges that are about to be determined. He may testify if given until December 1 to prepare with me to testify. He has that right, I believe. We are not waiving anything. But he will not testify today under the advice of me, because I think for him to testify is to be wrong; to be testifying today without any preparation is not right.

You have this testimony Mr. Prettyman has so much pride in, before the jury, in which he never conceded doing anything wrong. And he will not testify today. So I submit we go to point B.

The CHAIRMAN. Do you want to say anything further?

Mr. PRETTYMAN. I would only say that that is obviously Mr. Jenrette's right. I would point out to you that he knows more about the circumstances of what happened here than anybody else. He testified extensively at the trial and I would assume that it would take very little preparation for him to recount whatever he wants to to us about the case, if he so chooses, but that obviously is his right.

Mr. ROBINSON. Mr. Jenrette was on the stand for three or four days three or four days. Are we given the opportunity to put him on the stand here for three or four days or a week to testify in detail about what happened in this case?

The CHAIRMAN. In answer to your questions, what I am ruling, and I will ask the committee as I said before, I will ask the committee to share in this ruling, what I am ruling is that the next order of business under this procedure is 11(A), which says that we shall provide him an opportunity to present to the committee oral and in writing a statement respecting the allegation.

I am not ruling that the following part of Rule 11 necessarily would be negated because in the first place it is optional with the committee whether they do the rest of it or not, at least as to whether they interview other witnesses or not. So what I am really ruling at this point is that the next order of business is Mr. Jenrette's statement and he has no right and you have no right to say that we shouldn't follow the rule which says that we shall offer him that opportunity and that the staff may do other things. I am not saying the staff won't do the other things. I am saying until we hear from Mr. Jenrette we won't rule on the question of whether we will do those other things or not.

Mr. SENSENBRENNER. Mr. Chairman?

The CHAIRMAN. Mr. Sensenbrenner.

Mr. SENSENBRENNER. I think we we are getting a little bit off the track here.

The purpose for the proceeding before the committee today is to determine whether the offense for which Mr. Jenrette was convicted as a violation of the Code of Official Conduct of the House of Representatives. And that is the ultimate determination that the committee shall make.

Now the procedures that the committee follows are designed to give an accused congressman or officer or employee as much opportunity as possible to present whatever information that individual wishes to present to this committee. And whether or not the individual wishes to present anything to the committee, of course, rests with the individual involved.

But I also would like to point out that under the rules and precedents of the House, a resolution of expulsion or of censure or of reprimand is a resolution of the highest privilege and once a member of Congress, whether it be the 12 who sit here or one of the other members of Congress introduced that resolution, there is one hour's debate and a vote takes place on that resolution on the floor of the House of Representatives. And there is nothing that this committee can do to prevent any

one of our colleagues from introducing a resolution relating to Mr. Jenrette the next time the House meets tomorrow morning.

So you have an opportunity under the Committee Rules to present material and evidence and testimony that you would not have if the matter went to the floor of the House of Representatives by someone putting in a resolution expulsion.

Now, how you attempt to try your case is really none of our business, Mr. Robinson. But at the same time, I would like to point out that these rules do give you the opportunity for input that you would not have if somebody put a resolution of expulsion in on the floor of the House tomorrow morning.

Mr. ROBINSON. I would like to reply briefly, please, Mr. Chairman.

First, I would like to reply that you know in the criminal law, without immunity up here on the Hill, a conspiracy is when two or more people agree to do something, for example, to obstruct justice. We have a hearing here in which Mr. Jenrette is being given a hearing under Rules 14 and 11 and I almost read from what you said, sir, that if we don't go forward the way the rules are interpreted here, someone could, for example, speak to, another member of Congress, say two or more people and they would possibly have this matter brought to the floor of Congress to circumvent our right to a hearing here. I hope that I misread your remarks.

Mr. LIVINGSTON. Excuse me.

Mr. ROBINSON. I felt that was a very threatening thing to tell us.

Mr. LIVINGSTON. Mr. Chairman, I sat here keenly interested in what Mr. Sensenbrenner had to say. I heard him. I think councel placed his own interpretation on Mr. Sensenbrenner's words. But I feel the record ought to be made abundantly clear that my interpretation of what Mr. Sensenbrenner said was nothing of the sort that was just described by counsel.

Mr. Sensenbrenner eloquently pointed out that it is the option of any member of the House to bring a privileged motion of expulsion before the House of Representatives, that there is only one hour of debate, and that the procedures that are available to you to put your case in the best light on behalf of your client are there, and are present at this time. They will not be present in the event that motion of expulsion is brought on the floor.

I think in my opinion that is the only point that Mr. Sensenbrenner meant to convey.

Mr. ROBINSON. Mr. Jenrette advised me to agree with that. The point I would like to make is that you cannot—you cannot have have had statements from the committee today that Rule 14 is what we are proceeding under. I forget which one of the committee members asked that when she started would we do 14 or 15. I believe you did, Mr. Livingston, earlier on today and they said we were going forward under Rule 14.

We then go to Rule 14 and Rule 14 says that the vehicle through which we have this hearing today to see if there are going to be any charges lodged against Mr. Jenrette is Rule 11(a). Now 11(a) deals with (A) through (E). Now that means all of those are rules that come into place to assure a member of Congress who is before this committee the right to a full hearing even if the committee votes he

has been convicted so that you can evaluate what other people may say, what probative evidence there is elsewhere, what records or memoranda of importance are available. And I have advised this committee that, based on the haste with which—I am not being critical of the committee, I am being critical of Mr. Prettyman, he is the one who coordinates much of this, I am being critical of him.

He can be critical of me; lawyers are critical of one another from time to time. The point is, we are here under objection, you can't quarrel with the ruling, we are here, still here. But since we are here with the protest on the timing and the lack of opportunity to be totally prepared, Mr. Jenrette, contrary to his personal wishes, will not testify based on my advice.

Now that means we have to move to—and there will be no reconsideration of that at this time, there will be no reconsideration. So Rule 11(a)(1), rather 11(a)(2), sub-(a), which gives him the absolute right to testify or not testify, has been fulfilled. He will not testify and we will——

Mr. THOMAS. No, no, no, no.

Mr. LIVINGSTON. Mr. Chairman, before counsel arbitrarily trades away a right of his client, in trial practice myself I have learned you never say never. But let me simply bring things down on a more relaxed level if I can.

We have come here today, obviously, to determine whether or not, as Mr. Sensenbrenner pointed out, a violation of House rules has occurred. We have not come here necessarily to try United States versus Jenrette. That has been tried. A jury reached a decision based on instructions given them by the court of law. And they have convicted Mr. Jenrette.

Now, I think, Counsel, you would agree with me that on the face of it that constitutes a prima facie case in view of the other rules that Mr. Jenrette has brought some degree of discredit upon the House of Representatives. I have said a prima facie case.

It is your option to rebut that prima facie case. In the statement that you have just made, you are more or less abdicating or giving up that option and I want you to be perfectly understanding of that fact, before we proceed further.

Mr. ROBINSON. If it pleases the court or the committee, we have five options, we don't have one option. (A) is not our only option. This committee wrote (A) through (E).

In any criminal case the defendant can take the stand or not testify, but that does not preclude him from calling other witnesses and putting in other proof to show that he is not or should not be charged.

Now this committee wants to try this case, or try Mr. Jenrette, or have hearings on Mr. Jenrette based on the rules as this committee interprets the rule. Fine. If the committee is going to interpret the rules, let the committee interpret the rules. The committee had by its own admission said Rule 14 is the vehicle through which we are here today. The rule itself under 14 says we utilized all of Rule 11(A), it doesn't say 11(A)(2)(a), it says all of 11(A).

Now we are not going to have Mr. Jenrette testify, we are not giving up our right to rebut this evidence. We choose to rebut this evidence through the use of (B), (C), (D) and (E). And if we are not given

that opportunity to rebut that evidence under the committee's own rules, then we might as well not have a hearing because the committee will be violating every right that the committee gave Mr. Jenrette.

The CHAIRMAN. Mr. Stokes.

Mr. STOKES. Mr. Chairman, obviously Mr. Jenrette is here before the committee today as a result of the committee invoking Rule 14. It appears that Rule 14 then also causes the operation of Rule 10(B) and then Rule 11(A).

Counsel for Mr. Jenrette has raised what I think is a serious and legitimate question in the sense that he says that if Rule 11(A) comes into effect and then the committee has today proceeded to section (A) of Rule 11, why then does not (B), (C), (D) and (E) and—(E) appears to have no (a) but it does have a small (b).

I would like to hear from counsel for the committee, Mr. Prettyman, in terms of the arguments raised by Mr. Robinson as to why they do not apply.

Mr. PRETTYMAN. I am not saying they don't apply. I am saying that we, having crossed the guide in regard to (A) because the choice apparently has been made that he shall not testify, that the rest of the items are discretionary.

I am saying from the staff standpoint we do not find it necessary on behalf of a complete record to interview other witnesses or subpoena one. If the committee directs me to, I obviously will do it. I have not heard yet who Mr. Robinson would like to call under any of these subparagraphs except the four people he named in his motion this morning, which the committee rejected.

Mr. STOKES. Didn't he just a few moments ago ask the committee to invoke (B); he said he would like to have his staff interview witnesses?

Mr. PRETTYMAN. I understand that. I am saying to you simply from the staff standpoint we do not find it necessary to do that. But if the committee determines that it wants to direct us to interview people or examine documents or whatever, of course I will do it. But it is discretionary, it seems to me.

The staff may interview. Therefore the first choice would be up to the staff. Do we think it, in our judgment, necessary to do so? Now we having decided that it doesn't, it is now up to the committee and the committee can direct its staff to do so.

Mr. STOKES. I would think, then, what we are saying in essence is that the argument raised by Mr. Robinson is correct, that these other provisions in our rules do apply, even though, as you state, they may be discretionary. It would now seem to be incumbent upon the committee to make decisions, if the staff has made a decision as to (B) the other provisions then relate to the committee and its discretion as to whether it will invoke (C), (D), (E) and the provisions of (E) without whatever (A) is.

Mr. PRETTYMAN. That is correct.

Mr. STOKES. Is that correct?

Mr. PRETTYMAN. That is correct.

Mr. STOKES. Yes. And they would also have the authority to overrule the staff as it relates to any decision under (B).

Mr. PRETTYMAN. Absolutely. That would be my view. I think the committee is always in control.

The CHAIRMAN. Mr. Preyer.

Mr. PREYER. Mr. Chairman, I think we have all reached agreement that the committee does have the discretion to hear other witnesses if we choose to do so. So I think the question right now is whether or not the other witnesses that Mr. Jenrette wishes to call? If it is Mr. Civiletti and Judge Webster or if it is witnesses or documents dealing with the misconduct of the Justice Department or alleged misconduct, then I think we have ruled on those. And we have said in this case and the Myers case that misconduct of the Justice Department, if any, is a matter for the Judiciary Committee and not a matter for this committee and it is not really relevant to these hearings. So if that is the nature of the additional witnesses. I think the committee has in effect already ruled on that.

On the other hand, if there are other substantive witnesses that would testify to some fact directly related to this, I think that would be a different matter. So it seems to me we ought to find out who the additional witnesses are.

The CHAIRMAN. Mr. Preyer and Mr. Stokes have stated the case very well. Mr. Thomas.

Mr. THOMAS. If the gentleman will yield on that, I think what we ought to do is also back away from rule 11 and ask who rule 11 is for. And in my opinion, rule 11 is for the committee to help make its decision to move on to another stage, whether in fact we should or not. (A) is "shall," because the witness, of course, should be afforded the right to testify, either orally or in writing. The reason the others are made, quite clearly, is because if in the committee's determination we feel that is not sufficient for the committee to make its decision, we may utilize (B), (C), (D), or (E). So it would be the committee that I would ask the question of: Are there any witnesses that we want to interview or ask the staff if there are any additional witnesses to help the committee make its decision? I think we would be standing rule 11 on its head if after the "shall" provision of (A) was afforded to Mr. Jenrette and he declines it both orally and in writing and then say that a clear reading of 11 in moving to the discretionary portion is for purposes of asking Mr. Jenrette or his counsel if they have any witnesses that want to be interviewed. It is for the committee in determining whether or not there is suffiicent evidence for an alleged violation or not.

Thank you for yielding.

Mr. ROBINSON. Mr. Chairman——

Mr. LIVINGSTON. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. Mr. Livingston.

Mr. LIVINGSTON. If I can respectfully disagree with my colleague. I think (B), (C), (D) and (E) probably were intended to apply to evidence from either side and it is my impression that we have received the evidence from the prosecution, if you will, and I have to agree with Judge Preyer's statement that if the defense has any additional witnesses, that we have to make a ruling on those witnesses in accordance with 11(b) and then go on down through (y), (d) and (e).

Mr. ROBINSON. I would agree, I am so happy to have someone agree with me today, I may have to recess to regather my thoughts. But the point is, as Rule 11 clearly, it appears to me, is intended to show what both sides' rights are in either making allegations or responding to allegations. So I agree with Congressman Livingston's interpretation.

The CHAIRMAN. Well, the Chair doesn't agree with Mr. Livingston. I agree with what Mr. Preyer and Mr. Stokes said and I don't mind being overriden, but I do think that that Setcion 11(a) followed by (B), (C), all the things after it, I think they are for the purpose of allowing the staff to determine, the committee to determine what other witnesses are needed. But you know we have never been, on this committee, the peremptory type of body that a lot of people would have us believe. In other words, we read all kinds of things in the Congressional Record, all kinds of things are said about this committee. But the truth is we have never been that kind of a group. That is what Mr. Preyer was saying, as I understand it. I am not going to interpret it. He said if you have witnesses you want to bring in, let's hear who they are and let us decide. It is up to us to decide whether we want to call them or not. We dont' have to call them. But we could if we wanted to. We have not been in haste; we have done what the rule says. Why would a member of Congress be in haste about a matter like this? We are just fulfilling our responsibility. The rule says what we have to do. If we didn't do it, the whole integrity of Congress could be at stake.

So we proceed with what the rule tells us to do. We are doing exactly that. Now, I don't believe we have to have a vote at this time. Maybe we should have a vote as to how we interpret all these rules. I think the real basic thing is: Does Mr. Jenrette wish to testify or not? And that is (A) anyway, and that comes before the others. And I would like to ask him if he wants to testify or doesn't want to testify.

Mr. ROBINSON. Before he answers that, Mr. Chairman, I would just like to say that you know really 2(A) is a "may" also. You shall give Mr. Jenrette the right to testify, but he may testify if he deems it appropriate. So that is a "may," it is not a "shall."

The CHAIRMAN. Yes. We can't force him to. But we shall allow him to.

Mr. ROBINSON. You shall allow him to.

The CHAIRMAN. I am not trying to force him, no.

Mr. ROBINSON. No, I wasn't—sometimes I don't say what I intend. I hope you all believe that. In any event——

The CHAIRMAN. What has he to loose for testifying?

Mr. ROBINSON. Well, because, you see, we want—the most colored, the most prejudiced testimony you can get is John Jenrette's. Of course, he is going to say something that is favorable to him. We want you to hear the truth. The best way to get impartial evidence is under (B), (C), (D) and (E), where the own records of the FBI and Justice Department show he is innocent. We don't expect you to hear Mr. Jenrette testify and say the jury rejected so we will reject it. We want this committee to do the things we did not do at trial because the government lied to the trial judge about documents——

The CHAIRMAN. Excuse me for interrupting. I think what you are saying, in view of everything else that has been said here, I believe

you are saying to the committee that until we agree on certain witnesses to come up here, you don't want Mr. Jenrette to testify. I believe that is what you are saying.

Mr. ROBINSON. He is not prepared, he is not prepared to testify.

The CHAIRMAN. Well, he may not be prepared to testify but he has adequate notice of testimony.

Mr. ROBINSON. No, he hasn't.

The CHAIRMAN. He has known about these circumstances all the time.

Mr. ROBINSON. He hasn't had adequate notice.

The CHAIRMAN. He knows now what the truth is better than anybody else.

Mr. ROBINSON. That is right. We want an opportunity——

The CHAIRMAN. You are going tangently; I am getting ready to rule on something. I want to make this very precise for a moment. I interpret what you are saying to me that you don't want Mr. Jenrette to testify unless we agree to specific witnesses or agree to at least say we will have witnesses after Mr. Jenrette testifies.

Mr. ROBINSON. That is not what I am saying. What I am saying is if the rules apply, the rules apply. The old quid pro quo, tit for tat, whatever.

The CHAIRMAN. They do, but one of them is "may" and one of them is "shall."

Mr. ROBINSON. No, it is not; they are all "may." You are giving us a right.

The CHAIRMAN. Wait just a minute. The "shall" applies to the committee. It doesn't apply to Mr. Jenrette. There is no requirement on him to testify.

Mr. ROBINSON. But the "shall" applies to the United States Constitution, a person who is accused of anything has a right to testify or not to testify, and the trial judge has the discretion to permit certain evidence to be admitted. But the one thing the trial judge has no discretion over is the defendant shall have the right to remain silent against himself under the Fifth Amendment.

What you have done, I assure you, what you have done in this committee, is you have given in rules exactly the same procedures to meet the charges that the trial court gives. That is what this committee has done through its rules. I am saying if the committee has given us the invitation which the committee has to give us through (a), the committee has to apply (a), (b), (c), (d) and this committee cannot make an informed decision as to whether or not there is probative evidence under (e), whether or not there are documents under (d), unless the committee orders the counsel to talk to those witnesses and look at those documents and report to the committee. Then the committee may say yes or no.

How can Mr. Prettyman say it is irrelevant when he hasn't looked at it? It is asinine to say it is irrelevant when he hasn't looked at it.

The CHAIRMAN. He doesn't necessarily have to say what you have said. He has said that the evidence so far submitted clearly shows in his opinion that Mr. Jenrette is a person that should be charged. He doesn't opt to bring in other things because he doesn't feel it is necessary to bring in other things.

Mr. ROBINSON. Because he is a prosecutor here. I am a defense counsel. He put his case on. Rule 11(a) gives us the right to rebut the evidence, rebut the prime facie case. He has——

The CHAIRMAN. I don't see that. Where does it say that?

Mr. ROBINSON. That is what that means, sir.

The CHAIRMAN. What means that?

Mr. ROBINSON. These rules clearly mean that Mr. Jenrette's options are (a), (b), (c), (d) and (e). The committee has said that in my earlier question before I showed the committee what direction I was going in. The committee clearly conceded that I was right.

The CHAIRMAN. About what? I didn't concede what you just said.

Mr. ROBINSON. The committee has orally said, as I recall before that 11(a) is in effect here and therefore (a), (b), (c), (d) and (e) are in effect. I believe Mr. Thomas said (a) comes before (b), so once we resolve (a) we can go on to (b), (c), (d) and (e). So I got rid of (a).

The CHAIRMAN. The things after (a), however, are optional with the committee, and (a) is not optional. The committee has to allow him the opportunity to be heard. The rules do not contemplate that he has a right to submit this other type of evidence. We might do it if you told us what you wanted to submit. I am not so sure——

Mr. ROBINSON. I have a list here when we get to it.

Mr. LIVINGSTON. Mr. Chairman. I think one of the problems is that we are dealing in generalities where perhaps we should be dealing in specifics. (b), (c), (d) and (e) do say that the committee may entertain additional evidence in whatever form. It doesn't say it has to, it doesn't say it has to deal in redundancies. If in fact any material that counsel requests has already been covered in the trial, it would not seem necessary for this committee to review that evidence or to speak to those witnesses. If various rulings have been made by a court of law and those rulings led up to the conviction, it would not seem that this committee would necessarily have to take the time to interview those witnesses and make that ruling all over again.

So if counsel has additional evidence that was not presented in the trial, I think he should make that list available to us. We should sit down, item by item, and determine whether or not this committee feels, for whatever reason that it should look at that evidence or hear that testimony. Otherwise we can talk here all night.

Mr. RAHALL. I share the view just expressed by Mr. Livingston. It seems to me question (a) has been resolved by counsel's own decision. It is now to the point where the committee has to decide, and I am ready to vote on the issue whether or not to overrule staff on question (b). At a future time it may come that (b), (c), (d) and (e) are followed that we have to decide to go back and give the counsel the option on (a) to allow Mr. Jenrette to testify or not. But now it seems we are at a point of deciding on question (b). I would have a question, before we do have that decision, to counsel if some of the witnesses he intends to present to the committee, additional witnesses, are witnesses that did not testify at the trial or would not be in these hearings because of the co-defendant nature of the trial and the fact that you were being tried with another individual and would prohibit these individuals from testifying at the trial.

The CHAIRMAN. I think that clarifies it some. Who are the witnesses you want to call?

Mr. ROBINSON. One witness, for example, is Dave Burch, who did testify at trial but who made certain statements which post-trial hearings have indicated are not true, based on the 25 volumes of documents that are six feet in height. I will get back to Burch in a minute. We should get, for example, witnesses such as the co-defendant John Stowe, should be given the opportunity to testify here and decide whether or not he took the Fifth Amendment in the trial. He still has to be sentenced. He may even take the Fifth here, I don't know. You could give him immunity. But if he got the money, I think you all would want to know that, because if he got the money you might have the wrong man sitting here for puropses of what you are here for.

I thing there should be further hearings in which Mr. Weinberg and Mr. Amoroso are brought here for the limited purpose of explaining how it is that the video tapes of Mr. Jenrette had made of him on December 4, 1979, have no mention of Senator William Bradley. Mr. Jenrette always told me and we tried throughout the trial to put in evidence that they were asking questions about Bill Bradley. It was never on any tape recording. I always thought Mr. Jenrette was just managing things, not wanting to think the government was always sinister. I find it hard to believe.

Now it comes up in the trial of Mr. Thompson and Mr. Murphy that Weinberg was in fact after Senator Bradley. That means they were mentioning Bradley at the same time with other members of Congress. Why is it that the tapes don't have this on there? Because Mr. Jenrette as a matter of record has always said something along those lines. Keith Jones is a person who was involved in the certificates of deposit deal that did not testify in the trial before the jury. Keith Jones is one of the first people contacted in an attempt to get to Mr. Jenrette back in 1978 when they tried to make charges on him back then through Mr. Weinberg on these various tape recordings.

Mike Wilson is the supervising FBI agent who was in charge of the operation from Washington, D.C. He should have some explanation to do when he sat in court and he heard the Court proffer to the jury time after time that there were no written documents anywhere, and he knew of six feet of documents.

John Good should be recalled. I don't think that we petitioned in our motion before that he brought here that it was made clear that he should have at least come here to testify on the matter of those documents and as to the matter of how the investigation was conducted, what was written down and what was not written down, what was recorded and what was not recorded. Mr. Good's testimony under oath should be presented to the committee. The stenographer has not prepared it yet.

The CHAIRMAN. We ruled in this hearing that things relative to entrapment, things like that, are not pertinent to this hearing. Several of the witnesses you mentioned apparently are in that aspect of it. So I think you ought to confine yourself to ones that have to do with whether or not there was a crime committed or impropriety.

Mr. ROBINSON. All right. Entrapment, in the first place, I don't believe——

The CHAIRMAN. I am using that in the broad sense. In other words, those witnesses—about 6 feet of documents, as I understand it, they have to do with whether or not the FBI or the government did something improper in the ABSCAM situation.

Mr. ROBINSON. No, it is far greater than that. In other words, the Jencks Act as I am sure each of you knows and the Brady decision from the Supreme Court, Brady v. Maryland, says that the government has to give over favorable information to an accused prior to trial, at the time they learn the information is favorable to the defendant because it deals with his innocence or guilt.

The Jencks Act says that any written document has to be turned over after a witness testifies. Now, there are two prongs on the pitchfork that say we are entitled to certain written documentation. The government in the trial of Mr. Jenrette repeatedly denied they had anything more than——

The CHAIRMAN. That has to do with the appeal of your case for Mr. Jenrette through the Federal courts.

Mr. ROBINSON. No, sir. On those documents we submit somewhere is going to show exculpatory evidence. That is why the government didn't turn them over. If Mr. Jenrette repeatedly did not get involved with them in criminal matters, if there is evidence in there they knew Mr. Jenrette was suffering from a severe case of alcoholism at the time that they came after him, which is coming out more and more through the testimony last week, this deals with innocence and it deals with a corrupt verdict because the government kept the evidence from us and the jury didn't learn about it. These are things the jury should have learned about. They should have learned that the government knew he had alcoholism and whether or not he had serious financial troubles, whether or not he was about to be indicted on some trumped up charge in South Carolina that he has never been indicted on.

The jury, if it had heard all that information, would have believed his testimony more. They would have believed his testimony more. There are 25 volumes of documents tracing the whole history of ABSCAM where this committee has a wonderul opportunity to see corruption, either on the part of the Congressman or on behalf of the government.

If it was on behalf of the government and not on behalf of Mr. Jenrette, it would deal with your decision I would hope. So all these things are pertinent.

But when the committee says that it is "may" versus "shall", (b) is (b) I say for a very simple reason. Part (b) of Rule 11 says the staff may interview witnesses. They did that—you all did that for very obvious reasons.

First, the staff has to interview these people before they can make a determination in reporting to the committee as to whether or not it is something worthwhile pursuing. So you start with the interview process. That is what (b) is. I don't understand why you interview first and then part (b) says the committee may order the testimony of witnesses. In other words, first you interview. If you find something there that is worthwhile, that is probative.

The CHAIRMAN. You are rewriting the rules. That isn't what the rules say.

Mr. ROBINSON. But I am going——

The CHAIRMAN. The rules say that the gentleman who is up before the committee can make his own statement and the committee staff and the committee may do other things. It doesn't say like you say that they investigate because we are not in that type of hearing at this point.

Mr. ROBINSON. Sir, it says—what it means I submit and make my record and be completed, part (a) gives us the opportunity to testify or not testify. Once that is done, which we have completed here, then rule (b) says the staff may interview witnesses and examine documents. That is what we are asking for. We are asking for these people to be interviewed and for these documents in those files to be reviewed by the staff.

Once the staff has done that, in compliance with our request, you go to (c) because that means we come back for further hearings.

It says the committee may order the testimony of witnesses to be taken under oath, in which event the oath may be administered by a member of the committee, so on, so forth. So Jenrette has a chance to testify. After that, if he takes the chance to testify or if he doesn't exercise that option, you move to (b). (b) says we have interviews and review of documents.

The CHAIRMAN. If we want to.

Mr. ROBINSON. If you want to. But I cannot think of any matter that should make you want to more than when you have a Congressman before you, sir, who has had a jury say he is guilty, where you know the government is caught on a buzz saw of dishonesty where they know there are 25 volumes of something that they denied was there when they were trying the case.

Those are documents, there are witnesses. We could not call them during the trial because of Fifth Amendment rights and many other witnesses. Those witnesses can be questioned. They were not available at the criminal trial. That is why this committee has a broader power to make available the right to call witnesses that the jury did not have the right to hear because of the trial judge's decisions.

So you have the staff interviews and then you move on to further testimony if the interviews bring something to the committee's attention that appears to be relevant.

The CHAIRMAN. I understand you.

Now, I would like to have one clarification. This is such a serious matter and you have been talking for your client and I would like to have him respond to the fact as to whether he in fact is turning down the opportunity under Rule 11(a) that the committee shall provide the respondent an opportunity to present to the committee a statement researching the allegations.

Are you in fact turning that down, Mr. Jenrette?

Mr. JENRETTE. Mr. Chairman, I must listen to counsel. I do want at some time to testify but—you have never been down this road and I hope you never do—but since the trial I was in shock. I was in an election, just finished that, went right back into court.

To say I have had 7 days or whatever it is by the time Mr. Prettyman came in and gave us notice to prepare as to what I was hoping I would have through this committee to look at the 23 volumes to help me prepare additional testimony, to come in with this notice—and I submit

that you can't possibly understand unless you have been there and I can understand that. Seven days seems like a long time I guess to each of you on the committee, but I had been basically in shock since October, ran a compaign and just finished up, losing narrowly, but I lost. Everything happened to me that can. There is very little—and I think it is much bigger than John Jenrette now what the committee decides to do.

But I am highly disturbed and highly concerned. I want to say some things, but if you go by what Mr. Prettyman says, everything that I can—if we are going by just the record, what else is there for me to say?

I testified for three days as best I could. If that is all we are going by without me having any other preparation, the greatest preparation has come from Mr. Good. I said all along I knew about Senator Bradley. They asked me to go after Senator Bradley and these other things.

I think there is an awful lot I can enlighten the committee. I believe if I had that opportunity, sir, that you would not only not expel me, but we would look at some other things and turn it over to the Judiciary Committee, what you found.

This committee has this opportunity with me as a vehicle. I submit that there will be evidence that the committee will find that I have not committed an act that brought discredit on this House. I can go through the Senator Thurmond matter at great length and I hope to do that.

I just really and truly, with the advice of counsel and with what I have been through—and as I say, again, I hope none of you ever have to go through—I am just not prepared. I just got through in court trying to get those other documents. I am just not prepared. Another week or another few days I will try to be prepared.

I was hoping to be able to use some of this information we asked for to help solidify some of the points I tried to make in the trial record that through the Federal Rules of Procedure I was not able to get in.

The CHAIRMAN. All right.

The gentleman from South Carolina has made it clear that he is saying that he doesn't want to have that opportunity to testify himself.

Mr. JENRETTE. At this time.

The CHAIRMAN. At least at this time. So, then, we get down as some people have said we are already at that point and we are certainly at that point now, to decide whether or not we are going to authorize interviewing other witnesses and taking of other evidence. So I will be glad to listen.

Mr. PRETTYMAN. May I speak to that for a moment, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PRETTYMAN. Mr. Robinson has given seven names. Four of those people had a complete chance to testify at the trial and did and were cross-examined. The fifth pleaded the Fifth Amendment and, of course, Mr. Stowe would do so here. The other two names, Mike Wilson, an FBI supervisor, he has indicated is going to testify about written documents which I would submit to you, based on Mr. Jenrette's own testimony, is not necessary for you to consider. And Mr. Jones I am afraid I can't speak to because I don't know who Mr. Jones is. He apparently saw Mr. Jenrette back in 1978 before the crimes occurred.

The CHAIRMAN. I guess we have it pretty well——

Mr. PRETTYMAN. Excuse me. Did they relate to the certificates of deposit?

Mr. ROBINSON. Yes.

Mr. PRETTYMAN. The certificates of deposit issue as you will see when you look at the record, if you haven't already, is in my mind—I was even surprised it got into evidence frankly. I think it is irrelevant to the basic issues involved.

Obviously, Mr. Robinson disagrees with me. But it was a scheme Mr. Weinberg was up to, with the cooperation of the FBI, and it went back way before Mr. Stowe really became intimately involved in the events that actually resulted in his conviction.

Mr. ROBINSON. May I just briefly say that the reason why—let's say why Keith Jones is important. Keith Jones and Jack Morris and a guy named Bill Bell were to be charged on a phony certificate of deposit deal with tape recorded conversations where they were trying to get John Jenrette to do something criminal.

John Jenrette said, don't do it, it is illegal. It is evidence in the case. It shows you somewhere at least back in 1978 Mr. Jenrette was a right decent fellow, complying with the law.

We go further, these people were arrested. No one ever bothered Bell, Morris or Jones until after ABSCAM broke. Then on the day of February 2, 1980, the FBI went calling on all these people's front doors and interviewing them, that had been caught up in the undercover operation.

But the three people the FBI never went to talk to were Jones, Bell and Morris. The reason is they didn't have a case. They didn't want these witnesses to testify about the particular incident that they had been involved in on the certificate of deposit deal back a year before. No one ever bothered those people until I showed up in Myrtle Beach.

I knew a lot of people down there, grew up down there a long time ago. I went down there to interview these people. Mr. Jenrette gave me the names of everybody he knew in his life to try to figure out this riddle.

So I go and talk to Morris, and I go and talk to Jones. This is in April or May 1980, some three or four months after ABSCAM breaks. The FBI has not interviewed them or bothered them at all since 1978.

Suddenly Morris is subpoenaed to the grand jury after I talk to him, where he takes the Fifth.

Keith Jones refuses to testify because the FBI gets a search warrant and kicks in his door in Charleston, South Carolina looking for new evidence on the 1978 case.

They used these obstructive tactics to intimidate these two witnesses so they wouldn't testify in the case for us. Morris did eventually testify. But Jones refused to testify.

These matters should come before this committee because these people should give this committee evidence of John Jenrette's lack of involvement in the entire ABSCAM operation.

You cannot judge John Jenrette's actions of guilt or innocence based on the videotapes alone. The court instructs the jury on that. But all this evidence was not available at the hearings on the trial proceeding.

I don't know what else to say on this point other than the fact that either those rules—those rules are there for a purpose. This committee doesn't have a write rule of what it may do if it wants to do it. The committee can do what it wants to. But if the committee writes a rule we may do A, B, C, D, and E, that means the committee may give the defendant the opportunity to do it. That is what it means.

Mr. PRETTYMAN. Mr. Chairman?

Mr. ROBINSON. Excuse me.

It doesn't mean that the committee has to write this rule so the committee can look and remind what it can do. This committee put these down as guidelines to tell us what we may be able to do.

Mr. PRETTYMAN. That recitation, if I may say so, precisely demonstrates why this committee need not call witnesses of this kind. There is evidence in this record that Mr. Jenrette was not involved in the legal certificates of deposit transaction. That is the thing that if it is relevant at all, it is already in there.

The rest of this business about the FBI knocking down somebody's door or failing to arrest somebody or going to interview them and all the rest of it, I submit to you is totally irrelevant to what you will find as the real crimes involved in this matter.

The CHAIRMAN. Now, I think that we can sort of finalize this. It seems to me there are three points I would like to make.

First of all, do we want to take further evidence under this Rule 11? And these are things that we can or may or may not do.

Then the question of whether the committee staff will be directed to bring in a report under 14.

And then, thirdly, although it is not required but I want to be super fair as far as I am concerned, after we have taken care of the first two points, I think I would like to allow Mr. Jenrette, if he wants to still, to make at statement at this late date.

So the first thing we will vote on unless somebody—the first thing I am doing to ask in a moment is for a show of hands of all those who want to take further evidence in this case.

Mr. ROBINSON. I make a request. I request that this matter be held in abeyance until Mr. Stokes returns. He clearly advocated a favorable position to our interpretation of the rules. He had to go tend to other matters. I think we are entitled on something as sensitive and significant as an interpretation of the rules whereby we get the right to a trial or not a trial—that Mr. Stokes—

The CHAIRMAN. He asked to be called, so we will call him on that matter. How far off is he? Do you know?

Mr. SWANNER. He is in appropriations. I don't know where it is meeting.

The CHAIRMAN. Call him and tell him we have a vote.

Mr. SWANNER. We have a call in.

Mr. LIVINGSTON. Can I make a couple of observations while we are waiting on Mr. Stokes?

The CHAIRMAN. Yes.

Mr. LIVINGSTON. Mr. Prettyman has made some specific statements about seven witnesses that you have mentioned. I have been listening to you. You have been pretty vague about who you want to call and who you don't want to call. You indicated these may be examples and you also indicated you may have more.

I think this is the time to come up with your witnesses or not. Mr. Prettyman said the first four witnesses that you mentioned had been examined and cross-examined in the record.

Do you admit or deny that?

Mr. ROBINSON. No. Let me see——

Mr. PRETTYMAN. Not the first four. They were Burch, Weinberg, Amoroso and Good.

Mr. ROBINSON. Okay. Amoroso and Weinberg and Burch testified at the trial. However, due to what we have learned last week, either the witness for the FBI last week lied or they lied. Now, their testimony was the heart of the government's case. They should be called here on the limited issue of discussing under oath those specific parts of their testimony that deal with these 25 volumes and the keeping of records.

I can't convince you, sir, as to how much it bothered Judge Penn during the trial. He stopped the proceedings numerous times, to send the jury out, to probe about the absence of any papers or any memoranda in this case.

When we had the trial completed, and this Mr. Good testified it became apparent that there were enormous numbers of memoranda and documents which meant that the government, through these witnesses, had been involved in misrepresentations.

Now, if you are going to get to whether there is exculpatory versus inculpatory evidence, one has to look at those 25 volumes.

I dare say not only that, but we have to have the witnesses who testified that there is no such thing here to testify. Mr. Puccio, for example, Tom Puccio, the Assistant United States Attorney in the strike force who really orchestrated the entire ABSCAM investigation out of the Brooklyn United States Attorney's office. Mr. Puccio is in trial right now prosecuting the congressmen up there. Mr. Puccio should testify. Mr. Puccio has hidden behind the fact that he has been in all these other cases and has never been able to come and testify.

Puccio holds the answers as to what criminal offenses Jenrette did or did not commit. Puccio holds the answer as to when Mr. Jenrette was targeted, which goes to the issue of what, if any, criminal intent John Jenrette had. Puccio is a witness who has not testified.

Irv Nathan, now Irv Nathan is the director—as well, the Assistant Attorney General is Philip Heyman; his Chief Assistant is Irv Nathan. Irv Nathan has advised me in his office when we were there to discuss whether or not Mr. Jenrette would be indicted in early June of '80, advised me that he knew of the South Carolina investigation on Mr. Jenrette and he knew the ABSCAM matter, both at the same time.

This committee should hear Mr. Nathan testify as to how that was coordinated to show the stresses and the use of illegal methods on Mr. Jenrette. If Mr. Jenrette——

Mr. THOMAS. Mr. Natan—I don't have that name on my list. Is that a new name?

Mr. PRETTYMAN. Puccio and Nathan are new names.

Mr. THOMAS. So we are going beyond the names that you mentioned initially as a suggestion for the staff to probe and you are going into additional names?

Mr. LIVINGSTON. If I can reclaim my time, really, I think the Chairman put his finger on it.

The type of evidence you are describing right now leads to the nature of the ruling of the judge on the entrapment issue or the category that——

Mr. ROBINSON. Duress.

Mr. LIVINGSTON. Yes, duress or whatever view. It doesn't necessarily relate to the facts at hand.

Whether the facts, the incidents for which Mr. Jenrette was tried brings discredit on the House. I think that is really the only thing we have to determine.

Now, you have mentioned a number of other names: Stowe, Wilson and Jones. From your description of what Mr. Wilson would be called to testify about, Mr. Prettyman's response I would have to believe, that that doesn't necessarily relate to the issue at hand.

Mr. ROBINSON. Can I say why?

Mr. LIVINGSTON. Can I just finish my statement? I listened to you very carefully.

Mr. ROBINSON. I am sorry.

Mr. LIVINGSTON. Mr. Stowe—you raised the point Mr. Stowe was a co-conspirator and because of that he invoked his right against self-incrimination, chose not to testify, and that he might choose differently at this time and that he might choose to exculpate Mr. Jenrette. I tend to agree with you.

I tend to agree that that is testimony that we might—should look at.

With Mr. Jones, I don't know. I am still not quite certain about what Mr. Jones is sought to prove here. If Mr. Jones simply has testimony which relates to an incident that happened in 1968 without any impact on the events at hand, then I disagree with you. I don't think this committee need entertain Mr. Jones or listen to him, but I will be happy to hear from you further.

The CHAIRMAN. Let Mr. Robinson respond first.

Mr. ROBINSON. The only point I wish to make is for example on the Keith Jones matter, if Keith Jones was ready, willing and able to testify about a targeting process in which rules were being broken to pursue John Jenrette, which went to the heart of the defense as to whether or not he did it, I mean that was a big issue, was John Jenrette the bad guy or was the FBI the bad guy?

You have to believe whether or not they have been after him for a long time. To do that, you have to show these other incidents.

The point is, if Keith Jones has evidence that dealt with Weinberg, the key witness, and with the FBI's McCarthy, who was the predecessor to Tony Amoroso, and he was ready, willing and able to testify, and the FBI hadn't bothered him for over a year and a half and then they kick in his door on what was really a false search warrant.

They never pursued that case. The case had already been dismissed with prejudice before a federal judge in Brooklyn a year and a half before, but if they used that search warrant as a way to intimidate Jones so that he would not testify for us in the case, if the FBI told Jones and told Jack Morris that they had seen me talking with them in a Sambo's coffee shop for an hour in April, the fact that the FBI

had surveillance on me talking to witnesses they were worried about, then they intimidate those witnesses so they don't testify, that goes to the degree of intimidation that the government used on John Jenrette, to their style of operation.

The reason I say that is important is, the duress defense is the most important thing this committee should consider, whether or not John Jenrette did something that reflects badly on the Congress.

If someone had put a gun to John Jenrette's head and told him that he is going to rob the bank and he went ahead and robbed the bank, I don't believe this committee, if they had a video tape of that or an audio tape, would expel him from Congress.

They knew and you know it was beginning to come out what I pursued all along. They knew he was a severe alcoholic; they knew he had financial trouble: they knew he was facing investigations in South Carolina; they knew his lawyers were negotiating with Irv Nathan on what was happening on that case down there; they knew he needed $50,000 to pay Edward Bennett Williams' firm.

The right hand knew all along what the left hand was about to do. They deliberately waited. They deliberately used the image of Mafia figures, Tony de Vito and Weinberg said he dressed like Mafia figures. Weinberg talks like a Mafioso guy. They deliberately used organized crime. FBI agents, knowing that it is much more difficult for an alcoholic as weak as he may be, and it is clear that he is an alcoholic and that he was weak and vulnerable at that point.

It is much more difficult for such a person to say no, absolutely no, not talking about taking the money; I am talking about outright no; it is more difficult to say that to a person you believe is in the Mafia than it is to say it to the average guy on the street.

This is evidence that the committee should hear. The committee should hear how they threatened, they used duress, they literally put a gun to the man's head.

The key point the jury said, as to why they found Mr. Jenrette guilty, was why didn't he tell the police?

Oustide of Senator Pressler, not one person told anybody until after ABSCAM broke. Not one congressman, not one senator, not one public official, told anybody until ABSCAM broke. That is because these hearings could show everyone thought they were dealing with the Mafia, and whether you break the law or not, you don't go tell on the Mafia. These hearings should show that, because there is evidence to show you that he didn't do it, but it explains why he stayed with them so long.

All these actions of Irv Nathan's, John Good's, Puccio, Keith Jones, what they did to him, Mike Wilson, shows a pattern of intimidation and coerciveness by the Federal Government that was not properly admitted at trial, but this committee should hear before it decides to take action against Mr. Jenrette.

The CHAIRMAN. Mr. Stokes said he is not going to be able to be here but Mr. Rahall will make an observation for him when the vote is cast.

Mr. PRETTYMAN. May I make just one short statement?

I think the record should be corrected that the statements as made are not accurate. Some people who were contacted did go to the authorities, some congressmen.

Mr. ROBINSON. Who?

Mr. PRETTYMAN. I will not name them.

Mr. ROBINSON. Name one.

Mr. PRETTYMAN. I will not name them.

Mr. ROBINSON. Put them on a piece of paper and show it to the chairman and put it in the record.

Mr. PRETTYMAN. I am aware of the fact that there is more than one person who went to the authorities.

Secondly, almost everything that he has just talked about is in this record. The business about the alcoholism and duress from that, the government even conceded, the government's own expert witness on alcoholism conceded he was an alcoholic, but said he was at a high tolerance rate and he was fully in command of his resources when he committed the criminal acts and knew what he was doing.

All of this kind of evidence is already in the record. This is just an attempt to duplicate what we already know.

Mr. THOMAS. Mr. Chairman, an addition on that point.

The CHAIRMAN. Mr. Thomas.

Mr. THOMAS. In addition, the statement was in error because I believe the all-sweeping, all-inclusive statement was made that everyone involved in ABSCAM felt they were dealing with the Mafia. And indeed, the Meyers video tape showed that he offered to intercede on their behalf if it was necessary in the Philadelphia area.

Mr. ROBINSON. I do not believe that is accurate, Mr. Thomas.

I also invite counsel for the committee to submit—I do not have to see it—in camera, maybe under oath, on a piece of paper, what congressmen reported the attempts to bribe them. Not one. I have questioned the agents involved. If he has this evidence, let him bring it up there in camera to you all. I do not think he has it.

He shouldn't contaminate these proceedings by making a statement like that, saying "But I can't tell you, I have to play this close to the investigation." That is not the way to do things. He has the evidence or he doesn't. If he has it, give it to you all in camera. I do not have to see it. He doesn't have it.

The CHAIRMAN. We are not trying the counsel. We are also not trying the committee. We are trying to get the facts.

Mr. HAMILTON. Mr. Chairman, may I ask a question that relates to a comment Mr. Prettyman made earlier today, I think this morning?

I am not sure I remember your statement correctly or not. That is the purpose of my inquiry.

When we were proceeding under Rule 14 I thought you said that we, as a committee, would be confined to the evidence that would have been submitted or had been submitted at the trial. And I further remember you saying something to the effect that if we went beyond that we were getting ourselves into some difficulty. I am not sure what the difficulty is but you might spell that out for me.

Now as I recall, again, this morning the chairman permitted some evidence to come in that was not in the trial record and I presume possibly later this afternoon some additional evidence came in when I was not here, and I apologize to the members of the committee and to counsel for that, and also to Mr. Jenrette. But what I would like to ask is to refer back to your statement this morning with regard to Rule 14 and what the impact is if we do permit evidence to come in that goes beyond the trial record. What is the impact of that?

Mr. PRETTYMAN. As I perceived the rules in our Myers hearing, I understood that Rule 14 was an expedited type proceeding where you attempted to confine yourselves to the trial record plus the testimony of the witness and I think we had some discussions about that, and I thought that the committee had really decided that that is what Rule 14 meant.

I am perfectly willing to tell you, however, that by incorporating Rule 11(a) you can get a different reading. These rules are not perfectly written, and by referring to Rule 11(a) it can be, you can interpret it to mean that the committee has the power to go outside of the record.

I think we originally talked about when Rule 14 refers to "the evidence of such offense" we were talking about the evidence that had been admitted at trial, and I thought that was sort of the common understanding of the committee, but I have no problem with a different interpretation except to this extent.

I think that if you are going to get outside of the trial record except for the testimony of Mr. Jenrette, that you essentially are into a Rule 16 proceeding, and there is then no limit on the amount of evidence that could come in because obviously I am going to offer rebuttal witnesses to all of this evidence, and he will offer sur-rebuttal and so forth.

I thought that Rule 14 was an attempt to get around the Rule 16 approach in view of the conviction and that is what——

Mr. HAMILTON. That was my understanding, and frankly once you begin to let in additional evidence, it is very difficult for me to see how we, as a committee, can say to Mr. Jenrette and his counsel that they cannot enter something that they seem to be relevant.

We can't tell whether it is relevant or not until we have seen it, it seems to me.

The CHAIRMAN. Let me clarify because I am probably the person that unclarified it. I think what the counsel has said is 100 percent correct. I think section 14 or Rule 14 is designed to find a conviction if a conviction has been found and if it is within the rules of ethics for the congressman.

Then you just proceed, and it is not necessary at all to take any additional evidence. There is nothing compels it, and that is exactly what the rule was designed to do.

Otherwise there is not any reason for Rule 14. You could proceed under 16 all the way along.

The only thing about it is I am a soft-hearted individual, as most members of the committee are, and if a person had some real outstanding evidence they wanted to bring in, I think we would still have the power to let evidence in under Rule XI(2) (a), (b), (c), (d), and (e).

I think we have the power to do it. It is a question of whether we feel like we should do it and it is just up to us. That is the way I construe it.

Rule XIV is designed, when there is a verdict, when there is a decision, a conviction, and we have interpreted what that is, that all you have to do is to bring in the evidence of that trial and you don't have to bring in anything else at all except that the respondent, the congressman, shall be allowed to testify.

Now, that is what the rules are. There is nothing really complicated about it. They are in plain English.

"Shall" and "may" are different words, and it does say XI(a) and (a), of course, is a little confusing the way it is printed. (a) goes down to the middle of page 11 and is just before (b), that is pretty logical; and it does allow you all those options.

Mr. PRETTYMAN. Mr. Chairman, can I just make two additional points to make sure that I have fully answered your question?

There are two additional factors that I think should be thrown in here in answer to your question.

Regardless of how you interpret the rules, I would take the position that in this case there are two facts that should lead you to exclude the evidence. One is I am, of course, familiar with the almost 5,000 pages of trial testimony. I contend, as I will contend if I get the chance, that there is abundant, overly abundant within this record to find a number of violations of the House rules.

The other factor is that the type of testimony and evidence that Mr. Robinson has been referring to that he wants to introduce is irrelevant and immaterial.

It is periphery, tangential, really, to the issues, and I think, as you listen to him and you talk about your 23 volumes and the FBI breaking down doors, you are talking about evidence which even if you had a close case, I think would not be admissible.

Mr. HAMILTON. But Mr. Prettyman, how can we make that judgment until we see the evidence?

Mr. PRETTYMAN. I suppose on that theory, Mr. Congressman, you then open the door to anyone before your hearing to submit any evidence that he wants to.

Mr. HAMILTON. We have already done that. That has already been done.

The CHAIRMAN. We did it for the defendant.

Mr. PRETTYMAN. In what way has it been done?

Mr. HAMILTON. We have already gone, as I understand it, beyond the trial record here.

The CHAIRMAN. There is nothing that prohibits that.

The word is "may".

Mr. HAMILTON. I understand that, but once you do it, then I don't see how we can exclude evidence that they seek to offer on the basis that our counsel believes it to be irrelevant.

The CHAIRMAN. You have the word "may" there and you can allow whatever you want to of the defendant's evidence in or you can allow none of it.

Mr. LIVINGSTON. Will the gentleman yield?

The CHAIRMAN. That is real simple. It is just English.

Mr. Livingston.

Mr. LIVINGSTON. Mr. Hamilton, I see what you are saying, but I think that just as the court has the right to weigh certain types of evidence or make rulings on different types of evidence, I think so do we.

We do not have to accept redundant testimony, redundant evidence. If it is in the record, we shouldn't have to go through it again. If it doesn't bear on the facts that we are examining, we shouldn't have to hear it.

With one exception I would say that all the testimony that I have described so far is either redundant or doesn't bear on the issue at hand. It doesn't relate to the facts.

With relation to the testimony of Mr. Stowe, who was prohibited from testifying, simply because he had the right to invoke the Fifth Amendment and he was a co-conspirator being tried at the same time as Mr. Jenrette; that is an instance which may directly relate to the facts at hand, and for that reason I don't know if this is the right time, but I would make a motion that we send counsel out to see Mr. Stowe, and, if Mr. Stowe is so inclined, to obtain an affidavit from Mr. Stowe as to whether or not Mr. Jenrette got money.

He can let counsel use his own best judgment as to what that affidavit should say, subject to, of course, the laws of perjury, and if need be, we could take the statement under oath.

I think that that is testimony which may be deemed in addition to what was in the transcript and therefore not covered by the trial, and I think that that is proper for us to entertain.

Any of the other stuff that counsel has eloquently described I think is simply not relevant to the issues at hand.

Mr. ROBINSON. May I just say, Mr. Hamilton, folks, no one seems to be as distressed as I am and the Judge, Judge Penn, about these 25 volumes of documents.

Now, every government witness, Weinberg, Amoroso, Burch, every witness who testified on anything of merit from the government's case denied that there is any written record anywhere other than an eighth of an inch of documents that were given to Judge Penn. We took the approach at the trial that they must have deliberately not made the documents because they didn't want anyone to follow what they were doing because it is inconceivable, knowing how bureaucracy is, that there is all kinds of papers going back and forth, 302 statements and so forth made by FBI agents.

Then last week when we get in hearings before John Good, the case agent in the field who was the boss of Weinberg and Amoroso, after having been asked about five different ways he finally was cornered that he had to answer I suppose that there were 25 volumes out there.

Now, I just can't image why, if they were so careful to prevent anybody, in none of the cases, Mr. Myers' case, Mr Thompson's case, none of the cases tried thus far has anyone admitted that there is documentation out there as to what was happening.

Now, the only inference anyone with any brain can draw from that is, there is something favorable in there for the defendants and unfavorable for the government because they would not have lied so carefully across the board in every proceeding.

I can't image why we can't get those documents here. Judge Penn says he is going to review them and see what is in there because in there may very well be, and I submit there will be, all kinds of exculpatory evidence, not just one John Jenrette, but to show how this investigation went.

It has nothing to do with trying to prolong matters. Amoroso, the agent Weinberg, these people who have I say lied in all these trials, should be called on the carpet before this committee.

Before you vote to possibly censure or expel Mr. Jenrette from the Congress on anything, these people who have lied to get him convicted

should have to come in here and be questioned with new evidence to see whether or not this committee has taken the appropriate action, and see if they are telling lies or telling truths in their trial testimony all over the place.

It is clear that they have lied about these documents, and Judge Penn is very upset about it.

He is having further hearings in December and I just can't imagine why we can't have that here. It is very relevant.

Now, I agree, I have been trying to say, as you have, sir, that the committee makes the decision. The committee is the judge and jury, not Mr. Prettyman. Mr. Prettyman's function is to prepare and assist you all in putting the things before you.

The CHAIRMAN. We are familiar with the rule.

Mr. ROBINSON. My point is Mr. Prettyman doesn't have the right to rule on what is relevant or irrelevant. The committee does.

The CHAIRMAN. We have had a lot of different cases before us.

Mr. ROBINSON. That is just a preamble.

The CHAIRMAN. It is an interesting argument, but if you heard the previous cases, you would never raise the question because he is employed by the committee to help us in the matter. He doesn't direct the committee.

Mr. ROBINSON. No, I understand that. I am not trying to insult the committee. I am saying that I believe, I believe with all due deference, and not being critical of the committee, I am being critical of counsel, counsel has an obligation. When he tells this committee to go forward with the resolution under Rule 14, he has an obligation——

The CHAIRMAN. He doesn't tell the committee. He recommends.

Mr. ROBINSON. Make a recommendation. He made a recomendation, and in that recommendation he said we are going to go under Rule 14. I believe one of the committee members asked him this morning we are going under 14 or 16. Mr. Prettyman said 14.

Now after I suddenly after lunch bring it to the attention of the committee that if you go under Rule 14, all these matters A through E apply under Rule 11, Mr. Prettyman suddenly in responding to Congressman Hamilton's question says, I know that could be construed that way.

Mr. Prettyman, I feel, has an obligation to report to this committee as counsel being paid the amount he is being paid exactly what the interpretation of the rules are, not to give it a one-sided interpretation.

The CHAIRMAN. We will worry about Mr. Prettyman. In the first place, you see, Rule 14 is not an optional rule. It is demandatory. It is required of the committee. It says "If a member is convicted", the committee shall operate under that. It doesn't say may. It says if it shall be.

Mr. ROBINSON. I understand.

The CHAIRMAN. So it is not a thing that was up to him. It is not a thing that is up to the committee. It is a rule and we have to do it.

Mr. ROBINSON. But my point is Mr. Prettyman shouldn't be permitted once we have brought to the attention of this committee the fact that we see even if you proceed under Rule 14 that all of the subs A through E of Rule 11 apply, especially in view of the fact——

The CHAIRMAN. You are not correct in that statement and I have already stated and I have ruled that 11(a) does not require us to do anything except 11(a)(2)(a). In other words, that is the only thing that directs us to do anything. The rest of it is purely optional.

Mr. ROBINSON. I understand that. That is the last point I make, sir.

Mr. RAHALL. Mr. Chairman, I would like, if I may, Mr. Chairman.

The CHAIRMAN. Sure.

Mr. RAHALL. It is along a similar vein that Mr. Livingston commented, Mr. Livingston made a few minutes ago. Many of the witnesses that counsel for the defense has listed I would agree probably are beyond, what they would have to say would be beyond our jurisdiction in this committee and perhaps the jurisdiction of the Judiciary Committee, and evidence like in those 24 or 25 volumes that I would hope the Congress in the future does indeed have a chance to examine and examine in detail about, perhaps a question of the whole operation.

But the question here and of those witnesses that were listed, and in my view the one most important and the one that I would like to hear from, and he did plead the Fifth Amendment in the trial proceedings, is Mr. Stowe. And with all due respect to Mr. Prettyman, I would think that any testimony he might—and then again he might just invoke the Fifth Amendment again—but anyhow, I think we do owe him the opportunity to present testimony to us in this regard, and I don't see how his testimony could be termed irrelevant.

The CHAIRMAN. I think we are probably ready to vote. The vote would be on whether we want to take further evidence, which we are allowed to take or not to take under 11(a), which is made a part of Rule 14. It is optional with us whether we do it or not.

Mr. PREYER. Mr. Chairman, I wonder if we could just ask counsel if he foresees any problems on calling Mr. Stowe as a witness?

Mr. PRETTYMAN. Mr. Snyder called——

Mr. PREYER. He is the only witness that would not be peripheral to this, but are there problems?

Mr. PRETTYMAN. Mr. Snyder called Mr. Janus when he sensed what the direction of the committee might be, and Mr. Janus' response was that his initial reaction was that—I am sorry. His partner, Mr. Dohnal, said it was his initial reaction that Mr. Stowe would take the Fifth before the committee, but that he wanted to talk to two people, his client and Mr. Robinson first, before he gave——

Mr. RAHALL. Mr. Chairman, I think the opportunity should still be allowed. I don't think we can really go on what might occur.

The CHAIRMAN. I don't want to unduly influence the committee, but I would like to let you know that I personally think that we have complied fully, and as far as I am personally concerned, I think that since we have allowed Mr. Jenrette to testify, we don't have to under these rules have anybody else in. But, of course, whatever the committee wants is what we will do. So all those who want to take further evidence let it be known by raising your right hand.

All those opposed?

Mr. SWANNER. Seven to three. Seven yeas, three nays.

The CHAIRMAN. We are going to take further evidence.

Now I would like to have a motion from somebody as to what further evidence you would like to see.

Mr. LIVINGSTON. Mr. Chairman, I move that the committee take testimony in whatever form possible from Mr. Stowe and no other testimony.

The CHAIRMAN. All those in favor of taking testimony from Mr. Stowe and no other let it be known by raising your right hand.

Mr. LIVINGSTON. Let me rephrase that.

Mr. PRETTYMAN. Does that include a grant of immunity?

Mr. LIVINGSTON. No. That is a good point. No, I would like to rephrase that motion if I may.

I would like to move that counsel for the committee be instructed to contact Mr. Stowe's attorney, and determine whether or not it is Mr. Stowe's intention to continue to invoke the Fifth Amendment. If it is not his intention to continue to invoke the Fifth Amendment, I would move that Mr. Stowe be brought before the committee at the earliest possible moment to give testimony under oath before this committee without any grant of immunity whatsoever.

Mr. HAMILTON. May I ask a question, Bob?

As I understand it now, we are going to be proceeding under really a Rule 16 situation?

The CHAIRMAN. No, you are not. You are under 14, and referred incorporates 11(a).

Mr. HAMILTON. Under 14 with 11(a) incorporated, then Mr. Jenrette and his counsel would have the right to offer evidence, I presume, do they not?

The CHAIRMAN. Mr. Stowe only under this motion.

Mr. HAMILTON. I understand that, but my problem is I don't think I know all of the evidence that they might want to offer.

The CHAIRMAN. He has an opportunity to tell us.

Mr. ROBINSON. I would like to have an opportunity to submit something in writing with proper proffers rather than have to sit here and be bound by what I say here at 4:00.

I mean, I can present that, and Mr. Prettyman said before that he knows the record of 5,000 pages. He doesn't know the record as well as I do. Nobody knows the record as well as I do in this case, and I am not trying to be boastful. I am just saying I would like to submit something in writing very soon if it would be appropriate.

Mr. HAMILTON. The specific motion that Mr. Livingston makes, I think he is right about the testimony of this particular gentleman, but I am frankly very uneasy about excluding all other evidence that they might choose to offer in that case.

I am just terribly uneasy.

The CHAIRMAN. We could vote on his motion and then you could make a motion to open it up further if you want to. Why don't we do that.

All those in favor of Mr. Livingston's motion——

Mr. LIVINGSTON. Just a point of clarification.

Mr. HAMILTON. I was asking for a point of clarification by him. How is it you are able to exclude all of the evidence that they may offer on Mr. Jenrette's behalf?

Mr. LIVINGSTON. We have been here all day long, and to the best of my knowledge it is only evidence we have heard of that he wanted to

introduce, the stuff we have been discussing. Certainly this doesn't preclude argument by counsel in terms of briefs or anything like that, but in terms of hard core evidence, testimony, to the best of my knowledge it isn't a limitation. It is the end of his request.

Mr. RAHALL. Mr. Chairman, would it not be too unfair to at least give counsel overnight to prepare such list. Perhaps it could be they were stunned by this vote in allowing the presentation of these additional witnesses, and need further time, because it seemed to me earlier, in listing names, counsel seemed to be listing off the top of his head, and didn't seem to be much preparation in who those witnesses were going to be.

Mr. ROBINSON. The only problem I have with doing it overnight is, and I am not trying to win any medal, I am doing this—I have got other matters all day tomorrow. In fact, you know the government with their—they have subpoenaed Rita Jenrette with another jury on a ridiculous matter, but I have to be there tomorrow. I have got matters in Rockville. I am just the local yokel, and I have got matters in the Superior Court tomorrow and I can't do it by tomorrow. And I would like to be able to submit something and have everything available by next week some time.

The problem is that we are feeling our way here.

I didn't come here expecting to have to be here tomorrow or expecting to have to submit something tomorrow, and I came here admitting that I was looking for guidance, but that it looked to me like 14 refers back to XI.

If that is the case, then what Congressman Hamilton's concerns are are my concern, so I think we need some little bit of time. I am not asking for a whole lot of time to give something in writing to show the proffers of what we can present here.

This is a very serious matter, as you have said many times, Mr. Chairman, and once you are expelled you are expelled, and that shouldn't be done until Mr. Jenrette has the opportunity to prevent that expulsion, and this is our one chance.

The CHAIRMAN. I think we can vote on Mr. Livingston's motion, and if somebody wants to make another motion opening it up further, we can do that.

Mr. Livingston's motion you heard was to call Mr. Stowe as promptly as could be, if the Fifth Amendment was not involved.

If the Fifth Amendment is involved, I assume that he doesn't want to be called.

Mr. ROBINSON. I submit on clarification that Mr. Livingston's motion should drop the condition that he is the only witness called.

The CHAIRMAN. It is his motion and you are not a member of this committee.

Mr. ROBINSON. I am just trying to be heard.

The CHAIRMAN. I stated what the motion was.

Of course, Mr. Livingston could change his motion if he wanted to, but he didn't make that motion. All those in favor of Mr. Livingston's motion, let it be known by raising your right hand.

Mr. SWANNER. Five, Mr. Chairman.

The CHAIRMAN. All those opposed?

Mr. SWANNER. Five, Mr. Chairman.

The CHAIRMAN. Five to five.

Mr. SWANNER. Five yeas, five nays.

The CHAIRMAN. I ask for a recount.

Mr. LIVINGTON. Mr. Chairman, may I amend my motion?

The CHAIRMAN. All right.

Mr. LIVINGTON. May I limit my motion strictly to the taking of the testimony under the previously stated conditions of Mr. Stowe, so without regard to other evidence, so we don't have two issues that we are voting on?

The CHAIRMAN. Restate your motion. You have a new motion. What is the motion?

Mr. LIVINGSTON. The motion is basically to take the testimony of Mr. Stowe, if he elects not to invoke the Fifth Amendment, to take that testimony before this committee at the earliest possible convenience, and that such testimony will not invoke any gestures of immunity whatsoever, and I guess that is it.

The CHAIRMAN. That is it? I don't see a lot of difference between that and the other one.

All those in favor of this motion, let it be known by raising your right——

Mr. RAHALL. I ask unanimous consent, if I might, that I be allowed to record Mr. Stokes' opinions on these issues. He did express—

The CHAIRMAN. You can't delay the action.

Mr. RAHALL. No, if I may be allowed to cast his vote, that was his request.

The CHAIRMAN. You can state what he told you that he would vote, but you can't really cast his vote. There are no proxies on this committee. They are not allowed on this committee, but you can say how he would have voted.

Mr. THOMAS. Mr. Chairman, could we discuss the motion before we vote? Is that possible just briefly?

The CHAIRMAN. Yes.

Mr. THOMAS. I would just like to point out the motion that Mr. Livingston made was in asking for testimony of an individual that came up after several long diatribes explaining the rules in terms of what we could or we couldn't do, when in fact it was presented to us earlier in terms of pursuant to the committee's rules from counsel "to require by subpoena or otherwise the attendance of certain witnesses" and the witness that we are now seeking to call before us was never requested initially.

It was only after the long probing efforts to try to find an area, if I may say frankly, to keep the ball going, whatever the ball is that you want to roll it to, to keep it going, and that this committee, in terms of its discretionary powers under Rule XI, and based upon the information given by counsel verbally and not in writing as the other material was that was rejected earlier, is going after a single individual.

The CHAIRMAN. You have heard the new motion. All those in favor of the new motion let it be known by raising your right hand.

Mr. SWANNER. Five, Mr. Chairman.

The CHAIRMAN. All those opposed?

Mr. LIVINGSTON. It was six.

Mr. SWANNER. I am sorry.

The CHAIRMAN. All those in favor of the motion let it be known by raising your right hand.

Mr. LIVINGSTON. That we take testimony from Stowe.

Mr. SWANNER. I didn't see Mr. Spence's hand before.

The CHAIRMAN. All those opposed?

Mr. SWANNER. Four.

Mr. LIVINGSTON. The motion was to take testimony from Stowe, period.

Mr. RAHALL. Okay. I am in favor of that.

The CHAIRMAN. All right. What is the vote?

Mr. SWANNER. The yeas are seven, the nays are three.

The CHAIRMAN. So we will take testimony from Mr. Stowe.

The last thing on the agenda I had was, of course, I can't direct the committee; I can't direct the staff really to prepare a report yet because we haven't heard all of the evidence, but I am telling you when it gets in I want it to be done.

I guess we can do it nunc pro tunc for the future.

The last thing I had on my little agenda under these circumstances is still at this time this afternoon I would suggest if Mr. Jenrette wants to address the committee, he may.

Mr. ROBINSON. We will wait until we hear Mr. Stowe. If he gets out of bounds, we will rebut it.

The CHAIRMAN. I would assume we will meet tomorrow morning to hear Mr. Stowe, and that Mr. Jenrette will be here tomorrow morning, and I don't know if your associate counsel can be with Mr. Jenrette or what.

Mr. PRETTYMAN. I asked Mr. Snyder to call Mr. Janus back to tell him we would want an answer as quickly as possible. Maybe Mr. Snyder can say what he said

The CHAIRMAN. What did he say?

Mr. SNYDER. I spoke to Mr. Janus' counsel, Dennis Dohnal. He said his understanding is that Mr. Stowe is now in Florida and that Mr. Dohnal has been trying to reach him, but Mr. Stowe is not reachable today.

Mr. Dohnal said he cannot conceive—those were his words—that he would recommend to Mr. Stowe that he testify after a grant of immunity, but wouldn't be able to reach Mr. Stowe; he cannot give me a definitive response.

He did say it was impossible for Mr. Stowe or Mr. Dohnal to be here tomorrow.

The CHAIRMAN. Under those circumstances, anyone wants to move to reconsider the motion that we last had?

Mr. JENRETTE. Mr. Chairman, I have been pretty quiet, but that is an inference by the Chairman or something like that that upsets me greatly, sir, and I want that on the record, to reconsider. I have just been given a right and you want to take it away?

The CHAIRMAN. Apparently no one wants to do that.

Mr. JENRETTE. Thank goodness there is justice left.

The CHAIRMAN. Do you want to testify?

Mr. JENRETTE. No, sir.

The CHAIRMAN. All right. We will adjourn.

[Whereupon, at 4:00 p.m., the committee was adjourned.]

PENDING BUSINESS

FRIDAY, NOVEMBER 21, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE OF STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to adjournment, at 1:00 p.m., in room 2360, Rayburn House Office Building, Hon. Charles E. Bennett (chairman) presiding.

Present: Representatives Bennett, Preyer, Spence, Livingston, Thomas, Stokes, and Sensenbrenner.

Also present: E. Barrett Prettyman, Jr., Special Counsel; John M. Swanner, Staff Director; Donald E. Kelly, Counsel, and Jan Loughry, Secretary.

The CHAIRMAN. The committee will come to order.

We are in executive session pursuant to the motion adopted yesterday to cover one consecutive day. Maybe Mr. Prettyman can give us an explanation.

I will say the attorney Mr. Robinson called me and says he has a letter coming up here explaining his position. He wants us to wait until 1:15 or 1:20 to explain his position. I told him I wanted it in letter form about one and a half hours ago. He had no good excuse for not getting the letter up here earlier. I told him I would send somebody for it.

Now you tell them the background of what this means.

Mr. PRETTYMAN. We have been attempting to reach Mr. Janus and his partner since last night. We reached them twice yesterday and they said they had not been able to get a hold of Mr. Stowe. Finally, this morning, Mr. Janus told us that although he still had not reached Mr. Stowe, he could tell us unequivocally and without qualification that there was no way in which Mr. Stowe was going to appear and testify before this committee and that if he was subpoenaed to appear he would plead the Fifth Amendment. And he realized he was making that statement for transmittal to the committee.

In my subsequent conversation with Mr. Robinson, he made the point that only Mr. Stowe, himself, could decide whether he would testify. I told him I realized as a matter of law in court that the court would make sure that he was the one pleading the Fifth Amendment or was making the decision, but I thought that the committee would certainly accept Mr. Janus's unqualified statement that his client would in fact not appear and would not testify for his purposes.

I then told him about the meeting at one o'clock and he said that he had other commitments, his partner had other commitments, and that neither he nor Mr. Jenrette would appear today.

Now, I might just make a suggestion if I may, Mr. Chairman.

There is nothing in the rules that requires, as I understand it, the presence of Mr. Jenrette and his attorney at this type of proceeding.

On the other hand, I could well understand why the committee would, out of a sense of fairness, regardless of what the rules require, want both Mr. Jenrette and his attorney at this type of proceeding. It does occur to me that if we are thinking about fairness, if you wanted me—if the committee was not going to accept any more evidence, the next step would ordinarily be for me to give my summation of the evidence about Mr. Jenrette and then for his attorney to respond and give his version.

It did occur to me that if you wanted me to give my summation today, even in the absence of Mr. Jenrette, that that would be transcribed and sent presumably on Monday to Mr. Robinson and Mr. Jenrette, which would then allow them a week to prepare their response at your meeting on December 1. I am not in any way pushing that suggestion. I am not advocating it. I am simply—it occurred to me that actually it might be fairer than presenting the argument to him for the first time on December 1 and having him have to answer it at that time. But I want to make very clear that I am not in any way advocating that position.

The CHAIRMAN. Do you all want to discuss it? I had not heard this idea presented. I thought the rules contemplated we took all the evidence before the report would be made.

Mr. PRETTYMAN. I said only—you have to decide first whether you want any more evidence.

The CHAIRMAN. Unless they reverse the decision they took yesterday, we have already spoken on that. Then that would take, as I said, that made Mr. Jenrette rather unhappy—I wasn't saying it out of vindictiveness, maybe it didn't come across but I was merely stating it as a parliamentary situation, unless someone on the prevailing side asked to reconsider, that would stand. It made him quite unhappy. I don't blame him. I really didn't mean to be vindictive but just to state the fact.

Mr. LIVINGSTON. For clarification might I inquire, in your conversations with Mr. Robinson, did he indicate he had anything further to present to this committee?

Mr. PRETTYMAN. No, he did not. He didn't address himself to that issue one way or the other.

Mr. LIVINGSTON. Did he indicate that he wanted his client to testify before us?

Mr. PRETTYMAN. He did not address himself to that either.

Mr. THOMAS. Did you indicate to Mr. Robinson whether or not you would entertain the possibility of presenting your closing statement at this meeting today?

Mr. PRETTYMAN. I did not, because I didn't think of it until after I spoke to him. I want to make clear I am not suggesting submitting my report, that would come after he has had his full chance to speak. I am just talking about the closing arguments.

The CHAIRMAN. Why does the closing argument even have to be made. How are we saving any time about that?

Mr. PRETTYMAN. Normally, you will recall in the Myers hearing, Mr. Chairman, after the evidence was all in, both special counsel and counsel for Mr. Myers gave a kind of summation of the case and it was after that that the special counsel's report was submitted to you.

All I am suggesting is that—and again I'm suggesting it only as a possibility—that I could give that final argument today and he could give his on December 1. I have no idea whether he would object to it. I have no idea whether it appeals to you. As I say, it just occurred to me. He might even prefer it in view of the fact that he would have it in front of him for a week to get ready to respond to.

The CHAIRMAN. I think he would probably object to it, because you know, even my efforts to get everybody to know, for instance in the Myers case, Mr. Gonzalez or somebody said what a horrible thing that was for me to publish a day in advance what I was going to say the next day. I thought it was pretty nice. That gave him a day's notice to pick it to pieces. He said it was something sinister about my having done that.

So I would think that you would probably be criticized for anything you would do, and since there is no rule that starts running as far as I know after you have made your argument, it probably would be better, you might prepare your statement and tell him that is the statement you are going to make on December 1 and he can be prepared for it. That would give——

Mr. PRETTYMAN. If I am not going to make it today, I am not going to send it to him, because I am not reading, I am going to be speaking from notes extemporaneously.

The CHAIRMAN. I see. There is nothing that starts with that argument. That is not part of the rules anyway, is it?

Mr. PRETTYMAN. No.

The CHAIRMAN. I do not see how we are very much further along. In other words, you might just say have the closing argument on December 1. I think it probably would be safer because it is a procedure which would be known to them. Whatever you do out of the ordinary, they are going to complain about it, particularly since he is not physically present.

Mr. SENSENBRENNER. Will you be able to get some kind of a document from Mr. Stowe that he would plead the Fifth Amendment if he were requested to appear here, that would be over his signature?

Mr. PRETTYMAN. I will ask.

The CHAIRMAN. Can we subpoena him?

Mr. PRETTYMAN. We can subpoena him.

The CHAIRMAN. Why don't we?

Mr. LIVINGSTON. I would caution on a subpoena because if that guy comes pursuant to a subpoena and voluntarily starts testifying, we start running the risk, and I do not know what the recent interpretations are of grants of immunity, but there is a risk that you might run that might ultimately jeopardize the Justice Department's case against this guy. There may be some problems I would rather not invoke.

The CHAIRMAN. I think Mr. Robinson suggested a subpoena, somebody suggested it to me. It must have been Mr. Robinson.

Mr. STOKES. You have just confounded me then. I do not understand how you are asking Mr. Stowe to appear and being told he would not appear and at the same time refuse to subpoena him because of what he may say when he gets here.

It seems to me we can't have it both ways.

Mr. LIVINGSTON. You can clarify it by statement.

My concern is simply not to jeopardize any future proceedings against Mr. Stowe. We have the right to invite him to testify and through his counsel he has the right to refuse on the basis of the Fifth Amendment, which has just been done. That satisfies me.

Mr. STOKES. You would have to go back to the purpose for which we are inviting him to testify. Obviously there is a purpose for it, right?

There is a request of counsel, if called he is a man who could shed light upon this entire situation. My understanding was yesterday after I left the committee the committee expressed the desire to have Mr. Stowe appear, is that correct?

Mr. LIVINGSTON. Yes.

Mr. PRETTYMAN. That is right.

Mr. STOKES. You see I have some very real problems accepting telephonically or in some other way a communication with reference to whether, if called, an individual will testify before this committee.

It seems to me that the one way you clarify that is that you subpoena him to appear and if he appears pursuant to subpoena and says I take the Fifth, I will not testify, then you have done what is required. But I have a real problem with being able to go out to the floor and say we talked to some lawyers, he said he wouldn't appear and what he would say if he got here.

Mr. PRETTYMAN. May I inquire, would it be acceptable to you if he signed a statement under oath stating, number one, that he will not appear voluntarily and, number two, if subpoenaed he would plead the Fifth Amendment?

Mr. STOKES. Yes, I would accept that.

Mr. PRETTYMAN. I will tell his lawyer that is what the committee demands and if he won't——

Mr. THOMAS. Short of that we subpoena him?

The CHAIRMAN. Do you want to be given the authority to get a subpoena and hold it up? It takes a vote here to get a subpoena.

Mr. THOMAS. Yes.

Mr. SWANNER. Mr. Sensenbrenner moved to authorize the subpoena.

The CHAIRMAN. Did he move?

Mr. SENSENBRENNER. I would move that the committee authorize the issuance of the subpoena for Mr. Stowe's testimony. The committee's staff and special counsel can make a determination later on whether the subpoena will be served.

Mr. PRETTYMAN. December 1.

The CHAIRMAN. All right. Are you ready for a vote? All those in favor raise your right hand; all those opposed?

Mr. SWANNER. 6-to-1.

The CHAIRMAN. So that carries, that is it.

Mr. STOKES. May I raise one other question?

In light of Mr. Livingston's concern with reference to what the witness might say on that occasion, have we given any consideration to immunizing him?

Mr. PRETTYMAN. I asked that question and it was definitely made part of the resolution that he would not be granted immunity. I would suggest to you that granting him immunity would have serious impact upon the ongoing criminal prosecution. I really don't even know what

effect it would have, it is almost impossible to tell what impact it would have.

Mr. SWANNER. I think the Justice Department has 20 days to respond to that in any case.

Mr. LIVINGSTON. In view of that concern too, I would like to make a motion that we advise the Justice Department that we are subpoenaing Mr. Stowe here so that if there is any complication with respect to our forcing him to appear before us, that they at least be aware of that fact and take whatever steps are necessary.

Mr. PRETTYMAN. Yes.

The CHAIRMAN. Without objection that will be the policy we will follow.

Mr. PRETTYMAN. That is a good idea. I will do that.

The CHAIRMAN. We haven't heard; I think they were going to protest the fact they have not been allowed to be here. That has nothing to do with the subpoena. In fact, I think Mr. Robinson suggested to me that we get a subpoena, somebody did.

Now there is a possibility, as I understand it, that there is—a weak possibility maybe this thing could come to the floor. I do not know just how that would happen, but there would be awful short times, I guess.

Is there any way we can make it easier for Mr. Robinson and Jenrette to have the knowledge of what we are doing? You suggested something.

Mr. PRETTYMAN. The one thing I would suggest, Mr. Chairman, I realize we are in executive session, but I would suggest that the transcript of today's session be given to Mr. Jenrette and Mr. Jenrette's counsel so they can be fully aware of what occurred today.

Mr. SWANNER. That takes a vote of the committee, Mr. Chairman.

The CHAIRMAN. Off the record.

[Discussion off the record.]

The CHAIRMAN. Back on the record then.

For a brief moment we were thinking about whether or not this would be a good idea to give it to the counsel. Since he can't be here it is a good thing to send it to him. Okay? Cast a vote?

Mr. SWANNER. No, just without objection.

The CHAIRMAN. Without objection that will be done. The letter hasn't come yet?

Ms. LOUGHRY. No.

The CHAIRMAN. There is the possibility that the matter could still be handled timely but it would be on a very difficult basis for the time to work out. The only concern I have in this is if it did actually come up before the House that the gentleman, Mr. Jenrette, be given everything possible of anything that is going to come up as promptly as possible, that we don't waste any time in secrecy among ourselves or keeping him from knowing, so that whatever we do is completely fair.

Mr. SWANNER. Would you like to read that letter to the committee?

The CHAIRMAN. Okay.

Now in this connection the staff just handed me a letter I haven't read yet. This is a letter to Mr. Jenrette to be signed by me:

Mr. Janus informed special counsel this morning that Mr. Stowe would decline to testify before the Committee on Standards of Official Conduct in your case and

that if subpoenaed by the committee, Mr. Stowe would plead the Fifth Amendment.

In addition to informing you of this fact, I wish to notify you and your counsel that the committee will continue its preliminary inquiry in your case on December 1, 1980 at 10:00 a.m., in Room B-318, Rayburn House Office Building, and would appreciate you and your counsel being present.

That would be a good thing to sign I guess, wouldn't it?

Mr. THOMAS. You indicated without a subpoena he would not testify. In fact, the committee just voted to give—to authorize the subpoena at the discretion of the counsel. I think we ought to put that in the letter.

Mr. SENSENBRENNER. He will get the transcript.

Mr. SWANNER. He will get the transcript.

Mr. THOMAS. As long as he knows we took that additional letter.

The CHAIRMAN. I will sign that letter. Anything else?

Mr. STOKES. In the event Mr. Robinson's letter does not come before we adjourn or recess this meeting, can we be furnished a copy of that letter when it arrives.

The CHAIRMAN. I doubt whether this letter calls for us having a recessed meeting. I won't call one until he tells us that in view of this letter—we will recess, but I may not call you back unless some member tells me they think in view of that letter we ought to come back briefly because I do not know what the letter is going to contain. I think it is only a protest of him not being here. I do not really see any reason to call back a meeting for that.

Mr. PRETTYMAN. May I suggest the letter be made a part of the record.

The CHAIRMAN. Yes, I will make it part of the record. It hasn't come yet?

Ms. LOUGHRY. No.

[Whereupon, the committee proceeded to other business.]

PENDING BUSINESS

MONDAY, DECEMBER 1, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to call, at 10:00 a.m., in room B-318, Rayburn House Office Building, Hon. Charles E. Bennett (chairman) presiding.

Present: Representatives Bennett, Spence, Hamilton, Preyer, Thomas, Stokes, Sensenbrenner, Rahall, and Cheney.

Staff present: John M. Swanner, staff director.

Also present: E. Barrett Prettyman, Jr., special counsel; Kenneth M. Robinson, counsel for Mr. Jenrette.

The CHAIRMAN. The committee will come to order.

We may at a later hour go into executive session.

Mr. Spence.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI (2)(k)(5) and 2 (g)(2)(B), I move we go into executive session, for today and one subsequent day.

The CHAIRMAN. That requires a roll call.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Hamilton.

Mr. HAMILTON. Aye.

Mr. SWANNER. Mr. Hollenbeck.

[No response.]

Mr. SWANNER. Mr. Preyer.

[No response.]

Mr. SWANNER. Mr. Livingston.

[No response.]

Mr. SWANNER. Mr. Stokes.

Mr. STOKES. Aye.

Mr. SWANNER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

Mr. SWANNER. Mr. Rahall.

Mr. RAHALL. Aye.

Mr. SWANNER. Mr. Cheney.

Mr. CHENEY. Aye.

Mr. SWANNER. Seven; six absent, not voting.

The CHAIRMAN. The motion is approved.

The purpose of today's meeting is to continue the Committee Rule 14 proceeding with respect to Representative John W. Jenrette, Jr.

At the meeting on November 20, Mr. Robinson presented to the committee a list of persons he would wish to call if the committee agreed to hear them. The committee agreed to hear only the testimony of John R. Stowe if such could be obtained. Mr. Robinson stated that Mr. Stowe's testimony would exonerate Mr. Jenrette.

Mr. Prettyman has advised me that he has an affidavit from Mr. Stowe to the effect that (1) he declines to be a witness voluntarily and (2) that if he were subpenaed he would invoke the Fifth Amendment against self-incrimination and decline to testify. The committee has already indicated it would not seek an order of immunity for Mr. Stowe's testimony.

On November 26, Mr. Spence and I, pursuant to section 4(c) of House Resolution 608 of the 96th Congress, 2d Session, authorized and issued a subpena to the FBI for the production of two form 302s relating to interviews with Mr. Stowe which took place on February 2, 1980. I have not seen these, but I understand they are available here now.

The committee must now decide whether it will accept any further evidence including the 302 forms, or whether the record shall be closed with respect to evidence. It is my own feeling that the official record should be considered closed with respect to evidence.

There is also a proffer of further evidence just handed to us by Congressman Jenrette.

Since Mr. Robinson made a nonevidentiary statement regarding what Mr. Stowe's testimony would show with respect to Mr. Jenrette, I believe it would be in order to hear any rebutting proffer which Mr. Prettyman may offer which may be relevant. I do not believe it would be in order to accept the 302s as evidence. Of course I will hear from any member of the committee who may disagree with these views.

Following this, we will proceed by hearing a summary of arguments from special counsel on his report to the committee upon completion of the preliminary inquiry and we will also hear a summary from Mr. Robinson on this matter. Without objection I am asking the counsels to limit their summary to 45 minutes each.

It is my intention to hear arguments following that matter.

Is there any objection?

Mr. ROBINSON. I object, but I have other objections, too.

The CHAIRMAN. Is there any objection to 45 minutes?

Mr. ROBINSON. Yes, sir. I think 2 hours is needed.

The CHAIRMAN. For each side?

Mr. ROBINSON. I do not care if he takes 2 days, 3 days. I want the record to be full and I want everyone to know what the evidence is, and I do not believe 45 minutes can even begin to discuss the evidence.

The CHAIRMAN. Any objection to allowing 2 hours apiece?

Being no objection, 2 hours will be allowed.

Either before these summaries or after, as he chooses, Mr. Jenrette may address the committee on his own behalf if he elects to do so.

At that point special counsel will submit his report upon completion of the preliminary inquiry. Members will then have until 10 a.m. tomorrow to review the report and any or all portions of the record

which they deem appropriate, to determine whether or not to accept the report and whether or not to move the committee to formal disciplinary hearings under phase II of Committee Rules 14 and 16. Let me remind you that these hearings, should they be held, will relate only to the nature of the sanctions, if any, that may be recommended by the committee to the House.

Since, I am informed, that it is still the present intention of the leadership to adjourn the House sine die on or before Friday, December 5, it is apparent that the committee cannot hold hearings, act on a recommendation, report that recommendation and bring it to the floor of the House before adjournment. Therefore, it is my present intention that should the committee vote to hold these hearings I, without objection, shall order the date of them to commence at the call of the Chair. This provides a means by which the committee can function in this matter if the House should remain in past the December 5 date. Otherwise, of course, the matter will be moot.

Now, without objection, the committee will hear from Mr. Prettyman with respect to any additional procedural matters or information he may have on Mr. Stowe.

Mr. Prettyman.

Mr. PRETTYMAN. Mr. Chairman, I would like to move some additional exhibits into evidence before the committee.

The first is Exhibit P, which is Mr. Jenrette's request for extension of time in which to submit respondent's proposals for inclusion into the official record.

The CHAIRMAN. Read that again.

Mr. PRETTYMAN. These are the three requests he made at our November 20 meetings.

Exhibit Q, request for attendance of witnesses pursuant to Rule 11(a)(2)(d).

Exhibit R, motion by Congressman Jenrette to defer preliminary inquiry, or, in the alternative, to defer disciplinary hearing.

Exhibit S is a letter addressed to the chairman from Mr. Robinson, dated November 21, 1980.

Exhibit T, letter to the chairman from Mrs. Jenrette dated November 21, 1980.

The CHAIRMAN. On that one, let us deal with that one separately. I am not so sure that is a procedural matter.

Mr. PRETTYMAN. It was a letter addressed to the chairman as part of this proceeding and it dealt with her husband's case. Therefore, I deem it to be part of the record here.

The CHAIRMAN. Without objection, the ones you have so far mentioned, including that, will be made a part of the record.

Any objection?

Mr. ROBINSON. I am trying to find a copy of the letter. They gave me a copy; I just cannot find it.

Mr. PRETTYMAN. As Exhibit U——

Mr. ROBINSON. Could Mr. Prettyman please wait?

We do not object to it.

The CHAIRMAN. Without objection that and the things preceding will be admitted.

Mr. PRETTYMAN. As Exhibit U, a letter to Congressman Jenrette from the chairman, dated November 21, 1980.

Exhibit V, a letter to Mr. Janus from me, dated November 21, 1980.

As Exhibit W, a letter to Mr. Robinson from me, dated November 24, 1980.

As Exhibit X, a letter to Mr. Robinson from me, dated November 25, 1980.

As Exhibit Y, a letter to Representative Jenrette, Mr. Robinson, and all members of the committee, from me, dated November 25, 1980.

As Exhibit Z, Mr. Stowe's handwritten and notarized statement to me, as special counsel for the committee, stating his position in regard to his testimony here today.

As Exhibit AA, a copy of the subpena signed by the chairman, directed to Kirby H. Major of the FBI, subpenaing him to be here today, with two form 302 reports.

I would then add Exhibit BB, the proffer which has just been handed to the committee by Mr. Jenrette's counsel, entitled "Proffer of Further Evidence to Present, Pursuant to Rule 11."

As Mr. Stowe's affidavit states——

The CHAIRMAN. Without objection, all those exhibits will be admitted.

Mr. ROBINSON. I object to any proffer of an affidavit from Mr. Stowe until we have a better predicate as to who received the affidavit.

The CHAIRMAN. We should handle all the exhibits you have moved. Was it one that you did?

Mr. PRETTYMAN. Yes, Exhibit Z.

The CHAIRMAN. Suppose we dispose with all of them except the one you object to?

Mr. ROBINSON. Exhibit Z, the so-called Stowe affidavit. I would like to have a proffer as to who got the affidavit.

The CHAIRMAN. All the others will be admitted without objection.

Mr. PRETTYMAN. This was obtained at the direction of the committee. I called Mr. Janus and told him that the committee would subpena Mr. Stowe for his appearance here today unless I had in my hands during last week, a sworn statement by Mr. Stowe to the effect that he would not testify voluntarily, and would invoke his Fifth Amendment rights as to testifying.

Mr. Janus at that point was having difficulty locating Mr. Stowe. He called me back several days later and told me he had located Mr. Stowe and Mr. Stowe would not appear voluntarily, and if he appeared, he would invoke his Fifth Amendment privileges and would not testify.

Mr. Janus offered to give me an affidavit to that effect.

I informed him that the committee, in my view, would not accept an affidavit from Mr. Janus because of one of the comments that they wanted something personal from Mr. Stowe, and he said that he would contact Mr. Stowe and dictate to Mr. Stowe what Mr. Stowe should sign.

I received two originals of the affidavit so I would be sure to receive one in time. One was sent by Federal Express: one by regular mail.

The CHAIRMAN. What is your objection, Mr. Robinson?

Mr. ROBINSON. I object, and this ties into the proffer of the 302 evidence.

Mr. Stowe has not spoken to Mr. Prettyman; Mr. Prettyman has what purports to be an affidavit from John Stowe. No one from the staff of the committee talked to Mr. Stowe. We have what appears to be a notary public seal and there is no indication that it is a proper notary seal for interstate purposes. There are various rules and regulations as to where a notary seal can be used interstate. We have a handwritten note initialed John Stowe and signed John Stowe in which he says he will invoke the Fifth. That is a privilege that belongs to Mr. Stowe.

Reading the transcript of the hearings held over our objection on Friday the 21st of November, it was apparent to me, from discussion in the committee hearings here in our absence, that there was going to be a subpoena for Mr. Stowe to be here and at that time he would or would not invoke the Fifth Amendment. I do not believe he is properly invoking the Fifth Amendment by not being here.

I do not know, Mr. Chairman, whether you want me to address all that at this time or not. But when you made your introductory remarks a while ago, you referred to the fact that there was a vote that Mr. Stowe would testify on and that the evidence would be closed to all other matters. That is not my recollection. The vote was—there was a seven to three vote as to Stowe's testimony. Then there was a vote of five to five to all other evidence which means the hearing is not closed to all other evidence. The way you said it, it appeared to be the contrary.

The reason that is significant, is that under the law of the Supreme Court in the Breuton case, it is clear that a 302 of a statement made by Mr. Stowe which incriminates Mr. Jenrette which nobody can cross-examine is totally inadmissible evidence in a court of law.

Mr. PRETTYMAN. I object to going into evidence I have not addressed yet. I have not addressed myself to the 302.

Mr. ROBINSON. He wants to introduce a document saying that Stowe takes the Fifth Amendment, then without the committee knowing the full details of law and requirements of counsel, he will then try to introduce the 302. You said about that I had made a proffer and it seems to you that it is proper for Mr. Prettyman to rebut my proffer by a 302. That would be an unholy stretch of the Supreme Court rules and the law——

Mr. PRETTYMAN. I object to any mention of the 302 until I have had an opportunity to address that. He is supposed to be talking about the affidavit from Mr. Stowe. I took the committee's direction on November 21 and when it subpoenaed Mr. Stowe, I specifically asked whether the committee would accept an affidavit from Mr. Stowe in lieu of his appearance here. The committee said it would. That is what I have before you.

Mr. ROBINSON. This committee canot properly vote until it has all the facts as to whether that affidavit should be admitted here. This committee could have afforded to fly Mr. Stowe up here and see whether or not he properly invoked the Fifth or not and not have a third-hand note delivered by Pony Express, by some unknown notary.

Mr. Prettyman, with all due deference, is hoodwinking this committee. He continues to put in documents, as if it is a good faith effort

on his part. Then three minutes later, he will try to put in a 302, which is based on this affidavit which is contrary to all rules of evidence, the Supreme Court and to what Congress writes on the——

Mr. PRETTYMAN. I will say right now, I object to this business of accusing me of hoodwinking this committee and the type of language used in this exhibit which he has used is reprehensible conduct and a violation of all kinds of rules. I am tired of this personal attack upon me, engaged in by an attorney who has engaged in repeated insults against me and members of the committee and misstated facts. I think it is time this committee called a halt to it.

Mr. ROBINSON. Mr. Prettyman is accusing me of misstating the facts, he had to write the letter, indicating an apology. He interrupted me at a very important point when I was addressing the committee on Thursday and advised this committee there had been at least two Congressmen to his knowledge who had been turned into the FBI, who appeared to be mob figures, prior to the news breaking I charged him to make this information known en camera, he apologized that he made an innocent mistake. He has made mistakes throughout hearings.

Mr. SENSENBRENNER. I would ask the Chair to ask the counsel to argue as to the admissibility of the Stowe affidavit rather than going off on a tangent on these unrelated matters. I think both counsel are to blame for that.

The CHAIRMAN. I will, in just a moment. Rules page 402, "The Chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House of contempt."

Now in past years, it has been my observation that many people who have come before this committee have sought to try the committee rather than to try the facts of the case which of course the committee never had anything to do with establishing. The committee is not on trial. The lawyers should not be on trial. There have been many improprieties in this hearing so far which have violated opinion, good faith, expediency and justice in handling this matter. If this sort of thing proceeds, the Chairman may, with the consent of the committee cite people for contempt——

Mr. ROBINSON. Mr. Chairman, may I make a statement to that?

The CHAIRMAN. Not until I am completed.

Mr. ROBINSON. I thought you were done; I apologize.

The CHAIRMAN. So I will, at this point, say that I would like to see this sort of incrimination cease. It is very difficult to handle a matter of this type in any event and to handle it with all those emotional diatribe, is not conducive to handling the matter properly. I have already warned everybody concerned about it and now I would like to have the matter discussed on the basis of the evidence and the rules based on this particular paper.

Mr. ROBINSON. I view this warning to be a specific warning to me and I will not represent Mr. Jenrette any more here on in with the kind of zeal he is entitled to have. I think it is unfair for the Chairman, based on Mr. Prettyman's request to say——

The CHAIRMAN. Just a minute.

Mr. ROBINSON. I will withdraw from the hearings; hang him in my absence.

The CHAIRMAN. It is proper for this committee to ask that nontangible matters not be brought up in these hearings and that the committee not be tried and held in vituperation by anybody. This applies to all parties, anybody who may seek to make this other than a quasi-judicial proceeding.

You can be offended about it if you want to, but there is nothing about it that is offensive and I do want to proceed in a more deliberate manner.

Now, do either one of you want to discuss this matter of the Stowe affidavit?

Mr. PRETTYMAN. Yes, Mr. Chairman. I would like to refer you to page nine of our hearing on November 21, although that hearing was in Executive Session, I, myself, suggested that in fairness, we ought to send a copy to Mr. Jenrette and Mr. Robinson and that fact was done, as soon as I received a copy of it. On that page, it will appear that after Mr. Stowe said he was reluctant to rely upon telephonic communications between counsel and therefore wanted to subpoena the witness, I asked: "May I inquire, would it be acceptable to you if he signed a statement under oath stating, number one, that he will not appear voluntarily and, number two, if subpoenaed he would plead the Fifth Amendment?

Mr. STOKES. Yes, I would accept that."

It was pursuant to that that I engaged in the conversation with Mr. Janus. Mr. Janus dictated the letter to his own client, apparenly and as I say, it could hardly be a more authentic document when it is in the man's own handwriting and under oath.

Mr. ROBINSON. It is not admissible and we were not present as everyone knows, on November 21. I think page nine is also where Mr. Prettyman suggested in all good faith, to proceed to final arguments in our absence. I deeply, strongly object to the admissibility of this affidavit and to any subsequent 302.

Mr. PRETTYMAN. If I might correct you, Mr. Robinson, I suggested we proceed to the summary of the facts. I thought that might be a more fair procedure because you have an entire week to read them and to respond to them. I did not press the issue. The committee thought you might object to it and therefore declined to do it, quite properly.

Mr. ROBINSON. For Mr. Prettyman who is one of the top two trial lawyers of Hogan and Hartson to suggest that he makes summary in the absence of the defendant and counsel is a ridiculous interpretation of fair play and everything else. That is why I object so strongly. I am not trying to be contemptuous. He is your counsel and he is leading this committee, I submit, into making very unfair decisions because you have a right and obligation to listen to him and respect his views. But for him to come here in our absence and recommend giving his summary without us being here, then for him to say he was doing it because it might be fairer to us— if we go outside on anything it should be to the 25 volumes, six feet high, which include these matters.

So, this committee is about to make a ruling without becoming properly convinced that Stowe's affidavit is authentic. The 302, I am telling

the committee, is in the 25 volumes. If you let one piece of paper from those volumes in, then you have to let all the 25 volumes in. I am saying Mr. Prettyman should know that; that he should be opening the door which will catch this committee in a position they do not want to be in.

Mr. PRETTYMAN. If the committee will now rule on the statement by Mr. Stowe, I would like to move on to the proffer of evidence.

The CHAIRMAN. I would first feel I would like to hear whatever evidence or whatever statements are going to be made with regard to the proffer of further evidence, because I believe the committee would probably want to deliberate on these matters in Executive Session.

Does counsel want to say anything about his proffer of further evidence?

Mr. PRETTYMAN. Yes. I can describe briefly how that came about.

The CHAIRMAN. I am talking about Mr. Robinson's proffer, this lengthy paper.

Mr. PRETTYMAN. I would submit that we have not dealt with the Stowe matter as yet. He has made a statement as to what Mr. Stowe would testify to and we have now seen that Mr. Stowe will not appear and I would like an opportunity to make a proffer as to what Mr. Stowe would say if he were here. I have statements from the FBI as to what he would say.

Mr. ROBINSON. I would invite Mr. Prettyman to show what he would say. I know he said that he would invoke the Fifth. I know on the individual tapes, Mr. Stowe said he got $10,000. This is not news to anyone, but he has never been sworn as a witness.

If he can show me that, I will eat crow publicly.

Mr. PRETTYMAN. What you said——

Mr. ROBINSON. Read it. I do not accept your proffer.

Mr. PRETTYMAN. "Mr. Robinson: We should get, for example, witnesses such as the co-Defendant, John Stowe, should be given the opportunity to testify here and decide whether or not he took the Fifth Amendment in the trial. He still has to be sentenced. He may even take the Fifth here, I do not know. You could give him immunity. But if he got the money, I think you all would want to know that, because if he got the money, you might have the wrong man sitting here for purposes of what you are here for."

Later in the hearing, I believe it was Mr. Livingston said, "Mr. Livingston: Mr. Stowe—you raised the point Mr. Stowe was a co-conspirator and because of that, he invoked the right against self-incrimination, chose not to testify, and that he might choose differently at this time and that he might choose to exculpate Mr. Jenrette. I tend to agree with you."

Mr. ROBINSON. You see, he makes these statements and if each member is not up on what he says, they accept in good faith what he was making the committee believe. I have reason to believe that I had offered something that would exculpate Mr. Jenrette, because it was in your written text when you started the meeting this morning, Mr. Chairman.

The CHAIRMAN. I read notes. Was there something in the notes that disturbed you?

Mr. ROBINSON. Yes, because in those notes you indicated I had made a proffer that in some way, if Stowe were called, he would definitely exculpate Mr. Jenrette. I am saying Mr. Prettyman is giving his recollection of events and testimony and things which have happened which are not accurate. I am saying that in all likelihood, your communications with Mr. Prettyman, led you to make that statement based in good faith on what Mr. Prettyman said my proffer was.

Now, when he is confronted by what my proffer was, from the transcript, he sees I never said that. He is the counsel for the committee. He has been before this committee for months. I tend to believe he has more credibility than I, before this committee. He has an obligation to state what the record shows and what the history of events happens to be. So when he tells this committee, that I said such and such and it is not true, he has to stand in correction. Now what he is doing, he is going to try to get this 302 in evidence and not tell the committee the dangerous precedent he is setting if you let this 302 in, Mr. Chairman.

Mr. PRETTYMAN. I object to an argument on the 302, when I have not even gotten into the 302.

Mr. ROBINSON. He referred to the 302 a moment ago.

The CHAIRMAN. Mr. Robinson raised the question as to whether I was accurate in stating that Mr. Robinson stated that Mr. Stowe's testimony would exonerate Mr. Jenrette. That was my impression of what you said but you say you did not mean to give that impression.

Mr. ROBINSON. I said, Mr. Stowe should be called and given the opportunity to testify——

The CHAIRMAN. I am now asking a question as to my statement. As I understand what you have just said a moment ago, that you feel that the statement which I made this morning that Mr. Stowe's statement was editorial in nature and actually did not intend to make that statement.

Mr. ROBINSON. I am not saying that at all.

The CHAIRMAN. Then why did you raise the question on my statement?

Mr. ROBINSON. There is something wrong with your statement. What is wrong is, I believe your statement gives the impression that I clearly said on November 20, that if Stowe happened to be called as a witness, he would exonerate Mr. Jenrette. I never said that nor implied that. I said, that he as the co-conspirator would know what he did get and what he did not get and he should be brought in here under oath and give his statement.

The CHAIRMAN. I am sorry if I misstated it.

Mr. PRETTYMAN. I do not think you misstated, Mr. Chairman, when he says that you have the wrong man over here in this chair, that is a clearer implication that the man is going to give testimony favorable to Mr. Jenrette. I think the committee clearly had that impression. I cannot believe counsel would have made all this effort to get Mr. Stowe in here on the theory that he was going to give testimony afterwards. The clear implication was that it was going to be favorable to his client.

The CHAIRMAN. Is there anything further we want to say about Mr. Stowe's testimony? On the video tape, Stowe, when asked by Weinberg, said he got $10,000. But I also know of inconsistencies and by determining the money Mr. Stowe spent, I knew that we could impeach him with questions to see if he was telling the truth.

There is no foundation today, to say this is not appropriate.

Mr. ROBINSON. If I misled the committee, I must have done it on purpose and if I did, the committee was hoodwinked.

The CHAIRMAN. I do not know what hoodwink means.

Mr. PRETTYMAN. If the committee will act, I am prepared to move on to 302.

The CHAIRMAN. Unless some member of the committee feels I should do differently, my present inclination is to hear everybody out on the Stowe matter, then hear everybody out on the 302 matter then both these matters will be addressed in Executive Session immediately following.

Mr. PRETTYMAN. This is the position I think the matter is in: The committee felt, as I understand it, that Mr. Stowe might be able to testify in a way that Mr. Jenrette felt would be favorable to his case, would shed additional light on how this money was received, who got it and what happened. Therefore, insistence was made and the committee agreed, Mr. Jenrette was entitled to have Mr. Stowe here if Mr. Stowe testified.

We now have a sworn statement that Mr. Stowe will not testify under any circumstances, at least absent immunity. Now, if the committee felt, as it apparently did, that Mr. Stowe's version of events was of some consequence here, then I believe that I am entitled to call Mr. Kirby H. Major, Special Agent of the FBI, who took two statements from Mr. Stowe, on February 2, 1980, the day that this broke.

Mr. Stowe gave these statements, and they were reported in Form 302. I am prepared to call Mr. Kirby to authenticate these documents and have him swear that in fact Mr. Stowe made these statements to him.

I think you will find that what Mr. Stowe really said was the sequence of events was hardly the kind of testimony that Mr. Jenrette would have wanted to hear in person.

Mr. ROBINSON. Mr. Chairman, could Mr. Prettyman give the committee any case citation for the right to do what he is suggesting be done? It violates the Supreme Court law. It violates the law in every Circuit. It violates every principle of evidentiary rules.

I mean, for him to say he can call Mr. Major, who will testify about a 302, I dare say if Congressman Preyer were still sitting on the Federal bench, even if he were conducting a non-jury trial, this 302 would not be put into evidence.

It is not the way you conduct a trial. This committee is a committee made up of 12 lawyers sitting as Congressmen on a committee of ethics. If the rules don't apply in an ethics committee hearing, I don't know where they will apply.

For Mr. Prettyman to say, "I am prepared to do such and such," he should make a profer to the committee on what legal principle he justifies his proffer. How can we cross-examine a 302 that was made in a self-serving way by Mr. Stowe where no one can cross-examine him?

That is why the Supreme Court and all the law says you cannot introduce it. I mean, it is just—Bruton versus United States, United States Supreme Court, clearly says that is the law.

Mr. PRETTYMAN. I would like to remind counsel that I did not attempt to call Mr. Stowe. I was not the one that demanded this committee hear Mr. Stowe. You gave the committee the impression that if Mr. Stowe was called, he would give testimony helpful to your client.

We now know that Mr. Stowe will not testify, and I am simply saying that I am prepared, if the committee wants to hear it, to offer evidence that will show what Mr. Stowe would testify, what he in fact gave to the FBI on the very day of this arrest, after his rights had been read to him.

Yet, if the committee is not prepared to receive that evidence from Mr. Kirby, then I would ask—from Mr. Major, then I would ask the committee's permission to allow me to make a proffer as to what the 302 would say. That would not be evidence, but it would be my proffer as to what I would show if I were allowed to show it.

Mr. ROBINSON. Well, that is worse than Mr. Major testifying. At least somebody can cross-examine Mr. Major. I mean, Mr. Chairman, you started to ask Mr. Prettyman, as I recall, when he started, if he was familiar with the Bruton case. If he is not familiar with the Bruton case, he shouldn't be in here as counsel, with all due respect.

The CHAIRMAN. I don't think that is an appropriate remark.

Mr. ROBINSON. How can he say that is admissible evidence? I withdraw the remark and apologize.

My point is, Mr. Chairman, how he can sit here and proffer a 302 and not know what the Supreme Court and the rules of evidence are, and then say that he is doing it because I put something in contrary to that, when he just got through apologizing from reading it, I didn't really say that, but that is his subjective impression.

If it please the court—and this is the last time I will speak on the matter—he should have to make a proffer as counsel to this committee who is dealing with ethics and rules—I believe that is the name, ethics and rules committee—what ethical standards in the canons of ethics and what rules of law does Mr. Prettyman have to justify the introduction of this statement.

I dare say he cannot find one. He cannot even find one out of North Dakota, in the 1800s. It is inadmissible.

The CHAIRMAN. Well, I believe we have it all before us now and unless somebody else wants to say something further, we will go into executive session.

Mr. PRETTYMAN. May I ask the committee, if I may, if I may presume to suggest, that the committee vote whether to receive Mr. Stowe's sworn statement. If it receives Mr. Stowe's sworn statement, it then decides whether I can call the FBI agent as a witness to testify as to these documents. If it decides that it will not allow that testimony, the third decision as to whether it will allow me to make a proffer as to what I would attempt to prove if allowed to do so.

The CHAIRMAN. Your request is heard. It will be a matter of record.

Anybody else have any observation?

Mr. ROBINSON. At one point, Mr. Chairman, you indicated you were going to have me make the proffer on my motion. Do you intend now to wait until after you recess?

The CHAIRMAN. I assumed when you explained it to me that was a sufficient proffer.

Mr. ROBINSON. No, I think that should be discussed.

The CHAIRMAN. Yes, it will be discussed.

Mr. PRETTYMAN. If that is going to be discussed, I would like to address myself to it.

The CHAIRMAN. Since it is his motion, he should address it first, unless you have an objection to it being improper under the rules.

Since the rules are really fairly flexible, I would think that he would have the right to offer it.

Mr. PRETTYMAN. I have no objection to his offering it. I have no objection to——

The CHAIRMAN. Are you offering it, then?

Mr. ROBINSON. I am offering it, but I would like to read and discuss it because I think, Mr. Chairman, that if the committee retires to executive session and votes in favor of anything Mr. Prettyman just asked for on his three-pronged test about the Stowe testimony, or the Stowe hearsay, or whatever he wants to call it, that I want the committee to be at least on notice that I feel that any such vote clearly opens the door to the introduction of every piece of evidence that we are seeking through our proffer here.

Mr. Prettyman is going outside the record. There was a vote to hear Mr. Stowe testify. There has never been a motion for a vote that Mr. Stowe's 302 be admitted. There has never been a proffer yet from Mr. Prettyman about the legality of such a maneuver before this committee.

So, the executive meeting would not be meeting to discuss whether or not to accept a document that there has been a vote on. There has never been a vote by this committee to my knowledge that it will consider a 302 proffer contrary to whatever the rules are.

The CHAIRMAN. Well, he has made the offer, as I understand it. We can decide that in executive session, just like we can your offer here.

Mr. ROBINSON. As I understand it before—and I would seek some guidance here—it is that any time we seek to have an interpretation on Rule 11(a) as to what evidence will come in outside the trial record that points 11(a)(1) (a) through (e) we discussed before—and I won't go into that—apparently the vehicle through which that is brought to the attention of the committee is that there be a motion made to decide what, if any such evidence will be considered.

Based on that, I prepared a proffer in writing of what we think should be admitted. Now, my point, Mr. Chairman, is that for Mr. Prettyman to come here and to say, "I want (a), (b) or (c) on the Stowe matter when there has been no such vote on a motion made by any committee member is not the way that I understand it is done.

Now, I am not trying to be a teacher because I am a student on this. I am conceding that.

The CHAIRMAN. I will be happy to instruct you. You can make such requests as you want to make and we will dispose of them in such procedures as we feel proper. It is proper at this time for you to offer anything you want to.

Mr. Prettyman has made offers, and you are going to make an offer. We will be happy to hear from you.

Mr. ROBINSON. Thank you. I am reading the motion.

On Thursday, November 20, 1980, counsel appeared before this committee for purposes of what the committee ruled was a Rule 14 hearing. Counsel filed three (3) motions which the Chairman permitted to be read aloud. Thereafter, the committee ruled that the word "conviction" as used in Rule 14 means judgment of guilty by the jury and not judgment (which is upon sentencing) as is the case in a judicial proceeding.

Counsel argued successfully that a Rule 14 proceeding encompasses Rule 11(a) which gives the accused the right to provide testimony or a written statement before the committee. It was made clear that once the accused either testified or waives said right then the committee may provide the options of other proof available in Rule 11(a) (1) (A), (B), (C), (D) and (E). Those provisions (B)–(E) state that counsel can interview designated witnesses, call witnesses under oath, review documents, other exhibits and written memorandums as well as permit probes on other probative evidence. It was discussed that since counsel for Mr. Jenrette had earlier successfully introduced evidence before the committee which was not evidence presented before the Jenrette trial jury then Rule 11(a) (1) (A–E) could and should be read as permitting other evidence to come before the committee. It was suggested that counsel for Mr. Jenrette proffer what other evidence was considered a probative or relevant by counsel. A vote of 7 (ayes) and 3 (nays) favored the taking of co-defendant John Stowe's testimony (without immunity). Counsel was led to believe that Mr. Prettyman would make arrangements for Mr. Stowe's appearance on either December 1 or 2, 1980, since counsel stated unequivocally that he was unavailable for the entire day of Friday, November 21, 1980. Neither Mr. Prettyman nor anyone else suggested that counsel's unavailability for November 21 caused any problem. Chairman Bennett adjourned the hearing on Thursday, November 20, 1980 at approximately 4:15 p.m. There was no stated date for return of parties.

At 11:20 a.m., on Friday, November 21, 1980, counsel's associate, Dennis M. Hart, received a call from Mr. Prettyman advising us to be at a resumption of hearings set for 1:00 p.m., that day. Neither counsel nor Mr. Hart nor Mr. Jenrette were available. In fact counsel was set to present Rita Jenrette before acting Chief Judge John Lewis Smith of the United States District Court for the District of Columbia *in re* a grand jury subpoena that was totally unnecessary. Over objection Mr. Prettyman had set the hearing, purportedly with the Chairman's approval, for 1:00 p.m., knowing of counsel's inability to be present. Counsel submits that such conduct exceeds the role of an advocate and amounts to reprehensible conduct. This committee is entitled to something more in representation and Mr. Jenrette and counsel are entitled to more courtesy and fairness. Regardless of the foregoing historical recitation, counsel has learned that the Committee, upon one member's urgings, re-set the hearing after a brief executive session on November 21 to December 1, 1980. Mr. Stowe will be under subpoena at that time and he can then either testify or exercise his privilege to invoke the Fifth Amendment.

Prior to the proffer of further evidence infra counsel notes that Representative Sensenbrenner advised counsel, on the record, on

Thursday, November 20, that Mr. Jenrette should give careful thought to his right to testify before the committee as another member of Congress might decide to bring the explusion issue to vote on the floor at which time Mr. Jenrette would have but one hour to meet the charges. Counsel reacted forcefully to said representation until both Messrs. Livingston and Jenrette advised counsel that the member's proffer was being most likely misconstrued by counsel.

As a consequence of all the above facts, counsel appears today, December 1, 1980, to renew his efforts to defend Congressman Jenrette's rights to advance further evidence before the committee. That evidence is:

1. Rita Jenrette was prohibited from giving detailed testimony of her knowledge of the "ABSCAM Caper" because she had been permitted to sit in and hear the opening statements of the trial. Counsel argued at the time that Mr. Stowe's objection was misplaced and that the court's ruling on the rule on witnesses had not been violated; nonetheless, Judge Penn put a heavy lid on Mrs. Jenrette's testimony.

As a result the defense was deprived of substantial evidence which Mrs. Jenrette could have provided. She talked to Mel Weinberg on the phone twice. She observed Mr. Jenrette's deterioration from pressures, stress and alcoholism during the period in question. She has specific knowledge of $10,000 which was part of the $50,000 "bribe" paid to Mr. Stowe. She knows exactly what Mr. Jenrette did and did not do. She tape recorded the F.B.I. agents on February 2, 1980 and knows important facts about the issue of credibility.

2. Irv Nathan coordinated the probe of Mr. Jenrette between the South Carolina/Reed Weingarten and Washington/Tom Pucchio/ABSCAM cases. He threatened counsel prior to this indictment and has personal knowledge of the 25 volumes of ABSCAM's "paper trail" which his subordinates denied existed at trial. This does not deal with government misconduct as a primary point. Nathan's testimony and the 25 volumes deal with the validity of the verdict since the "paper trail" shows impeachable points in the government witness sworn testimony.

3. The 25 volumes of "ABSCAM" documents must be subpoened to this committee. The committee can study them over the Christmas holiday and use them upon its return in early January 1981.

I have learned since, by the way, the Congress has intended to adjourn.

No presentation can be adequate without this committee's having access to those 25 volumes. Mr. Prettyman has had since November 12, 1980 to subpoena those files. That was when the existence of the documents surfaced in Judge Penn's courtroom.

Mr. Prettyman should have advised the committee of the existence of the volumes of documents and let the committee decide on relevance prior to counsel's arrival last Thursday. He does not have the powers and discretion he has attempted to exercise in these proceedings.

Simply stated, counsel Prettyman is a highly competent, highly priced "hired hand." I didn't mean to insult him by the "hired hand", I meant to flatter him.

The committee has the votes from subpoena power to discretion to recommendation of sanctions. Any delay now over documents should be assigned to Mr. Prettyman and not to counsel Robinson.

4. Phillip Heymann, Assistant Attorney General, Criminal Division, should be a witness to discuss his overall knowledge that Mr. Jenrette's actions here in ABSCAM were no different than those of Senator Pressler prior to the offering of the $50,000. The $50,000 was thereafter offered to Mr. Jenrette who said no. A phone call was made immediately before Mr. Jenrette's rejection which said offer the money. When Senator Pressler had discussed certain immigration problems an F.B.I. agent called from the adjacent, two-way mirror room and told Tony Amoroso not to offer the Senator the money. Thereafter, the Senator did not return, did not get any money and did not report the incident to the authorities until February 4, 1980 (two days after ABSCAM broke).

Counsel intends to show that Mr. Jenrette's actions were no different than those of the Senator but for the fact that Mr. Jenrette was intoxicated and had Mr. Stowe involved who returned and took the money. Consequently, the video tapes of the Senator should be subpoened by the committee and shown in contrast to the December 4, 1979 Jenrette tapes.

5. Agent Steve Bussey, F.B.I., was the bartender at the townhouse. He should be present to testify about the three bars at the W. Street townhouse and his orders to provide liquor to congressional guests.

6. Tom Pucchio, Chief Strike Force, Brooklyn, New York, ran ABSCAM. He has been under counsel's subpoena since August 1980. He repeatedly fails to testify due to the stated excuse that he is busy trying other "ABSCAM" cases, which by the way he had been active in trial.

Mr. Pucchio has custody of the 25 volumes of FBI files. He knows, in counsel's view, of prejury in the government's cases and has not brought such evidence to the court's attention as his obligation.

Counsel refers here to the contrasts in the statement of Messrs. Webster, Civiletti and Heymann versus the sworn testimony of Messrs. Goode, Amoroso, Burch and Mel Weinberg.

7. Counsel earlier offered the names of William Webster, Director of the F.B.I., Keith Jones, Charleston, South Carolina, and John Stowe, co-defendant to Mr. Jenrette.

Counsel must be permitted at least one to two days to coordinate the schedules of the various above referred to witnesses. Also, counsel notes that if the committee moves forward and recommends further charges then counsel has substantial witnesses he would call at any sanctions hearing.

Those witnesses include Congressmen Pete Stark, Rich Nolan, Walter Fauntroy, M. Davis, former Representative James Mann, Greenville, South Carolina, Governor Dick Riley, South Carolina, and others.

Counsel must present substantial evidence on both the merits and at sanctions, if we get to said point, in able to demonstrate substantial variances between the Myers matter and the Jenrette case.

Now, Mr. Chairman, I would like the committee, when it retires to executive session, to consider this proffer because I feel very strongly—and I will try not to speak so strongly—that if the committee permits any further evidence on the Stowe matter, aside from Stowe's own testimony, which apparently will not come, then the committee is opening the door to our having all of these proffers granted, especially on

the 25 volumes, because, as I said before, the Stowe 302 is in those 25 volumes.

So, if the committee votes in executive session to let one document that hurts Mr. Jenrette into these hearings as evidence that comes out of the 25 volumes, then it has an obligation at least to review the 25 volumes and see what exculpatory evidence is in the 25 volumes that helps Mr. Jenrette.

You cannot just take the one document that is in the 25 volumes that hurts Mr. Jenrette where he cannot be cross-examined and then not review the 25 volumes which provides clearly some inculpatory evidence.

Now, I understand—and I haven't seen it yet—the prosecutor in our case, Mr. Kotelly, has provided two or three documents that were possibly Brady matters that were in a file that he learned of after the trial.

I haven't seen those yet. There is an example of documents that he reviewed that he thought we should at least have at this stage of the proceedings. Now, if he has not reviewed the entire 25 volumes, who is to say what else may be in there.

So, I think the reason I am making this proffer is so that there can be no allegation of trying to sandbag the committee. I think the committee is making a dangerous precedent if the committee lets the Stowe 302 into evidence because if the committee does that and then rejects our application for further evidence, then it is going to be an unfair misuse of the rules of the disadvantage of Mr. Jenrette, without giving him the opportunity to use what is advantageous under the same rules, under the same pieces of exhibits that are out there.

So, I think that the committee should have all of these matters before it when it votes in executive session.

Mr. PRETTYMAN. If I may just respond very briefly, Mr. Chairman.

I refrained from characterizing these motions on November 20 as dilatory. I took them in good faith. I think this motion, however, is clearly a dilatory motion because with two exceptions everything in here was discussed at our November 20 meeting and, in fact, as I understand it, ruled upon.

The committee decided it would not hear this other evidence but was interested in getting Mr. Stowe's evidence if it could get it.

Now, the two exceptions are a reference here to Mrs. Jenrette's testimony and the fact that Judge Penn put a heavy lid on her testimony. That is simply contrary to fact. The only lid that Judge Penn put on Mrs. Jenrette's testimony—and it begins, her testimony begins at 2415 of your brown bound volume—was when she attempted to go outside of the ambit of the questions asked to her and to comment in a subjective manner about matters involving her husband. She was properly stopped. Otherwise, she was allowed to testify.

Now, in regard to Mr. Bussey or Bursey, I don't believe he was mentioned last time. Number one, he was presumably subject to call at trial, and apparently Mr. Robinson did not call him. In any event, the matter of the number of drinks served to Mr. Jenrette on those occasions, the number of bars, the amount of glasses that he was handed, the amount of liquor he had before he arrived, all of that was gone into excessively with both Mr. Jenrette giving his version and the others present giving their version, Mr. Weinberg, Mr. Amoroso

testifying about that, and certainly you can see on the videotapes the drinks that were handed to him.

Agent Bursey or Bussey could not add one iota of evidence that would be helpful to this committee. I submit that the rest of this was all gone into on November 20 and decided by the committee.

Mr. ROBINSON. Mr. Chairman, just in rebuttal.

One, the representation about Rita Jenrette's testimony being introduced except for what Mr. Prettyman said is just not accurate. One of the reasons why the committee cannot test who is accurate and inaccurate here is because Mr. Prettyman has decided that the bench conferences are not admissible for purposes of these hearings.

We had a substantial bench conference. Mr. Kotelly is here. If necessary, we will call him here to be as unbiased a witness as he can be on the point he was a participant at the hearings at the bench, at which time I was stunned by the judge's ruling that Mrs. Jenrette could not testify about the daily merits of what was occurring in December and January during the ABSCAM caper because I had moved the court to let her appear in court at Mr. Jenrette's urgings during the opening statements in which, of course, the rule on witnesses say if you hear part of the testimony you cannot sit in and you cannot testify.

Without getting into all of these matters, that was discussed prior to the trial. She sat in for the opening statements. Then Mr. Stowe's attorney wisely made a motion that she could not testify about the relationship between Jenrette and Stowe during this period of time because she would be disqualified from having sat there on the opening statement.

There was a very heavy lid put on her testimony at trial. It is very evident in a long bench conference which is not before the committee because of the way Mr. Prettyman has deemed it appropriate as to what this committee should consider.

So, if there is anyone on the committee, I suggest, that thinks that I am deliberately or not deliberately misstating that fact, I would invite the committee to call Mr. Kotelly to make a proffer as to whether or not there was a lid put on Mrs. Jenrette's testimony because he was there and he certainly wasn't on our side.

So, I think that can correct Mr. Prettyman on that matter. I think that the proffer on Bursey speaks for itself.

Now, finally, as far as the committee, Mr. Prettyman said preliminarily that the committee ruled before on all these other matters.

I don't recall the committee ever ruling on the 25 volumes or all these other matters. This committee ruled that Stowe would be given an opportunity to testify under subpoena. We covered that.

The other point was there was a vote, a motion, as to whether or not to close the evidence as to everything but the Stowe matter. It was a five and five vote, which meant the matter did not carry. Therefore, there is still an opportunity to present all this other evidence.

I will stand corrected if Mr. Prettyman can correct me. There was never any decision as to whether or not these 25 volumes were going to be useful to the committee or not. In fact, I believe Mr. Hamilton raised the matter, as I recall, at that time with Mr. Prettyman, how are we able to make a determination as to what is relevant unless we have reviewed the matters first.

Now, I may be misstating that, but I think that is pretty accurate, that we have to look at the particular documents before we can decide what is relevant. So there has not been a decision on these matters.

Finally, at some time today I intend to try to proffer to the committee—I don't have but one copy now, but I will have copies made—the Judge Fullam ruling. He ruled in a 64-page opinion over the Thanksgiving holiday that there was a violation of due process in this case.

He talks about some very outrageous conduct on the government's part, especially Mr. Pucchio, who has been at the threshold of misconduct throughout the cases. He is a witness we have tried to bring in here that we say is the custodian of the 25 volumes of documents.

Judge Fullam—I haven't read this, but I have been told—he was very critical of Mr. Pucchio because Mr. Pucchio misrepresented to the Justice Department certain facts he had that favorable to Senator Williams, for example.

Now, Mr. Pucchio should be a witness. I mean, he should at least be verified by counsel for the committee because Mr. Pucchio was the person who was orchestrating these attacks on the Congress.

It wasn't Mr. Kotelly or the Justice Department. It was Pucchio and certain FBI agents.

Now, this opinion I feel is something that the committee should review because in this instance, for example, if Mr. Jenrette had this ruling at this point you wouldn't even have a Rule 14 proceeding, you wouldn't have a conviction.

The parties, Jannoti and Schwartz, are not convicted as of now because the judge has finally ruled on the due process ruling, which means he has directed a verdict for Jannoti and Schwartz, which means they are not convicted because he has set aside the jury's findings.

Then we have to move to a Rule 16 proceeding and not a Rule 14 proceeding. I just think when we have something that is such a firey matter as the due process point, which has been raised by Mr. Myers' counsel in here, as well as ours, and now the only ruling that has come down at all from a Federal judge on the due process matter after review of all the evidence is a 64-page opinion setting aside the verdicts and saying the conduct was outrageous, that it was a case of ABSCAM, was a case not of corruption so much on the part of the politician who was targeted, but it was an invitation by the government to see if they could make someone corrupt.

I think the committee should have this before it votes on whether to send this matter to a sanctions proceeding.

The CHAIRMAN. Is that issue before this committee?

Mr. ROBINSON. Yes, I believe it is.

The CHAIRMAN. No. I don't remember—there may be one, please correct me—I don't remember a pleading that raises this question. The mere presentation to the committee of a decision of a court is not a pleading.

Mr. ROBINSON. We filed a motion which we read on November 20 which we said that there is no conviction because the due process matter is still under litigation which will be decided eventually.

The CHAIRMAN. You didn't raise the due process matter here. You raised the question of whether or not this proceeding should be held up

until that due process decision was made. You didn't raise the due process issue in this committee.

Mr. ROBINSON. I believe I did, but I would have to review——

The CHAIRMAN. I think you will find out you have not.

Mr. PRETTYMAN. Unlike Mr. Robinson, I have read Judge Fullam's decision. I read it very carefully. I am prepared to argue at the committee's pleasure that that position has absolutely nothing to do with this case. As a matter of fact, all of the matters that he is attempting to introduce through his present motions are in the due process area.

As I say, I am prepared to argue either now or later the reasons why that decision has nothing whatever to do with this case.

The CHAIRMAN. There aren't any pleadings in this proceeding that I am familiar with that raise the due process matter, except to say that the decision of the court on a due process matter not in this case is something that we should read or have reference to.

Mr. PRETTYMAN. I must just add in that opinion Judge Fullam was very careful to say not once but several times that it was quite clear that a crime has been committed. Now, that is what this committee is interested in.

Whether or not the government engaged in some kind of misconduct is a problem for the Judiciary Committee. Even if a court eventually rules, the Supreme Court eventually rules that in this very case there was entrapment or a Twigg violation, outrageous conduct by the government or whatever, I submit to you that has nothing to do with the action of Mr. Jenrette, which is what we are interested in.

I say again, I can point to you in the Fullam opinion where he several times said it was quite clear that bribery had taken place. In effect, he was saying that the government is not going to be allowed to conduct itself as it did and still get a conviction.

It is interesting, however, that under your entrapment rule it must be the government that does it. If a private person had walked into Mr. Jenrette's office, he had never seen him before, he knew nothing about him, and he handed him $50,000 for his vote, and Mr. Jenrette had never had a traffic ticket in his life, was totally blameless of anything, and he handed him that $50,000, if Mr. Jenrette had taken it, there could be no entrapment about it. It has to be by a government officer or agent.

The court held in this case that Mr. Criden was in fact a government agent. Therefore, it was government misconduct and the government could not take advantage of that and allow the conviction to stand.

What we are interested in is not the governmental misconduct. What we are interested in is did Mr. Jenrette take money in return for his vote. Did he attempt to get an additional sum of money for allegedly bringing Senator Thurmond and get his vote. That is the kind of conduct that we are interested in. It has nothing to do with governmental business.

Mr. ROBINSON. Mr. Chairman, I just think we are at a disadvantage. I think that each committee member should read the decision and that counsel should be given an opportunity to read the decision before a vote is taken as to what to do with the decision.

Mr. Prettyman read the decision. I suppose the reason why he read it is because he thought it was relevant to know what is in the decision.

If it is relevant for him to read 64 pages, it is certainly relevant enough for counsel and the committee members to have an opportunity to read the 64 pages.

We are here under Mr. Prettyman's urgings and the committee's invitation to be down here under Rule 14 on the interpretation of what a conviction is. The only case we now have by a very wise, very highly respected judge, Judge Fullam, is that there is no conviction because there is a violation of the Constitution.

Now, of course, Mr. Prettyman's example that if an individual, private citizen, invades the rights of someone like Mr. Jenrette, that this issue does not take effect, denies the very purpose for the Constitution.

The Constitution is written so we cannot have a police state. I can kick in somebody's door and make an illegal seizure, turn it over to the police and the person cannot raise a search and seizure matter if I do it as a private citizen.

The Constitution is written to protect the individual rights of everybody in America; that is, to make sure that the government doesn't overreach. That is what this decision by Judge Fullam is all about. I think this committee should very carefully, before it votes in executive session, decide whether or not it wants to go forward on the conviction theory of Rule 14 when it now has as the only precedent of any of the ABSCAM cases a 64-page opinion that says in that case of the conviction there by a jury, there is no conviction because the Federal judge has set aside and directed a verdict in favor of the defendants because of the fact—and this is an important point, and I will be quiet—the point is ordinarily due process motions are heard, motions to suppress, before jeopardy attaches. That means, as all you lawyers know, you Congressmen, that the government has a right to appeal anything if the jury has not been seated yet.

So, ordinarily a motion to suppress a statement, a motion to suppress outrageous conduct is heard by a judge before the jury is selected. But the government has repeatedly urged in every case, and been successful with all the judges, that in this case of ABSCAM, the Congressmen have to do it different, the flip side of the coin from the ordinary citizen. The Congressmen have to wait until there is a verdict and then the judge will decide the due process matter.

Now, if we followed the ordinary course of events the way the rules are written by the Congress and the way the law is, Judge Fullam would have thrown out this case and Jannoti and Schwartz never would have gone to trial. The government would have taken its appeal. They would never have the blemish of a jury verdict saying guilty. It is the same with John Jenrette.

So, it is unfair for counsel to argue, I submit, that we have a jury finding of guilty when counsel should know that all the facts were not presented to the jury, and that had the things been taken in the natural course of events the way it ordinarily happens in a criminal trial, Mr. Jenrette's case would have been ruled on on the due process point before a jury was selected and he would not have been prejudiced by a jury finding of guilty, he would not have been hurt at the polls by that and various other places he has been hurt.

So, I think this committee has to evaluate the totality of everything and read this decision and consider all these matters in deciding

whether or not this committee should proceed today with the Rule 14 inquiry on its interpretation of the word "conviction".

We think that now this particular ruling, opinion by Judge Fullam, should be of assistance to the committee in determining whether or not this committee should re-evaluate its interpretation of the word "conviction".

Mr. PRETTYMAN. While I have no objection to the committee reading the opinion, I assure you it is not going to be of any use to you. Repeatedly throughout—and I have numerous examples here, I am not going to take the time with them—repeatedly the facts in the Philadelphia case were very different than the facts in the Jenrette case. It was simply a different set of facts.

We cannot assume because a district judge in Philadelphia has thrown out that case, the case involving Mr. Jenrette is going to be thrown out on similar grounds.

I would just simply add a very minor point, but I cannot let it stand.

On page 2 of his motion Mr. Robinson says that I set a hearing purportedly with the chairman's approval. I don't set the hearings of this committee. The chairman sets them. I did not set the hearing.

The CHAIRMAN. I would like to address one point here.

What is the opinion of the counsel on each side whether or not this committee would have jurisdiction to consider the question of due process? It is not raised in this proceeding except very tangentially, if at all. I don't think it is really raised because there is no pleading related to it. There has been a lot of conversation about it, but no pleading.

Mr. JENRETTE. Mr. Chairman?

The CHAIRMAN. Does counsel want—all right. Mr. Jenrette.

Mr. JENRETTE. Mr. Chairman, that disturbs me. As I understand, in the Myers case counsel for the committee or some member of the committee stated that in his request for due process consideration, that the committee or someone associated with the committee raised the question that it would be a long time, he could delay it for a period of time before he would—his decision or his due process rights were heard, that no hearing had ever been set, and therefore the committee did not go forward with Mr. Myers' consideration of his due process as a matter that the committee would determine. We are in due process hearings now. Certainly I have every hope——

The CHAIRMAN. I don't know what the Myers case has to do with it, Mr. Jenrette.

Mr. JENRETTE. If you are going to exclude us from having a due process hearing, I am saying——

The CHAIRMAN. I just said you had never raised it.

Mr. JENRETTE. I think we have.

The CHAIRMAN. Where is the pleading on it?

Mr. JENRETTE. Am I excluded from raising anything at this time?

The CHAIRMAN. I didn't say you were. I said to my knowledge you have not submitted any pleading on the question. I raised the question as to whether counsel wanted to—on each side would like to discuss whether it is appropriate if you did plead it. You have not pled it, but if you had pled it, would it be something, or if you now intend to plead it, would it be something appropriate for this committee to do.

Mr. JENRETTE. Certainly we want to plead it.

The CHAIRMAN. Well, you have not pled it.

Mr. JENRETTE. Are we excluded from pleading it?

The CHAIRMAN. Sir?

Mr. JENRETTE. Are we excluded from going forward?

The CHAIRMAN. I raised the question whether you wanted to plead it.

Mr. ROBINSON. Mr. Chairman, I respectfully disagree with the chairman's interpretation of what we have raised. Exhibits are marked by Mr. Prettyman——

The CHAIRMAN. I asked you to tell me whether you pled it and you didn't reply. You are making a controversy out of a noncontroversy because I asked you as the counsel for Mr. Jenrette to advise me as to whether you ever raised the question.

You remained quiet on the matter. Therefore, I think now to make a controversy between me and you on something I asked you whether you had done is to look for controversy.

Mr. ROBINSON. No, sir. Mr. Chairman, I think sometimes, with all due reference, that you are too sensitive to my statements. Just because I make controversial remarks about Mr. Prettyman, I am not coming in here and being controversial about you, sir, or anyone else on the committee.

The CHAIRMAN. I am asking you now.

Mr. ROBINSON. I say Exhibit X, which was our motion which we read as a motion by Congressman Jenrette to deliver preliminary inquiry or in the alternative to defer disciplinary hearings raises due process at page 2, in which we not only talk about due process, but we cite all the law in the Twigg decision and all the cases of Archer and so on.

The CHAIRMAN. Did you ask anything to be done on the basis of that?

Mr. ROBINSON. Yes, I believe we did. We asked that the hearing be delayed until due process is determined.

The CHAIRMAN. In another court.

Mr. PRETTYMAN. That is the point, Mr. Chairman. He didn't ask this committee to decide the due process rights. He asked for a deferral until those rights had been decided by a court.

The CHAIRMAN. That is correct. We turned that down.

Mr. PRETTYMAN. That is number one.

Mr. ROBINSON. Who turned it down?

The CHAIRMAN. The committee turned it down. Didn't we deny that motion? We denied the motion to defer until another court had taken action on an issue which you cannot raise in this committee.

Mr. PRETTYMAN. Number two, if the committee saw fit to allow him to raise a due process motion orally now, I would strongly urge you to deny the motion on the grounds that I have stated, that such a motion goes to governmental misconduct, goes to what the government did.

It does not go to the things that Mr. Jenrette was shown to have done and said on these tapes, which is what this committee is interested in.

This committee's job is not to find out whether somebody improperly acted on behalf of the government.

Mr. STOKES. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Stokes.

Mr. STOKES. Mr. Prettyman, isn't Mr. Jenrette before this committee by virtue of Rule 14?

Mr. PRETTYMAN. Yes, sir.

Mr. STOKES. And doesn't Mr. Jenrette have pending in the trial court a due process hearing relative to his conviction?

Mr. PRETTYMAN. Yes, sir.

Mr. STOKES. And if as to the case of the other two gentlemen in Philadelphia, where Judge Fullam has just vitiated their convictions, in the event that the same were to occur in Mr. Jenrette's case—that is, in the event that the court were to find that the government did overreach and set aside his conviction—would that not then affect the Rule 14 procedure by which he is before this committee, which requires a conviction?

Mr. PRETTYMAN. No, sir, not in my view. I will tell you why.

In the first place, of course, such a ruling is subject to appeal. Judge Fullam recognized that he is framing his opinion in a way so that it can be appealed. I am sure, I have been told that the government is appealing. So, we don't know whether we are going to even have a final decision one way or the other in that case.

But assuming, I think your question really goes to, if there was a final decision in this case, that in fact, Mr. Jenrette's due process rights were violated, and that the conviction was vitiated, would we be properly under Rule 14. I think that is really what you are going to.

My answer is yes, it would, for this reason. Rule 14, as this committee has interpreted it, means that once there is a jury verdict of guilty, regardless of what eventually happens to that jury verdict, you are automatically into a Rule 14 proceeding. You have to conduct, as a matter of fact, a Rule 14 proceeding.

The language is mandatory, once the jury verdict comes down. You have not interpreted that rule to mean that you are going to come back later and overturn your decision if the jury verdict ultimately is vitiated.

The reason for that I think makes good sense; that is, that all the jury verdict does, it does not say that there is going to be a sanction against Mr. Jenrette. It doesn't say he is going to be expelled from the House or censured or anything else. All it does is trigger a hearing.

What you have decided is that for most purposes you are going to use the trial record as the evidence of what occurred to determine whether Mr. Jenrette acted in a way which violated the House rules.

Now, whether or not his conviction is ultimately vitiated is really irrelevant because you, this committee, has then made its own decision as to whether that conduct, which is reviewed, violated the House rules, and requires sanctions. Consequently, the ultimate decision is totally irrelevant, in my view.

Mr. STOKES. Well, the jurisdiction of this committee is invoked by virtue of the conviction, is it not?

Mr. PRETTYMAN. Correct, yes, sir.

Mr. STOKES. It would just seem that out of common ordinary fairness, if a conviction is vitiated, obviously you would not then give the same kind of consideration to penalizing the member of Congress that you would in the event the conviction stood.

Mr. PRETTYMAN. Well, Mr. Congressman, I would remind you, sir, that you faced that very question in the Myers case when there was a motion to defer until the entire proceeding had run its course. As I understand the committee's ruling and its interpretation of Rule 14, there was no necessity to wait to see what happened, whether the conviction was overturned or not, because all the conviction did was to trigger a hearing.

It was a mechanism simply for triggering a hearing. Since you then went ahead and made your own decision, it was really irrelevant. You turned down deferral motions precisely on that ground.

Mr. STOKES. Well, the committee did.

Mr. PRETTYMAN. Yes, sir.

Mr. STOKES. This member didn't.

Mr. PRETTYMAN. I am speaking of the committee. So your question has already been answered by the committee, if I may say so.

Mr. STOKES. If I can just raise another question, Mr. Chairman, without taking up too much time.

I would be interested also, Mr. Prettyman, in your counterargument to Mr. Robinson's argument on the question of the proffer of Mr. Stowe's testimony or the actual receipt into evidence of Mr. Stowe's testimony through Mr. Major, would be violative of a Supreme Court decision, and also on the question of whether the admission of the damaging testimony by Stowe against Mr. Jenrette would then trigger the necessity for this committee to extend itself into the 25 volumes in order to look at any exculpatory material.

Mr. PRETTYMAN. I quite agree with Mr. Robinson that Bruton and other cases would indicate that where a co-conspirator does not testify, it is improper to bring hearsay testimony by other witnesses as to what he would say in a court proceeding.

My answer to that is that, first of all, this is not a court proceeding and this committee is not bound by the rules of a court. But secondly, that this situation, the posture that we are now in, is a little bit different than the ordinary court proceeding; namely that it was Mr. Robinson who attempted to force Mr. Stowe's testimony before the committee.

I should say to you, despite what he has said, that if his remarks were interpreted as meaning obviously that that testimony would be helpful to his side, that statement stands on the record. It seems to me at the very least I should be allowed to make a counterstatement which would be a proffer of testimony, even if that is all you allow me to do, it would be a counterstatement, which itself would not be evidence, as to what Mr. Stowe would testify to if I were allowed to bring the witness to the stand.

I also think that, as I say, this committee is not bound by strict standards as courts are. It really can take any evidence I believe that it thinks relevant.

As to the 25 volumes, I don't think it has anything to do with the 25 volumes. The 25 volumes again does not relate to what Mr. Stowe said. It relates to alleged governmental misconduct. It relates to alleged governmental misconduct. It relates to the due process point again.

I have gone through that for you. As you know, I think that is totally outside the relevance of what is before you.

Mr. STOKES. If I have just another moment, Mr. Chairman, with the indulgence of the committee, the question of the admissibility of the affidavit, assuming that the committee was willing to accept this affidavit, isn't the question raised with reference to Mr. Jenrette of the fact that on the application of the Fifth Amendment rights that Mr. Stowe would have, if Mr. Stowe were present here in the room, wouldn't Mr. Robinson on behalf of Mr. Jenrette have the right to ask him certain questions which he would not even be entitled to invoke the Fifth Amendment for?

Mr. PRETTYMAN. Well, I don't know because his own counsel will advise him whether he will even give his name or not. His own counsel would advise him whether it was in his interest to answer any question, even something that would seem to be entirely irrelevant.

That has been done in many cases where the man says anything at all it might well incriminate him.

I would simply remind you, Mr. Stokes, it was you yourself that invited the letter, so to speak, when I asked you whether it would satisfy you, and you replied that it would.

Mr. STOKES. Yes. I have no problem with the fact that that was my statement with reference to what might satisfy me. But I am not the one here who stands to be sanctioned. Obviously the one who stands to be sanctioned has certain rights before this committee. What I might accept as a committee member might be totally unacceptable to the man who stands being sanctioned by the Congress. It just seems to me he has certain rights he can raise here that I cannot waive on his behalf.

Mr. PRETTYMAN. Don't we have a rather practical problem? We had a trial at which Mr. Jenrette chose to testify. Mr. Stowe chose not to testify. He invoked his Fifth Amendment rights and he did not even give his name, he did not get on the stand, he did not choose to testify.

His attorney then thereafter informed me that under no circumstances was he going to testify about anything. This committee chose not to accept that. It wanted something in writing under oath from the witness. Now he has given it to you.

What more do you really need? Do you need the man up here in order to swear him and have Mr. Robinson ask him a question and invoke his Fifth Amendment rights in order for Mr. Jenrette's rights to be fully taken care of?

I don't think you do. I don't think you do at all.

Mr. STOKES. In the absence of Mr. Stowe, wouldn't you have some problem with having Mr. Stowe's testimony come in by way of Mr. Major rather than by Mr. Stowe himself, or Mr. Jenrette would have the opportunity to cross-examine him? He can cross-examine Kirby, but that is not the same as cross-examining Stowe, is it?

Mr. PRETTYMAN. That is exactly right. I agree with that. He can cross-examine Mr. Kirby all he wants to about whether these statements were in fact made.

Mr. STOKES. Thank you, Mr. Chairman.

The CHAIRMAN. Any further statements anyone wants to make? If not, we will go into executive session.

[Whereupon, at 11:50 a.m. the committee proceeded in executive session.]

AFTERNOON SESSION

[Whereupon, at 2:30 p.m. the committee proceeded in open session.]

The CHAIRMAN. The committee will come to order.

We are in open session.

The committee in executive session, acting on the Stowe affidavit, on a motion by Mr. Sensenbrenner, a motion to accept it, voted to zero to accept it.

On the motion by Mr. Sensenbrenner to deny the admission of the 302s, by a vote of eight to one it was denied; in other words, the 302s were not allowed in.

On the request by Mr. Prettyman to proffer a statement on the 302s, on a motion by Mr. Sensenbrenner to deny, the vote, eight to one, it was voted in accordance with Mr. Sensenbrenner's motion, to deny that.

Then on the action on the Robinson motion, Mr. Sensenbrenner moved to deny that motion. By a vote of five to three the motion carried.

So, we are now at the point of hearing from the counsel in the final arguments in this preliminary matter, unless at this time Mr. Jenrette wants to speak, or he can wait later if he wants to.

Mr. ROBINSON. Mr. Chairman, before you get to that point, may I raise a matter.

I just received—once again, seeking guidance, I suppose—I just received in a sealed envelope some documents that were brought to my office from Mr. Weingarten, who was one of the prosecutors in the case before Judge Penn. These are documents that came from the file on the John Jenrette case, which the government denied existed at the trial level.

During our due process hearings on November 18, 1980 it was revealed for the first time that there are 25 volumes, which I have referred to many times, I know.

In these particular documents is a request by the government to Judge Penn that two of the three documents be kept under seal. We feel that this committee should have an opportunity to review these documents because they clearly show perjury, in my view, of two of the leading witnesses in the trial level in the government's case. They have been turned over to us under the Brady versus Maryland doctrine.

The government said that they don't want documents A and C revealed publicly at this time because there is an ongoing investigation somewhere on somebody, whatever that means. I certainly would not want to release any documents the government says should be under seal until I get clearance from Judge Penn.

I don't know whether I could place a phone call to Judge Penn and ask for permission to have them submitted in camera to the committee. I do feel it is significant that we just got these, and I do feel it is important when it shows they deal with the actual targeting of John Jenrette and payments to Mr. Weinberg, and it deals with some major contradictions we feel in the transcript of what testimony was offered by Amoroso and Weinberg at trial.

So I guess what I am asking is would the committee give me the opportunity—and I just got them about two or three minutes before Your Honor called this meeting into session, or whatever—but anyway, I would like to be able to try to get in touch with Judge Penn and see if I could have those turned over in camera to the committee.

Mr. Kotelly is not here. I understand from Mr. Major he won't be back this afternoon. He did not have them here this morning, or otherwise I could ask Mr. Kotelly if he has any objection to the committee having them.

The CHAIRMAN. I would like to hear from the other side.

Mr. PRETTYMAN. I obviously can make no comment in terms of relevance because I have not seen the documents. I think as a general proposition, since the committee has opened up the record to include at least one attempt at material beyond the record, since it is a limited number of documents, and since Mr. Jenrette feels they are helpful to them, I personally have no objection, reserving any objection, without agreeing that they are necessarily relevant.

I think the committee would be well-advised to allow them to come in.

The CHAIRMAN. Well, then, without objection they will be allowed, but their relevance is still open to question.

Mr. ROBINSON. In other words, they will be allowed, but I have to get clearance from Judge Penn before I can proffer them. They are under seal, as I understand it, with Judge Penn. If I were to submit them here now even in camera, I may be in contempt with Judge Penn, if I didn't get authorization.

The CHAIRMAN. Well, you will have to submit them before we allow them, of course. There is no way of allowing them to be in the record without your submitting them.

Mr. ROBINSON. I am asking that the committee recess long enough right now to let me make a phone call to Judge Penn's chambers and see if I can get permission to submit them in camera to the committee.

The CHAIRMAN. Well, I will allow you—how many minutes do you want?

Mr. ROBINSON. If I have the right change, I could probably be back within seven minutes.

Mr. PRETTYMAN. I have some change.

The CHAIRMAN. There is a booth right across the hall. I will allow you seven minutes.

Mr. PRETTYMAN. Mr. Chairman, may I suggest in view of your rulings you adjourn the subpoena so that the FBI agent can be excused. He was waiting to testify. In view of your committee's vote——

The CHAIRMAN. Yes, there is no reason for you to stay, unless you want to stay.

[Brief recess.]

The CHAIRMAN. The committee will come back to order.

Mr. ROBINSON. Mr. Chairman, thank you for the opportunity. I just spoke to Judge Penn on the phone and advised him of the problem. Judge Penn has asked me to convey to the chairman and to the committee that he has no objection to me submitting in camera the parts that deal only with Mr. Jenrette, and to make copies that delete the

reference to any other people other than Mr. Jenrette in these documents.

So, if possible, during any recess or whenever you want to do that, I could do that. I notice there is a machine in back of this room, a xerox machine. We could make copies available.

Mr. PRETTYMAN. Do I have the right to see it?

Mr. ROBINSON. Yes, absolutely. Everyone that is a party can have it. What I will have to do apparently is I will have to make a copy of this and then white out what parts that no one can see, and then make copies for everybody, what the judge says you all can see. That is going to probably take about 20 minutes, I would think, to do all that.

Mr. PRETTYMAN. May I suggest, Mr. Chairman, that we go ahead now, present our arguments, and then recess and allow him to produce that, and then if necessary we can address the new information.

The CHAIRMAN. That would be a way to expedite matters.

Mr. ROBINSON. I have no problem with that other than the fact that I wanted to be heard on a couple of other matters before we get into summations. The one point with regard to what Mr. Prettyman suggested, the only problem I have with that is that at some point I would like to at least be able to submit something in writing or some statement in the closed session indicating what the significance of these documents are, in my opinion, because to not be permitted to comment on them would be a waste of time to put them into evidence.

The CHAIRMAN. Does it have to be in a closed session?

Mr. ROBINSON. My problem is that any reference to just what is in these documents would have to be in closed session, if the judge has ordered that part be kept in camera. I have no problem with us discussing in open sessions what, the bulk of what we have to say is all about. Then, if there is any reference, a two-minute argument on the significance of these documents, we could do that in a closed session perhaps.

Mr. PRETTYMAN. May I make a suggestion in that regard?

When he submits the papers to the committee, the committee reviews them, I think the committee can make a judgment as to whether it needs argument as to their relevance. If it does require argument, then we can go into executive session and the parties can be heard.

I have a feeling that the committee, having reviewed as much evidence as it has, the documents will be self-explanatory. If that is not so, after we get through our argument, the committee can review the documents.

The CHAIRMAN. Do you have an associate here that could help you with that, so we could go forward? It is kind of hard—business is transpiring on the Floor right now. It is kind of hard to be totally absent.

Mr. ROBINSON. Yes, I understand that. Mr. Hart is in Texas.

The CHAIRMAN. All right.

Mr. ROBINSON. That is the extent of my firm.

The CHAIRMAN. You certainly in ten minutes could white it out and, you can do that in the next door room, I am sure, and then somebody else could run it off for you on the whited out part, couldn't they?

Mr. ROBINSON. Yes, sir. Is the chairman suggesting doing that now?

The CHAIRMAN. Yes. I see no other way to do it.

At 3:00 we will come back. We will expect you—it won't take you that long to white it out. Why would it take you until 3:00? It is only

about 10 or 15 pages, isn't it? You know what you can white out, and you don't have to be in there to run it off. Somebody else can run it off for you.

Mr. Kelly, will you go with him, then, and help him get it set up? I guess we will have to recess until 3:00.

[Brief recess.]

The CHAIRMAN. Mr. Robinson.

Mr. ROBINSON. Judge Penn just called me here and has asked me to get the whited-out copy over to his chambers and he will review it and he will let us know by tomorrow morning whether I can release it in camera to the committee. So, we can proceed to whatever the committee wants to do at this time, but I have just been advised by Judge Penn not to release these documents until tomorrow.

The CHAIRMAN. The action was conditional on your submitting it. We do not want to delay the trial for something that is this late in the date. If it gets here in time, I will present it to the committee. It might never get here. If it gets here in time, we may present it to the committee, and we may not. The committee can decide on it. At this time we will proceed as we announced we will proceed.

Mr. ROBINSON. Does that mean nothing else will be submitted after these summations?

The CHAIRMAN. We gave you several opportunities to make several requests.

Mr. ROBINSON. I would like to get the memorandum and order in the record.

The CHAIRMAN. The committee has it already. Most of us have read it. I move its admission as an exhibit.

Mr. PRETTYMAN. I object on the grounds of relevance. I do not think there is any place in this case for it as an exhibit.

Mr. ROBINSON. It deals with the interpretation by a Federal judge who has heard more of the ABSCAM in its totality than anyone else in this courtroom.

Mr. PRETTYMAN. Mr. Chairman, I withdraw my objection. We will take more time talking about it.

Mr. SENSENBRENNER. I object. It is not relevant.

The CHAIRMAN. We could take a vote on it by a show of hands.

All in favor of letting it in, raise your hand.

All opposed.

Three in favor, four opposed.

So it is not allowed.

Mr. Prettyman.

Mr. PRETTYMAN. Mr. Chairman, if it please the committee, the trial record in this case is almost 5,000 pages long, a 22-day trial. With the committee's permission, at the end of the hearing I will give the committee and counsel for Mr. Jenrette a detailed summary. I will offer here a short view of the overall evidence I regard is urgent.

On June 13, 1980, Representative Jenrette was indicted on two counts of bribery, one of conspiracy in violation of the bribery statute.

The first count charged from November 15, 1979, until February 2, 1980, he and one John Stowe conspired to violate the bribery statute. It was alleged that as part of the conspiracy, Jenrette and Stowe would agree to receive $100,000 in cash. Jenrette in addition was to demand a substantial amount of money as a loan for Stowe to purchase a muni-

tions plant in South Carolina and would agree to receive $50,000 immediately which they would share and $50,000 for a Jenrette loan after the private immigration bill had been introduced. Stowe would collect for Jenrette an additional $125,000 in return for Jenrette's promise to influence Senator Strom Thurmond of South Carolina to introduce a similar private immigration bill.

The second count alleged that between or about December 5 and December 6, 1979, Jenrette, aided and abetted by Stowe, corruptly received a sum of money for himself and Stowe in return for Jenrette introducing a private immigration bill in the House.

The third count alleged between January 7 and January 28, 1980, Jenrette, aided and abetted by Stowe, sought and agreed to receive a sum of money in return for Jenrette's causing Senator Thurmond to introduce a private immigration bill in the Senate.

On January 7, Anthony Amoroso, a special agent of the FBI, was directed to move from Washington to Florida, where he was given Mr. Weinberg's name. He met Mr. Weinberg there. Mr. Weinberg acted as an informant, a con man who had been engaged in various nefarious practices dating back to his childhood.

On April 18, 1979, Weinberg and Stowe had a telephone conversation in which Jenrette's name was first mentioned. Also discussed was a munitions plant in South Carolina, AG&P—American Gear & Pinion—which was in financial trouble and in which Stowe had an interest.

The next month in a recorded conversation, Stowe said he talked twice to the Congressman, that the Congressman had to be damned careful, in his words.

May 13, 1979, Weinberg told Stowe that "Yassar"—one of the fictitious sheikhs involved—"Yassar has plenty of money, all right. Arabs like to have friends in high office and Yassar said definitely we would help him."

Jenrette, in a recorded telephone conversation, Stowe told Weinberg everything is set up with the gentleman in Washington. The gentleman in Washington was identified at the trial as Jenrette. The meeting was arranged for noon, August 6, in Washington. It was later discovered the meetingplace of the August 6 meeting had been changed to the Congressional Dining Room and DeVito signaled Weinberg to cancel the meeting because he was afraid he would be recognized.

On December 15, there were a number of telephone calls. In the first one, Weinberg beseeched Stowe to contact Jenrette to determine whether he would help out in having a private immigration bill introduced. Weinberg promised Jenrette would receive $50,000 up front, 50 when the bill was introduced.

In a following conversation, Stowe said a meeting was arranged for December 3 at the Georgetown Inn between Weinberg, DeVito, and Stowe. The second meeting was arranged for the following day, December 4, at which Jenrette would meet DeVito and DeVito would bring with him the $50,000.

On December 3 another meeting was held in the Georgetown Inn between Weinberg, DeVito, and Stowe. DeVito was told that "Johnnie was" quote "in financial problems and was looking for some help" quote. Weinberg said that he had promised, quote, "$50,000 now and $50,000 when the work was done."

DeVito explained again about the possible might of the Arabs and asked Stowe to talk further with the Congressman to make sure he wanted to go forward.

The next day, December 4, Jenrette had either lunch or drinks with Stowe at the Monacle Restaurant; although Jenrette claimed there was no mention of $50,000, he conceded that Stowe discussed along with AG&P problem of citizenship and Stowe said "these people just wanted to meet someone in Washington" and said that "they might at some point in time help me financially if I need help or do me a favor."

That evening Stowe picked up Jenrette and drove him to a house on W Street the FBI was using in its ABSCAM operation. The discussion there was videotaped.

Legislation was discussed by both DeVito and Jenrette. DeVito explicitly referred to $50,000 now and $50,000 when the legislation was introduced.

Jenrette then entered into a series of excuses for not taking the money that evening. It finally came down to the fact that he wanted to wait until his attorney, Edward Bennett Williams, found out from Attorney General Civiletti whether certain other matters potentially pending against Jenrette were to be dismissed. Also he expressed concern if he took the money and had to return it because if he did not return it, Stowe would nevertheless feel that he should retain his share of the money. At one point in the conversation Jenrette admitted that he "had larceny in my blood."

There were six telephone calls the following day. In one, Stowe reported Jenrette said okay. In one, to come see DeVito that night and Stowe would take care of the delivery. DeVito made reference to the $50,000. Stowe said Jenrette surprised him by saying yes, because Stowe felt Jenrette wanted an attorney to handle the matter.

In still another call, Jenrette said I think we are already in the same way we were last night and I am ready to go forward. During the conversation, Jenrette asked, are all the documents you have clean as far as numbers and so forth? Stowe confirmed this.

In a following call Jenrette told Stowe he had to leave Washington and he advised Stowe to take it, saying we have got these ethic rules about the amount of money we can make. If my friend of 20 years asks me to do something, i.e., introduce the legislation, I am going to do it.

Stowe went late that afternoon to the house on W Street and was videotaped. He explained that Jenrette was scared, his best friend was facing a jail term. DeVito asked "When you get back to him, at least have him call me back or write and verify, all right?"

Stowe replied, "Sure will."

The money, $50,000, was then delivered to Stowe.

At about 6:15 that evening, Jenrette called DeVito at the W Street house. DeVito asked, "You got the package from John?"

Jenrette replied, "Everything is fine. I will do my share."

Jenrette testified in regard to this tape that Stowe came back to his office, put bills on his desk, and said they were $10,000. Jenrette knew Stowe had gotten the money from DeVito. According to Jenrette, Stowe asked Jenrette to hold the $10,000 for Stowe and Stowe then insisted on having his director of staff services to prepare a note for $10,000 payable to Stowe.

December 8, 1979, in a recorded call, Stowe said that he had received a call from Jenrette who was in trouble in Myrtle Beach over a golf course and needed $130,000. Weinberg replied that he had to talk to DeVito, who was out of the country. Two days later, December 10, in a call, Jenrette confirmed he needed $130,000.

On January 7 a meeting was attended at the W Street house by Stowe, DeVito, Weinberg, Jenrette, and an agent identified as an accountant.

The conversation turns to Jenrette's problems. Later Jenrette asked, when do you think your people will be coming over? He thought he had a Senator who would help. He identified him as being Strom Thurmond, but he was damn expensive. Jenrette said that the Senator would not come to the townhouse, but rather would go along with the legislation, on the word of Stowe and Jenrette.

The following conversation took place. I will only read part of it.

DEVITO. Are you satisfied with the way the 50 was——
JENRETTE. Oh, yeah.
DEVITO [continuing]. Was divided up between you and him? Okay, good.

A little later:

DEVITO. You know we were concerned about the serial numbers and what not. I think there is only one new pack of money, but the rest was, you know, old, old, used money and I just wanted to make sure you felt good about it.
JENRETTE. I will feel good after I finish up what we are supposed to do.
DEVITO. Like I say, I talked with those people over there about this thing, extensively, okay, about helping us out and it's, you know, that I think maybe the price was a little low on the $50,000 and I said, you know, if it would be okay, that when the move had to be made, put another $25,000 on top of that, so I just wanted you to know, okay, that was added on and I just wanted to make sure that everything was okay and——
JENRETTE. Oh, yeah.

Further on in the conversation:

DEVITO. Hundred-dollar bills were a little high, but I made sure they were not in numerical sequence. One pack was in sequence, but there was no problem. But as long as you are happy with it, it is okay.
JENRETTE. Okay.

The conversation ended with a promise of a call to Senator Thurmond and a mention of a doctor in the Philippines who was helped by the Senator.

On January 25, Weinberg called Stowe. Stowe made a reference to Thurmond, said Jenrette had lunch with him, that "the Senator would go along with anything to help me, in other words, whatever he wanted he would do. However, this guy won't go the way John did, it has to be done in private."

When Weinberg asked whether the Senator will take the money, Stowe replied, "He will take the money, right."

Stowe said DeVito could not even talk to the Senator about the matter.

On the same day, January 25, Jenrette acknowledged making a call to Weinberg and talking about Senator Thurmond introducing legislation.

Three days later, January 28, Jenrette told DeVito, Jenrette was talking about $125,000 in view of the fact that is what he got for helping the Philippine doctor. DeVota replied as soon as something was

introduced, that amount would be guaranteed. It was indicated the deal had changed between that arranged with Jenrette. Now, no money had to be forthcoming until a bill was introduced. All this happened on January 2, when the ABSCAM matter ended.

Senator Thurmond and his secretary testified and denied having anything to do with ABSCAM or being told about legislation. They said an appointment had been set up with Mr. Jenrette but he did not show up for the appointment. Mr. Jenrette admitted he had lied in his conversations with Mr. DeVito about Senator Thurmond. Senator Thurmond also denied taking any money from any doctor from the Philippines or otherwise.

Jenrette relied on a number of defenses. One of his primary defenses was that he was an alcoholic and because of this disease, he did not have the requisite intent to commit the crimes charged against him. There was testimony from a large number of witnesses on this issue, including a government expert who had reviewed the tapes and who testified that during key parts being videotaped, Jenrette was aware of what was going on. There was also testimony that he showed no fear from witnesses including his own wife, that he showed no fear of mobs and suffering physical damage and had no paranoia.

The jury was instructed consumption of alcohol could be considered as a cause for him not having a requisite state of mind, namely, a specific intent to commit the crime.

Another one of Jenrette's defenses is that he never received $50,000. He received $10,000 which he was holding for Stowe for his purchase of AG&P. He also testified after a period of time that he gave $10,000 to his wife to give to her parents and his wife testified she received $10,000.

Finally, Jenrette pleaded a defense of entrapment. The Court instructed the jury to regard to this defense and stated were that not to be true the jury was to return a non-guilty verdict. The jury returned a verdict of guilty.

At the committee's hearing is a copy of the records of the Schick Center on Alcoholism. The records dealt with Mr. Jenrette's alcohol problems which I have referred to above and fully covered.

The committee also received certain insurance documents which had been introduced at the trial and considered by the jury. Jenrette argued these records showed he was putting his affairs in order because he feared for his life.

Jenrette's next exhibit was a tape recording made by Mrs. Jenrette when he was confronted by the FBI. Large portions of this tape are inaudible or virtually inaudible. Nevertheless, Jenrette principally relies on the fact that when he was told DeVito was an FBI agent, he replied, "I am glad."

When Jenrette's counsel failed to point out to the committee is that prior to that statement, Jenrette had denied receiving any money and had even denied having called DeVito. In other words, his "I am glad" was consistent with his statement, "I am innocent."

Jenrette also introduced a videotape dated December 5, 1979. Even assuming the voices are those of Stowe and Weinberg, no witness has authenticated this. Special counsel submits there is nothing on this tape which conflicts with the basic evidence. It deals essentially with the meeting Weinberg had planned to have with Stowe.

The next piece of evidence was a tape of December 9.

There are two final pieces of evidence, one an audiotape, one of a telephone conversation sometime in early February, 1980, after ABSCAM had broken. Jenrette's counsel claimed this tape exonerated his client because when Jenrette said he never took any money, Stowe, instead of putting forth a denial or correcting this, replied, as I interpret the tape, "Well, anyway, I think we both better get attorneys and let them discuss it together."

What counsel failed to note for the committee were two facts that he had revealed to the district court when he attempted to introduce this same tape at trial. First, that Jenrette had placed the call to Stowe; and secondly, that Jenrette himself had taped the conversation. Moreover, during the conversation, Stowe stated his convictions that "The lines are wired," meaning wiretap by the Government. Therefore with Stowe assuming he was being recorded and Jenrette knowing he was being recorded, because he was recording, it is hardly surprising that their conversation was of a self-serving nature. This was the determination reached by the district court.

I agree with the Government, it is self-serving, but the court went further: "I am not even sure it is helpful to the defense, especially after hearing the tape."

What the court may well have had in mind is that Jenrette admitted on the tape that he was in major trouble, that the charges were very serious, and that the paper, meaning the $10,000 note which Stowe had forgot and left in his office would prove to be a great help. The Government contended that the entire business of the note was devised to be a sham by Mr. Jenrette in saying this is how we will cover up.

In summary, none of the evidence submitted diminished any of the evidence against him at the trial.

Under rule 14, the committee is required to determine whether one or more offenses were committed by Representative Jenrette over which the committee has jurisdiction. While each case coming before the committee must be individually considered and not decided on the basis of the conclusion reached in any other case, it is nevertheless a fact that the Jenrette record bears striking similarity to that in the Myers case.

Special counsel's recommendation in this case would be the same as in that one insofar as proceeding to the second or sanction stage of this proceeding.

The most basic difference between the two cases is that Jenrette did not personally take the bribe money from the FBI undercover agent. However, the evidence seems clear that he used a middleman, Stowe, to pick up and deliver the money, not out of a sense of decency or decorum, but rather as an attempt to seal himself off from a charge of bribery. He confirmed in a telephone call immediately after the Stowe pickup and in numerous conversations thereafter, particularly January 7, that he had received the money. He even showed concern over the serial numbers of the bills. The basic offense was no different that if he had taken the money personally.

These are the same elements of defense, entrapment and alcoholism, as are found in the Myers case. It should be noted that not even Jenrette

claims to have been intoxicated. However, the Government's expert on alcoholism, while acknowledging that Jenrette certainly was an alcoholic, strangely acknowledged that during the key videotaped segments, he was aware of what he was doing. Special counsel's conclusion is that these are justified by the record as a whole.

There is an added dimension in this case not present in the Myers case. Here, Jenrette attempted to obtain $125,000 on the false claim that he would in turn bribe a U.S. Senator. Jenrette admitted his claims in regards to Senator Thurmond were false. His actions in regard to this matter alone would appear to demand the most severe sanctions of the House. There is no avoiding the fact that as Agent DeVito said, "I made the offer; at any time, he could have walked out." And as Agent DeVito also said, "Jenrette demonstrated the qualifications in his mind for greed." The record clearly shows this greed in a pattern of conduct which violated the most basic rules and principles of the House.

Accordingly, special counsel for the committee concludes on the basis of the overwhelming evidence in the record that Congressman Jenrette is guilty of acts which would include: violations of House Rule XLIII, clause 1, clause 2, and clause 3, and I will also draw your attention to rule 5 of the Code of Ethics of the Government Service.

Thank you very much. To the extent I have time remaining I would reserve it for rebuttal.

The CHAIRMAN. You have ample time. You have an hour or more.

Mr. Robinson.

Mr. ROBINSON. Initially, I would like to comment that we have been unable to present further evidence which is obviously what we would have liked to have done here. The committee has had its votes and rules so we are here, obviously, over objection to being here in the first place; and in the second place, to not being permitted to try to prove the things that we feel would shed proper light on these facts with which this committee will have to vote.

I would like to initially state, on page 49 of Judge Fullum's decision which is before the committee, it is something which can be cited I submit as authority for review, especially in view of the fact the chairman has indicated the committee members have a copy of it. There is an important paragraph in the middle of page 49 which states:

> In my opinion, in their zeal to make sure that the defendants would accept the tendered payments, the government agents offered such attractive inducements as to preclude any reliance upon the defendants' acceptance of the money as proof of predisposition. In the first place, the amounts offered were exceedingly generous. Standing alone, the very amounts of the bribes were, to paraphrase the language of the court in *Scriber* v. *U.S.*, *supra*, "a substantial temptation to a first offense."

The judge went on to state:

> . . . it was clear that the defendants would not be asked or expected to do anything improper on behalf of the proposed hotel venture; and they agreed to do nothing inconsistent with their obligations as members of the City Council, working for the benefit of their constituents.

I respectfully submit, that this committee should understand why John Jenrette is here and what it is that he had done which is such an unforgivable sin which is contrary to what any other committee mem-

ber might have found himself doing had he been found in the same unfortunate position Mr. Jenrette was placed in.

John Jenrette was targeted, according to all the evidence, in October of '78, according to a recorded phone conversation.

You say, so what? What has that to do with him taking a bribe? He was at the political peak of his career, in October of '78, running unopposed, financial affairs in order. Everything was good for the man, had a good marriage, was off alcohol, he had a good life. Unknown to him, the FBI was trying to get him to participate in an illegal certificate of deposit matter.

The committee should look at who John Jenrette was before alcohol took over in his life and before the government put such a stress on his life. When John Jenrette, according to all evidence, was not drinking, when he was not having financial troubles, when he was at the political peak, John Jenrette told John Stowe that the certificate of deposit deal, which was being proposed by Mel Weinberg in tape-recorded conversations was illegal, do not do it. That is uncontradicted evidence. So, it shows you who John Jenrette was in 1978, which is important when you decide what to do about this matter, because of something he did or did not do in 1979.

The government says, that John Jenrette never did surface as a name until April of 1979, whereas John Good, supervisor of the entire operation, testified in April that his name was known to him in December of '78. The government testified John Jenrette was not mentioned until November of '79, yet the record will show, Weinberg was given a bonus in May of '79, because of critical evidence he had collected against John Jenrette. All these things are important that is why I feel it was unfair and I am not trying to be critical, but it is unfair to rush into these matters because what you are doing here, if you rule against John Jenrette, if you recommend that he sanctioned and if the sanction is for expulsion and if he takes his place in history as the third member in history to be expelled and it is based on an incomplete record, then it would be an unpardonable sin, something from which he can never recover the rest of his life.

I think it is wrong to try to destroy a man through a vote here based on an incomplete record which would destroy the man, probably more so than a jury verdict. The jury verdict will be satisfied. We will win that, but you cannot set aside an expulsion by one's colleagues up here. I think, to have Mr. Jenrette expelled, would be a very wrong thing to do. The evidence in this case shows clearly and I will stand contradicted if I can be contradicted, it shows, that John did turn his back against criminal conditions and he did go on and continue a pattern of non-criminal activity. Unknown to John Jenrette, Weinberg made 20 phone calls, from October of '78, to May of '79, none of which were tape recorded. There is a reason, I can submit, why this committee can interpret why they were not tape recorded. Because when you are trying to get someone ensnarled, you do not want to leave a trail to show how you did it. The bottom line of all that is in '78, Tony Amoroso became the leading FBI agent on the case. At that time, he got Mel Weinberg an increase from $1,000 a month in pay to $5,000. Mr. Prettyman may argue that it was $3,000 a month. The government paid him by

check, did not withhold taxes, Social Security or Fraud expenses. So, Mr. Weinberg was paid handsomely. He was paid to be a bounty hunter.

In a sense, I am trying to retry the case. Mr. Prettyman brought up matters historically about what the evidence was. I submit for him to recite what the evidence was and us not being able to have this committee look behind what we were trying to do and how the government prevented us from doing it right then before the jury, is an improper avenue to pursue.

John Jenrette was a target of ABSCAM in October of '78. We have a tape recording the committee has a tape recording. They were unsuccessful in that venture.

Amoroso and Weinberg denied knowing who Jenrette was until April of '79 whereas Good, their employer, said they knew in '78. Gunter Askeland in Miami, said he reviewed the tapes and knew there was a Congressman involved whom they were trying to get implicated.

There is no evidence that he ever said anything other than it would be illegal and do not do it. That is important in 1979 as the committee will see on something not in camera, that I can submit to the committee anyway. Weinberg got a $15,000 bonus from the FBI based in major part on the critical evidence he had accumulated against John Jenrette and the fact Jenrette was apt to do favors for the ABSCAM undercover operation. There was no evidence that Jenrette was going to do favors for anybody. In fact the tape recording shows that John Stowe told Weinberg that Jenrette was not interested in doing anything other than introducing you around to a few lobbyists. He will do that. But he does not need any favors.

You will see in the memorandum, the government was giving a $15,000 bonus based on this critical evidence that he was accumulating against a corrupt Congressman named Jenrette.

Amoroso and Weinberg denied they ever did any bounty hunting toward Jenrette. The evidence will show that the committee will see in April and May of '79—let me be sure I do not misstate it, in April and May of '79, that Jenrette was having financial problems; that he was under investigation for some land deal they had been trying to get him on for years but could not. The government denied they knew that. They admitted they knew something about an investigation. The government denied knowing that John Jenrette had financial problems. In the document given us today by the government, two months after the jury verdict, it is shown that the government knew both in the field from Buddy Puccio's office and from Webster's office, that John Jenrette was having substantial financial problems as of May of '79. I can hear you saying so what? Why did the jury say he was guilty? What happened? If you look at the exhibits and documentation in this case, you will see that John Jenrette in July of '79, went to the Schick Alcohol Center. That was not something done so he would have a defense in advance. He was a man having substantial psychological problems with his teenage son, his wife, his marriage and his drinking. He went and tried to get help.

I say John Jenrette is different than any Congressman caught up in ABSCAM, because his judgment was clearly impaired as to what he did or did not do. He was reaching out for help and the government

knew he had a drinking problem and financial problems and knew he was under investigation, which added stress to him. So, if you take a person with a drinking problem, financial problems and if he is under investigation—if you are under investigation, you are under stress and the government knew it and we finally have written documentation, that they knew it. So if the government knew it and they had been after him since May, why did they wait until November? I think Members of Congress should be bothered as to why the government did this because there are many people on this Hill who have a drinking problem. There are enormous stresses up here, that does not justify taking a bribe. We are going to show you why you can begin to question what it is Mr. Jenrette has done, which is so offensive and contrary to what any of you would have done. What did Mr. Jenrette do different than any other Member of Congress would have done, being in the vulnerable position he was in? When the government came calling on him to get him into a compromising position. That is a fear which every person should have. The government has no right, that is what Judge Fullum is saying. They do not have a right to wait until a person is vulnerable, until he has these things that are on his mind that he cannot cope with, then dangle a carrot before him that he wants to devour in order to help his problems.

What Mr. Jenrette did here, is from July on up to December, Mr. Jenrette had a friend named John Stowe. Stowe, I guess, is no different than any other middleman in these cases. Stowe is a pathetic individual. If you look at all the documents in this case—it is hard for me to sit down and talk.

The CHAIRMAN. Stand if you want.

Mr. ROBINSON. I think I will.

The CHAIRMAN. Do not be pressured: do what you want.

Mr. ROBINSON. I do not want you to be persuaded by my impressive gestures.

John Stowe was targeted for whatever reason and it is in the record, back in the fall of '78. All Stowe wanted was to go back to Myrtle Beach and make some money, legitimate money. He also talked about legitimate deals and Weinberg always took him back to the illegal way. You have, John Doe out there. He knows a Congressman and all he has to say is I know a Congressman and he can help. I submit any Member of this committee who has a friend—and John Stowe, here is a man who had been a millionaire before at Myrtle Beach, who had lost his shirt because of bad business decisions. He was at the bottom, he wanted to go back to Myrtle Beach to purchase American Gear and Pinion, which employed five hundred people in John Jenrette's district. That place was about to be closed down. Weinberg appealed to Stowe. "I can get you financing to buy American Gear and Pinion, if you can get a Congressman who can help the Arabs get into the country."

Forget the bribe for the minute. There is not a Member on the committee who if they have a friend who has no shady background and this person has an opportunity to save 500 jobs in that Congressman's home district and all the Congressman has to do is learn about what the problem is and then try to help the Arabs get into the country—there are special immigration provisions as each of you know, if a

person has a substantial amount of money invested in this country in a business, that person can get an exemption to get a bill passed to get a temporary stay or something like that.

The point I am driving at is, that was all Stowe was after. Stowe wanted American Gear and Pinion. He went to John Jenrette to see if Jenrette would help him get American Gear and Pinion. There is no evidence in this case that Stowe ever explained to John Jenrette, before John Jenrette ever got to the December 4 video taping, that John Jenrette knew he was going to be there to be bribed. There is no evidence at all. The only evidence is that John Jenrette, after an hour on video tape, after the three drinks over there, four martinis at lunch and if you look at the video tapes, you will see. I do not say it is a nobleman on there who just got up and walked out of the room. But I submit, not one Congressman or Senator on the whole Hill would have walked out of that room. There is a cunning reason why—because the government set out with the most creative plan to attack the Congress in history. They set out with Mafia images and names and got people in there talking about something legitimate for their home district, which is what John Jenrette did. He came in and talked about a legitimate immigration problem, there was no mention of money. He talked about how you could get people into the country, nothing illegal, of course. He did not know the tape was running at that time. Everything he said was proper. In fact, early in the tape, Mr. Jenrette told Amoroso, "You need money not to pay people but in order to have the business work." Now, that was evidence that was contrary to any consideration of a bribe. If John Jenrette was coming to the December 4 meeting to take a bribe, he would not make a statement that you need money not to pay people but to get the business going. The reason he made that statement is that he had no idea he was about to be bribed. That is why it is important for each of you to take the opportunity to review the video tapes, review the transcripts. I hope you will review the final argument I made in the trial before the jury because I think it was better than what I am going to give you today.

I spoke for some three hours there, outlining every detail of what the evidence was, with whatever confining rulings the court had made, on what would be admissible evidence. But the reason I feel that it is significant is that the only thing John Jenrette ever did, when he was at the December 4 meeting which indicated that he had no previous knowledge about a bribe, was after at least seven incidents on the video tape in which Mr. Jenrette refused the money. He gave me various excuses, every excuse conceivable. Amoroso admitted that. At the end Mr. Amoroso finally got a phone call. After some 40 or 50 minutes, after Mr. Jenrette gave all kinds of excuses, Amoroso got a phone call, then he accepted, look, you have been such a good fellow, I will give you the $50,000. All you have to do is tell me you will try and you can bring it back tomorrow if you cannot help me. I submit that was about as tempting as it could be and all the promise Mr. Jenrette had to make was the promise he would try and he could keep the $50,000.

Mr. Jenrette said at that point, and I paraphrase, he said, I have a problem. I had some of the details laid out to me at lunch today and Stowe is going to want his cut today and I will feel like a fool if I bring you back 35 instead of 50.

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Everyone says that shows knowledge that Jenrette knew there was going to be a bribery discussed. I say it does not show that. I say in the first place Stowe's own statement later on on the videotape after the bribe was paid to Stowe on December 6, Stowe said he got $10,000. Stowe said he got 10 and Jenrette got 40.

I dare say if Mr. Stowe and Mr. Jenrette discussed the bribe and the payoff at lunch on December 4, the very day that the bribe was going to be offered to Mr. Jenrette, that Mr. Jenrette would have had his story straight that he was going to get 40 and Stowe was going to get 10.

Mr. Jenrette's statement here at the end of the day, when he had tried to avoid taking the money, was that the problem is that "Stowe is going to expect his and I don't want to come back short."

Why would Jenrette say that? Jenrette would say that because he thought he was dealing with mob figures. You all may say, well, that is absurd. I mean, it is easy to sit here right now and look at those videotapes and say it is ludicrous to think that Mr. Jenrette thought this was the mob. But why did the FBI use an agent out of organized crime? That is what Amoroso left, the organized crime division. Why did he assume a name, Tony DeVito, with all due deference to any Italian-Americans. Why did Weinberg describe himself as trying to dress like Mafia figures?

That is what the testimony is at trial.

I submit the government did this because they knew if they are going to hold themselves out as Mafia people, it is more difficult to say no to a Mafia person. Anyone can smile or anything they want about that, but I say that if one were to go, if one were to go today to one of the so-called leading Mafia people, the fellow down in New Orleans, Mr. Francese, or some of the other people in New York, who are supposedly leaders of Mafia families, and a congressional member were to sit in the presence of that person, in a townhouse after a couple of drinks, and the person offers you a $50,000 bribe, you are not going to get up and say, "Well, you know, I better go on down and get out of here and go to the FBI," because you are going to think, "I don't like cement."

What did John Jenrette say on December 5 when he talked to Amoroso, after having this bribe under advisement for 24 hours? He said, "I don't like cement, Tony." Why would Jenrette say these kinds of statements? To cover his tracks? He wouldn't make all these incriminating statements about "larceny in my blood" if everything he was saying was to cover his tracks.

Mr. Jenrette had a substantial alcoholism problem. I think that this committee has got to look at that with compassion and with empathy when it considers what to do with Mr. Jenrette because there are many people who function at a different level when they have a drinking problem than they do when they don't have a drinking problem.

The instructions at court about alcoholism as a defense, they were not sufficient. They didn't cover what we think the judge should have covered. But he is the judge and I am a lawyer and that is that.

The main defense at trial was not entrapment. The main defense at trial was duress—duress; that is, that John Jenrette did whatever he

did because he was afraid to do anything else but what he did. The judge took all the wind out of our sails and didn't give the jury an instruction on duress.

John Jenrette came to a meeting on December 4, 1979. At that meeting he began to discuss an immigration problem that would have helped his home district. It would have gotten 500 jobs that were about to be lost to these people down there. He was intoxicated when he came there.

Now, the government had a doctor—Ryback. Dr. Ryback testified he spent 40 hours preparing for testimony at trial, and that in his opinion John Jenrette is not drunk on the videotape.

We called Congressman Rick Nolan, who knows John better than most Congressmen. Mr. Nolan had some personal problems. He had been in the Congress with Mr. Jenrette since 1974. They came in here together as rookie Congressmen.

John had gone to Congressman Nolan to seek guidance as to what to do with his drinking problem before ABSCAM broke. It was after ABSCAM broke that Nolan finally convinced Mr. Jenrette he had to solve his problem, he had to solve his problem.

John Jenrette went into the Bethesda center on the urging of Congressman Nolan. He had drinks with John Jenrette. He knows John Jenrette personally, socially.

John Jenrette was drunk on the December 4 videotape. Mr. Nolan said it, and I submit it is true. Many other people who know John Jenrette, who saw the videotapes, said he was drunk, including the doctors that we called.

Dr. Moser, for example. And the government has Dr. Ryback, who spends 40 hours preparing, who never even sought to talk to John Jenrette. He never even tried to talk to anyone who knows John Jenrette. He said he wasn't drunk, period. Although he does say that when Mr. Jenrette did leave the videotape meeting at the end of the meeting he was somewhat high at that point.

Again you say, well, what has that got to do with anything I say it shows that Mr. Jenrette, being pursued by the FBI since at least October of 1978, at a time when he was not drinking substantially, when he seemed to be on his own two feet and seemed to be doing well, turned his back completely, said don't do it, he said no.

Mr. Prettyman said, Mr. Amoroso said, "Everybody can say no and that will be it." Mr. Jenrette said no. At that point the government should have left him alone under the law of entrapment, fair play, and constitutional government.

They didn't. They stayed on his tail. There was a reason, a reason we couldn't explain to the trial jury. We could not explain why they stayed on his tail. Now we know. Now we know from the documents we got today that Weinberg gets the $15,000 bonus in May of 1979 because of the critical evidence he has accumulated against this criminal, John Jenrette. The government turned around at trial and said they had no interest in Jenrette until November of 1979. Now, that is important.

Why is that important? It is important because Weinberg pursued Mr. Jenrette through Mr. Stowe from October 1978 up until De-

cember 4, 1979, so Weinberg could get his bounty. He was after this money, and the government could care less what it was that Weinberg got, who he got or how he got it.

They were after Senator Thurmond in May of 1979. I dare say their 25 volumes won't have that now because they are just digging like crazy. They didn't reveal they had them until two weeks ago.

But if you listen to the tapes of Senator Thurmond, 57 years in public service, they were asking questions about the Senator, whose name is American Gear and Pinion. Strom Thurmond. That is who Stowe was after. He said, "We can get you 120 percent financing, John Stowe. All you have to do is have the juice. You know what I mean."

He had to almost spell out to Stowe. Poor old Stowe couldn't figure out he was talking about a bribe. Finally Stowe figured it out.

They were after Strom Thurmond. They were after Pete Rodino, Tip O'Neill, they were after everybody. The Congress—I am not trying to put them all on trial for the Congress right now, but I am saying someone has to question how did they get John Jenrette and didn't get these other gentlemen I referred to? Is it because John Jenrette is more crooked? Or did John Jenrette have substantial personal problems that they knew about?

Now, you take yourself, at your most critical, vulnerable moment in your life, when you think the world is going to cave in. You have financial troubles all of a sudden which Mr. Jenrette had coming into the spring of 1979. His campaign manager had been caught in January 1979 with a planeload of marijuana. That is all he needed, coming in, just gotten reelected. And he says the Governor and the U.S. Attorney and John Jenrette are behind it.

So the U.S. Attorney's Office, the Justice Department clears everybody but Mr. Jenrette right away. They say, "We will get into this matter, we will check is out."

Mr. Jenrette wrote asking for an investigation, asked that he be cleared. They cleared him all right. They cleared him by finally getting rid of the marijuana charge but going back into the real estate deal which they had been unable to indict on in 1974, an election year, unable to indict on in 1976, the election year. They went back and are trying to get Mr. Jenrette on that. They check him to see if he was violating the Postal Frank Act. They checked to see if he was stealing stamps. They checked to see if he was using the water line illegally. They checked to see if he was getting kickbacks, like Mr. Diggs was convicted of doing. They did all these things, looking for some way to bring John Jenrette down.

You say, well, if a person is targeted that much by the government he must be some kind of crook, that they spend that much time. I say it is the opposite. I say when the government is permitted to harrass somebody that long, that somebody ought to look at it carefully, to see that this man did not have the kind of criminal attitude that say Mr. Myers may have had when he went on the videotapes.

For months they were after John Jenrette. They could not get him. Now we know that in May of 1979 they knew he had these personal problems, these financial problems, that he was under investigation. They keep trying to get Mr. Stowe to participate in getting Mr. Jenrette to commit bribes.

In fact, there is a May 13, 1979 tape which is in evidence. On that tape Mr. Stowe tells Mr. Weinberg that Jenrette is not interested in any favors. It is the complete opposite of what Mr. Prettyman just said.

If you listen to the April tape, through the May 13 tape, you will see that on, I think, the May 9 tape or May 5 tape Weinberg says look, Yassar has plenty of money. He will help the Congressman. Stowe is not even asking for help for the Congressman.

Stowe gives Mr. Weinberg Mr. Jenrette's phone number in Washington and he says call him, see if you can help him, see what you can do.

Two days later, I think it is the 7th or the 13th of May, Stowe calls and speaks to Weinberg and at that time Stowe says, "I have spoken to John and he is not interested in any help." Now, there again, this is the second time that the word has come to Weinberg, who is the government for all practical purposes in ABSCAM, the second time that word has come back to Weinberg, who tells Amoroso, and they have a tape, that Jenrette is not interested in criminal conduct.

Now, they suddenly have left him alone. But I say it is important to this committee because it shows you two examples before there was a snowballing or a peaking of Mr. Jenrette's personal problems, that at a time when he has some stability, when his feet were on the ground, did say no, like Mr. Prettyman says a decent fellow ought to do.

So, what does the government do? They don't leave him alone. They get a $15,000 bonus for Weinberg and say that Weinberg is still pursuing on a hot trail of this crooked Congressman.

Critical evidence. What critical evidence? Weinberg gets $15,000 more, no taxes paid, and they keep pursuing Mr. Jenrette.

Mr. Prettyman says let's look at the July 11, 1979 tape. I believe Mr. Prettyman said that on the July 11, 1979 tape Stowe said, "The meeting is all set up between you and Jenrette and me." But what Mr. Prettyman didn't tell you, if you look at the record John Jenrette on July 11 was at the Schick Alcoholism Center, being treated for alcoholism. He wasn't even in Washington.

We put into evidence John Jenrette's diary from his secretary that showed on July 12, a day after Stowe had said the meeting is set up with Jenrette, we show that Jenrette wasn't even in the office. He was in Texas, in an alcoholism center, and that Stowe is calling to see if Jenrette and Senator Pete Williams can go to lunch on August 6. That shows you how out of control a Congressman can be taken by a so-called friend like Mr. Stowe.

Here is Mr. Stowe talking, unknown to Stowe, on a tape recorded conversation of July 11, saying to Amoroso and Weinberg that the meeting is set up, which is supposedly the meeting where there is going to be a bribe.

You see, this is important. He says the meeting is set up for August 6. There was no meeting set up. John Jenrette wasn't even in town. He was getting detoxified.

Stowe calls the next day, trying to get a meeting set up for John Jenrette and Pete Williams, which corroborates they were after the Senator, too, all that time, trying to hassle him, trying to create something on him.

There was no meeting. When the meeting was cancelled on July 21, it was cancelled for I think a rather ridiculous reason that I hope the committee will consider.

Weinberg and Amoroso testified that that meeting for August 6, 1979 was cancelled because Mr. Jenrette had wanted to meet in the Congressional Dining Room over here, and that Amoroso couldn't do that because Amoroso knew too many people on the Hill and he might be recognized.

We then put into evidence showing that the Congressional Dining Room closed August 1 for the entire month of August 1979. You may say what has that to do with the bribery. It has to do with the fact that John Jenrette was being manipulated, set up, in an attempt to get him to become involved in criminal conduct unknown to him, and that every time something favorable happened to John Jenrette, the government had no tape recording.

They say they did not tape record the July 21, 1979 meeting which cancelled the August 6 luncheon which never had been set up because the phone was on the front porch in a trailer park and a traveling salesman came to the door and they could not tape record the conversation.

They say they did not tape record the November 15, 1979 phone call, which was the day they say the conspiracy was born, because they didn't have any tape recording equipment in their room at Resorts International.

I know if the members read the cross-examination of Amoroso and Wilmore and Weinberg, they will see that it was not an honest mistake that Amoroso and Weinberg did not tape record that conversation on November 15, 1979, just like they didn't tape record the conversation of July 21, 1979 because they did not want a congressional committee or a jury or a judge to one day hear the degree of inducement that they were participating in to try to set up meetings to see if they could tempt someone into violating the law.

Now we get down to whether or not John Jenrette did violate the law. I think it is important that before December 4, 1979 Mr. Jenrette had—since July of 1979 been into the Schick Alcoholism Clinic three times. Three times he had been in there trying to solve his alcoholism.

Three times there had been attempts to get Mr. Jenrette involved in criminal activity and three times Jenrette had said no. He had said no on the October 1979 certificate of deposit deal, uncontradicted. He had said no in the May 13 Stowe tape recording of 1979. He didn't want any favors. He didn't want any financial help. He had said no, that there would be no August 6, 1979 meeting, luncheon, because he wasn't even involved in the decision which was falsely being claimed to have been made by Mr. Stowe. Three times prior to December 4, 1979 Jenrette has said no. He is not going to become a criminal. Three times he has been trying to solve his alcoholism problem.

What happened? November 15, a crucial date to the government, they don't even tape record the conversation that they made to John Stowe in an attempt to induce Mr. Jenrette, in the clean-up operation.

What is important is this December 3 meeting at the Georgetown Inn. Mr. Stowe went to that meeting supposedly to discuss what the method of operation would be the following day at the townhouse on

W Street. They had their Nagara $3,000 tape recorder working on the body of Mr. Amoroso. You could hear the man whispering back there in the corner, which is all right, but I am just trying to make an example. You can hear anything. You cannot hear anything on that tape except a bunch of mumbo-jumbo.

The reason is because some miraculous way ten minutes into the conversation you can hear Amoroso and Weinberg say, well, does Jenrette know why he is coming tomorrow, he knows why he is coming, doesn't he, and that means he knows he is coming to be bribed. Stowe says no, he doesn't know, he doesn't know.

Now, that is important, when this committee votes on who John Jenrette is, what kind of recommendation to make as to whether or not charges are furthered along and whether or not there will be sanctions imposed on John Jenrette, because John Jenrette, according to Stowe, didn't know why he was coming there on December 4.

So, a fourth time they have notice that John Jenrette has no knowledge that he is about to become a criminal. According to the testimony of Mr. Webster, Mr. Civiletti, Philip Heymann, the head of the criminal division, all these hotshots from the Justice Department who come up on the Hill and lie when they come before the Congress about what they were doing in ABSCAM, the way whenever there was evidence the person would walk away, they left him alone.

That is poppycock. They don't walk away. When they wanted somebody, especially in this Congress, they kept pursuing them. That is what they did to John Jenrette.

I submit it should bother this committee, whether you are Republican or Democrat, liberal or conservative, it should bother each member of this committee that these high ranking officials in the Bureau and the Justice Department can come up here and if they don't lie, they could do a tap dance across the truth.

They come up here and they try to justify ABSCAM, and the way they did things in this case, and it is the furtherest thing from the truth of what was revealed at trial in post verdict that anyone can imagine.

Four times before John Jenrette got to the videotape of December 4, 1979 the FBI and Weinberg had been notified that Jenrette did not know that he was to become a criminal, that he was not soliciting anything, that he was not going to do illegal deals.

Four times through Stowe he had said no. So what do they say to Stowe, a man that they know wants this American Gear and Pinion so bad he can taste it? What did they know when they tell Stowe this? They know Jenrette is an alcoholic. How do we know that? Because Jack Morris testified in October of 1979 he was arrested on a certificate of deposit deal, October 4, 1979.

After that occurred, there was a phone call from Weinberg that told Morris get John Jenrette drinking. He will help us on this CD deal. That is uncontradicted in the evidence. How do we know Weinberg would use alcohol to tempt somebody into breaking the law? Because Congressman Thompson is on trial, going to a verdict tomorrow up in New York.

On an October videotape of 1979, when Congressman Thompson went to a meeting at the townhouse here in Washington and they tried

to give him a bribe, he said he wasn't interested in any money and he left. What did the middleman, Criden and Amoroso, this noble FBI creature, and Weinberg talk about? They said, "He is an alcoholic. Give the fucking guy another drink."

This is our FBI and our Mel Weinberg, that when they have a man like Mr. Thompson, who purportedly was an alcoholic, and he said no to the bribe, and Mr. Prettyman says all you have to do is say no and walk away, you are okay, they won't bother you anymore, Mr. Thompson leaves, what do they do? "Give him another drink."

What happens? We don't know whether he had another drink or not. They bring Thompson back down there and Criden walks out with the briefcase and $50,000.

Why is that relevant to Mr. Jenrette's case? Because we say that is exactly what Weinberg tried to do to John Jenrette through Jack Morris on the certificates of deposit back in October of 1978. But he didn't know Jack Morris was a reformed alcoholic seven years in the program and he said no, take a walk.

So, they didn't get to John at that time. They knew he had a drinking problem. They didn't know John Jenrette had pretty good control over it in 1978. Anyone from South Carolina can know, maybe on the Hill you might know, that off and on over the years John unfortunately has had a drinking problem. It was something that we showed in the evidence was a matter of the litigation on the divorce from his first wife in 1975, chronic drunkeness.

Why is that important? Because on December 3, 1979, the fourth time that Stowe told Weinberg and Amoroso that Jenrette doesn't know that criminal action is afoot, or that Jenrette won't do the criminal action, what did they tell him to do? They told Stowe not to forget the deal, like they were supposed to according to Mr. Prettyman, and according to their testimony. They told Stowe, take him to lunch tomorrow and see if he understands the deal.

Now, I ask you, what do you think an alcoholic does at lunch? What do you think an alcoholic does? You all know alcoholics. You know them up on the Hill, I submit. I dare say they have three or four good solid pops at lunch. They knew Stowe would take Jenrette to lunch and they knew that Jenrette would drink at lunch, and they knew if Jenrette came down to them with a little bit of liquor in his belly on the night of December 4 he would be more inclined or more disinclined to say no while they sit there in their mafia image.

I say this committee makes a decision on who Jenrette is, and what to do with him, this should stick in your bellies and bother you. It should bother you. It should make you not want to do to Mr. Jenrette what you did to Mr. Myers. What Mr. Myers did was wrong. Mr. Myers came in and he opened his pockets and he wanted the money and he came before this committee and admitted that he had done wrong, that he had been unethical.

I stand here very proud that John Jenrette did not take a bribe. I don't care what the jury said. The fact that he turned his back in that videotape meeting for whatever clever reasons Mr. Prettyman wants to assign to him, as many times as Mr. Jenrette turned his back to these FBI agents on December 4, is a confirmation of some high degree of integrity.

I say to your average alcoholic, who needed $50,000 and the government knew it, to pay Edward Bennett Williams for the case in South Carolina, they knew it, it was public knowledge. There has been a story about Rita, who talked sometime in the papers. There was knowledge in the press that Jenrette needed $50,000 for his lawyers. There was knowledge he had a drinking problem. There was knowledge he was about to be charged on some real estate deal in South Carolina. There was knowledge he was going through financial disaster.

What did they come up with on December 4, after four times to December 3 Jenrette has said no through Stowe. They tell Stowe to take him to lunch, have a nice long lunch, and discuss everything, and they come down here and see if we can do business.

So Jenrette comes through half looped on the night of December 4, no evidence to contradict that. No evidence at all. In fact, Doug Wendel, an aide, a top aide to Mr. Jenrette, said on the morning of December 4 Mr. Jenrette was still feeling the effects of a drunk from December 3, when he came to work on the 4th.

Mr. Wendel could recall that because they were having very significant tourism meetings on a caucus Mr. Jenrette was heading on that day. Mr. Wendel was embarrassed that Mr. Jenrette was already almost drunk before lunch, all these big shots coming in from all the many districts across the land. This is important.

The FBI knew John Jenrette had these financial problems. They knew he was under stressful situations. They knew he had drinking problems and needed money. They knew he needed $50,000 to solve his problems with Williams.

I think it is obvious from you having had me up here two days, it is preferable to have him than me as your lawyer. So I think that it is clear that the FBI knew all of these things. They knew it. They sent Stowe to a mission to take Mr. Jentrette to lunch for these long drinking episodes to occur. Then when Mr. Jenrette comes to the meeting on December 4, he says no, repeatedly, for many reasons, to people he thinks are mobsters.

You have to look at it I submit through the state of mind Mr. Jenrette had at that time. If Mr. Jenrette didn't think these were mobsters, if he didn't think that his life was in jeopardy, why did he say on the 5th, "I don't like cement." Why did he get his insurance in order? Why did he pay a $4,400 insurance premium that wasn't even due, if his mind wasn't so screwed up he could not think right?

Mr. Prettyman says Mr. Jenrette didn't function in an irregular way on the Hill at that time. Congress Fauntroy testified he saw it in his eyes, in his breath, his ruddy cheeks, every day, that John was drinking too much this time. People came from all over saying how bad John was drinking at this time, that he could not function.

He could not function, and the FBI knew it. They were wrapping up this case called ABSCAM and they wanted to give Weinberg one more chance to wrap up where they started. They started on Jenrette. I don't care what they say. This case started on John Jenrette. He was the first Congressman ever targeted—period. They did it for reasons I don't have time to explain.

I believe that is covered in part in my final argument before the Jury.

Mr. Jenrette did not take the $50,000.

Mr. Chairman, I respectfully submit that if you review carefully all the evidence of the tapes from October 1978 up through December 3, 1979, and review in your mind what it is that Myers did when Mr. Myers was before the video camera, and what I am sure each of you have read at least in part the testimony of what Mr. Thompson and Mr. Murphy did—they left the room.

I don't know if Mr. Thompson was sober or not, but Mr. Murphy clearly was. They left the room. When they left the room, the money left the room. When Myers left the room, the money left the room. When Mr. Kelly left the room, the money left the room. When Erchetti left the room, the money left the room.

There is a reason for this. The reason is the bribe is not going to be paid unless the person leaves that room. That is a target, when the money leaves the room.

That was the scenario. That is what the evidence in Philadelphia showed in Judge Fullam's case. That was the way that Amoroso and the various agents were schooled to conduct this operation. The money has to leave the room when the target leaves the room. You can say, well, Mr. Jenrette was the most clever of the crooks, he sent the bagman. That is contrary to all the evidence of how reckless he spoke on the tapes. You don't manipulate and think of all the clever ways to avoid leaving the room with the money an talk about having larceny in your blood unless you are drinking.

It is a contradiction. I am not going to go through all the contradictions of the December 4 conversation, but you cannot have it both ways. If Mr. Jenrette is so smart that he is the only guy who left the room and had somebody else pick up the money in his absence, he would not, if he is that smart, and that sober, he would not have been so stupid and so drunk to make all the other statements that were made at the same time that implicate him in such a way.

I say Mr. Jenrette's statements that implicate him are made by a man who is drunk, who is a severe alcoholic, who is trying to solve his problem, that that does go to what this committee's vote should be. I think you should deal differently with a man if he really has problems drinking as opposed to a man who is sober and goes in with a corrupt purpose to take a bribe and sell his office.

I think that is very significant in this case. The law did not permit you to do it in such a crystalized way before a judge and jury. The law in the case of the judge and jury is that you have to find certain things, and if the jury finds those, you cannot let sympathy get in your way.

I am not just saying I want you to give sympathy to John Jenrette. We will take all you can give us. But that is not why I am making these statements. You are going to vote what to do to John Jenrette's reputation in this 96th Congress, I think it is, and what to do with him.

What will history say about John Jenrette? It is one thing if history shows that the jury said guilty and that on appeal we won and that he can come back another day with the voters in his district, and do whatever he wants to do. Whether his career is destroyed, or may rise up again, I don't know. That is between him and the voters. But to put a blemish on him that he should be expelled, or that he should be sanctioned, period, when the case is completely different than that which had been before this committee in other cases, it would be wrong.

I think that one can look at the testimony of Mr. Amoroso, at a very significant point—I don't have the page here, but I referred to it in my final argument. I asked Mr. Amoroso why he didn't offer the $50,000 to John Jenrette just outright, pull it out and offer the money to John. He said, "I didn't think he was ready to take it." I mean, that should bother every member of this committee. It should bother every member of the Congress. You got a guy in there who is talking about immigration, that you have been after for 13 months, 14 months, who has been talking to you for 30 or 40 minutes on a videotape of course unknown to Mr. Jenrette at that time, and the agent says he didn't offer the money because he didn't think John was ready to take it.

That shows you he didn't believe John had a crooked disposition at that point. That is important in you deciding as to what he did. That is very important in deciding what you will or will not do.

I refer to page 4584, is where I spoke about that particular matter in my final argument.

I wonder if we might take a brief recess, and I will conclude after that. I have about an hour and ten minutes, if I wanted to use it.

The CHAIRMAN. An hour and seven minutes.

Mr. ROBINSON. Could we have maybe a five-minute recess? I might be able to consolidate something.

The CHAIRMAN. All right.

[Brief recess.]

I think an important consideration is page 16 of the trial transcript where I questioned Mr. Amoroso:

Will you please tell us what evidence you have which helped you to believe that Mr. Jenrette would become involved with your solicitation that was about to occur?

Answer. The only information I had available were the tapes made between Mr. Weinberg and Mr. Stowe.

That is a very frightening matter which I hope the committee will discuss when it votes, however it decides to vote, because here on November 15, 1979, you had a wild man undercover informant in Mel Weinberg, working with an agent named Amoroso, who permits—now this is November 15, of 1979, keeping in mind, please, that it was in October of '79 that Amoroso had been present when Weinberg had told Criden to give Congressman Thompson another drink despite the fact that he was an alcoholic in order to get him to become more inclined to accept the temptation to take more money. We are not talking about a con man like Weinberg here, who will do anything, sell his soul to six different people in an hour if he has to. But the point is, Amoroso should have a higher standard and he had let Weinberg make this statement in his presence about Congressman Thompson and the bribe. So, that is important when I tell you to review this part of the transcript where I asked Amoroso at trial, page 615, what evidence did Amoroso have at that time to lead them to go after John Jenrette and Mr. Amoroso said: "The taped phone calls between Weinberg and Stowe is all I had at that moment." That is important, because the taped phone calls, if you listen to them, show resistance by Jenrette of any criminal conduct. So all Amoroso had as of November 15 is tape recordings that showed there was no indicia that there would be criminal conduct. That is what they had. Plus they had John Jenrette, who was vulnerable. They had Amoroso, who permitted Weinberg to say

what I have talked about as to Mr. Thompson. But the thing, the right thing here is that the FBI was continuing to pursue John Jenrette as of October 15 when the conspiracy began. There is no evidence that John Jenrette had a predisposition. All we had is a running dispute between Jenrette and the Justice Department. There is not evidence of a predisposition.

The Government then goes after Mr. Jenrette through Mr. Stowe and does not tape record the conversations. If you are going to draw and quarter a man in front of an audience by videotapes, you should have an obligation to tape record the initial contact so the committee and jury can see and hear all the facts, know all the inducement and dispositions and lack of dispositions, before deciding whether or not Mr. Jenrette should be sanctioned in any way in a jury system or this committee session. I think the frightening part here is that the Government, if the Government loses on appeal the way they have lost thus far in Judge Fullum's court and the way they are going to lose in our case. They wanted to get rid of a Congressman who bothered them, which the Justice Department shows Mr. Jenrette did in the cause of poor people in Horry County and other counties down there. The checks and balances system, the position of letting the executive branch have more power than other branches, they can set out and destroy a person. They can make him go to trial on outrageous conduct. If he is convicted, he can have it overturned on appeal, but it will defeat him politically. They have done it to every one of the ABSCAM politicians except for I believe two thus far. One was unindicted in the Congress and one goes to trial in January.

They have successfully defeated people prior to the final determination of whether their conduct was proper. If the Government can do this—I am not asking you to judge due process here. I as asking you to decide who the culprit is when you decide if any sanction should be imposed on John Jenrette. What did he do that was so wrong? For 14 months through Stowe he said no to the offers to become a criminal. During those 14 months, the tide going back and forth make him more of a severe alcoholic, more personal and financial problems. And the Government knew, the testimony of John Good on November 12, 1980, that he knew in November of '79 that Mr. Jenrette's friend in the investigation in South Carolina was going on trial. So the Government can now wait, they can go after a man for 13 or 14 months, know he has financial problems, know he is an alcoholic, know he is under stress, know he had to testify in an important criminal case in which he may be targeted next, and wait until one week before testimony has to be given, then induce Mr. Jenrette, through a call to Mr. Stowe, and not report the phone call.

Then when they come to the December 3 meeting, the $3,000 tape recorder does not work, but it works good enough so we know that Mr. Jenrette did not know why he was coming to the meeting. Rather than saying he is not interested in a criminal venture, they send Stowe out to have lunch with him and ply him with liquor.

Why do they have three bars in the townhouse? Why were they permitted to do this? Does this not give you cause to wonder why they can have a townhouse in Georgetown with an FBI agent as the bartender, send the middleman, Stowe, with the man who is a known

alcoholic, who will drink at lunch, bring him there that night and talk about immigration before you talk about money? Then you offer him $50,000 and watch him squirm. He did squirm and he resisted; every time he resisted, they persisted, and would not take no for an answer.

I say when you have men with names of DeVito and Weinberg talking about their mob contact—you can look at the videotapes, December 4, Weinberg and Stowe were talking about mob connections on a videotape, and drugs; talking about all kinds of stuff. Why do they do that? In the first place, they figured Jenrette was going to take that money. They figured he needed the money; he is drunk; he has financial problems; he has legal problems; he has a lot of stresses; needs $50,000 to pay his lawyer. Offer him $50,000, he will take it. What better time for him to take the money than then and there? That is why the bribe worked that way with all the Congressmen. They knew in that room, one-on-one, the bribe would take place. That is why they set it up in a quiet townhouse, I submit.

If Mr. Jenrette had it laid out to him at lunch that they were going to offer him a $50,000 bribe and he went to the meeting to take the bribe, he would have taken the bribe. If he knew there was going to be a bribe or if he did not want to get implicated, he would have sent Stowe there that night. He would not have gone there that night, he would have sent Stowe to pick up the money. All Mr. Jenrette had laid out at lunch is that there was a plant in which 500 people would lose their jobs. This was not something new to Mr. Jenrette. Mr. Jenrette and Strom Thurmond had been to Warren Christopher before, trying to get contracts. Mr. Jenrette had helped the President of the American Gear and Pinion before. This was an important thing to this county and the district and the government knew it.

What this committee would be permitting if they permit him to be sanctioned the way Mr. Prettyman wants, they would be permitting the government to: (1) Lie at the trial. They can say one thing, the witnesses something else; nobody inquires.

I submit, what Mr. Webster and Civiletti are trying to do, they are hoping to stop this Congress from getting that charter shoved down their throat. They are doing the old shuffle that Mr. Hoover did, more bluntly. They come to Congressmen and get convictions because everybody out in the public, they all think politicians are crooked. You have heard it since you were a boy; and lawyers are the second most crooked. So, you have Jenrette, both a lawyer and a Congressman.

On page 622, I ask them to define, "develop," then I asked him to define, "create." I showed they created a case against Jenrette. That is what outraged Judge Fullum so much. Judge Fullum had the benefit of observing all these liars for the government. I say, if there was evidence that John Jenrette was corrupt and if you were trying to go under cover to catch him doing something corrupt, that is fine. But for 14 months, they knew John Jenrette was saying "no," through John Stowe.

Now, Mr. Prettyman and Mr. Kotelly the prosecutor, they say, well, since Stowe said my Congressman is as big a crook as I am, they think that statement justifies predisposition, the fact he made that statement and laughed—I say everyone on this committee has had someone say jokingly, that he is a crook. My wife laughs every time I tell her of a

defense; sometimes the juries do not. The point is, everybody can have a joking comment made about them. John Jenrette resisted. He did not violate the law. When he went to the townhouse on the 4th, he would have taken the money had he gone there to get bribed, but he went there and got drunker.

Congressman Pete Stark, says that night, after John Jenrette left that townhouse and Mr. Stark was at John Jenrette's house to meet a young lady—meet somebody, sorry, John Jenrette passed out drunk.

Two other witnesses said he passed out drunk or was too drunk to walk. If he was not drunk when he left the townhouse, when did he consume all this liquor? He was drunk and if he was drinking, you have to look at his conduct as a drunk. He does not like to hear me say these things, but you have to look at this with some kind of compassion. We are not talking about law and order, we are talking about right and wrong, decency. John Jenrette was decent. He did not take that money on the December 4th tape. A crook with a predisposition who had it laid out at a lunch as Mr. Prettyman wants you to believe, would have taken that bribe in that townhouse; he would have walked out of that townhouse just as they insisted in the case of every other politician before they were caught up in ABSCAM. The one thing that brought John Jenrette down was that Stowe wanted that money. Stowe knew he wanted to get financing to fool the Arabs. Using Jenrette as a stalking horse. I cannot discuss everything in two hours. The problem is, as the evidence showed that Stowe went down there and got that money. He came back to John Jenrette's office on December 6th and John Jenrette held $10,000. There was a note executed. The note was for $10,000. Stowe cannot deny the fact of that note. John Jenrette's secretary Diane Robinson testified, there was a note for $10,000. How can you discuss all this evidence in the remaining minutes? You cannot do it. You think John Jenrette would leave a documentary paper trail to show that he got $50,000? Do you think he would create the alibi of being drunk? If you look at Exhibit 124, John Jenrette had a $230,000 investment in a place called Aristo, an island project. The bank had a note due. John Jenrette got notice on November 26 that that note was due and payable by December 15 or they would foreclose. John Jenrette called the banker according to all the evidence and asked how much money did he have to have to save Aristo. They said "25 to $30,000 John, and we will not foreclose."

Now the government and Mr. Prettyman want you to believe that here is John Jenrette with $230,000 investment he will lose, he gets $40,000 as his cut of a bribe on December 6th, 1979 and did he pay the $25,000 to save that investment? No. He did not save Aristo, that is why when he was back on January 7 at the video meeting in 1980, he was trying to get a loan to save Aristo because he had not gotten any money to save it back in December; that is important. If he had the money, he would not have had to try to get money for Aristo in January, because in January of 1980, he lost Aristo. He would not lose a $300,000 investment when all he had to do was pay $25,000 of the bribe money he supposedly got on December 6.

What did he say in January when he was approached? He said:

It has to be legal. Anything we do has to be legal. You have to comply with the bonding laws. You have to get an attorney to do this and that.

On December 4, when they brought up money for the first time, he said, you need money not to pay people. This is a man that is not a crook. I could not convince a jury, but I hope to hell I can convince you. He should not be in a place in history as Mr. Myers. Mr. Myers should have been dealt with by the Congress. His own story, his own request, was that some sanction should be imposed. He is different than John Jenrette, much different. I do not refer to the other Congressmen caught up in this mess.

I send a great deal of compassion to Mr. Thompson because whether they raise that issue in his defense or not, that man was treated awfully. They have tapes where he is a known alcoholic and they say: "Give him liquor." This Congress should not let it happen. A man 26 years in office, even has not had his trial and because of what the Executive Branch can do, his career is over, because they say: "Give the alcoholic another fucking drink." If they can do that to Frank Thompson, they will do it to a nobody like John Jenrette. They will do it to anybody and this committee should know this.

We have the rules on what to do with John Jenrette. It should know it, because they should not sanction it based on what the government did to this man. That is what I am trying to communicate here. That is what I am trying to say. Yes, John Jenrette mentioned Strom Thurmond. He certainly mentioned him and it was a great difficulty for me, for example, to talk in the trial about that episode. Coming here in 1968, I will not even have gotten a job, had it not been for Senator Thurmond helping me. Coming from the same area as, seeing from all friends, some of the things Jenrette has done down there, for the poor people, that is corny, maybe, but having been one, he appreciates it. He gets in a predicament where he is drinking, where he turns down a bribe, where he cannot even remember what happened the next day or what he did the night before. The evidence is in the record of the blackouts, of memory lapses.

He has a middleman taking advantage, trying to get the money for himself. He is afraid the plant is going to go down the tubes, American Gear and Pinion, and Stowe is going to tell the public he let that happen because he is too drunk to take care of his job. And all these people lost their jobs. He is in a political fight for his life. He is about to be indicted on some drummed-up charges by an administration that has been after him ever since he beat Mr. McMillan down there. Harassment after harassment. When he knows that Stowe has the money—after the Christmas holidays John Jenrette went back into the Alcoholism Center, trying to get himself together, trying to find what he could do to get out of this mess. And when he comes back and is off the juice for a while, Weinberg calls and says, "Look, you have done nothing, and you got to do something." And Weinberg brings up Mr. Thurmond. There is no tape of that. Of course there is no tape of that. But Weinberg admits that in the last week of January of 1980, four tapes were stolen from his suitcase, four tapes.

You know what he had stolen, he says. Four cassette tapes and some cigars. The thief didn't even take the tape recorder which was in the same pouch.

They got a call July 21, 1979, that we always said was very important to John Jenrette, because it cancelled this luncheon for August

6, '79, which Jenrette had never set up. There is no tape of that. You have two phone calls of November 15, 1979, which set in motion this great conspiracy. No tape recordings of those. And you got a call in early January before the January 7 meeting of 1980 on the video tape, no tape recording. And coincidentally, Weinberg has four tapes stolen with some cigars and says it has nothing to do with Jenrette, and we are all supposed to take Weinberg's word as if he were up there on the mountain with Moses and God himself, chiseled it into the stone. Weinberg is a liar. Weinberg should have to be before the committee some day, even if it is in 1980 and you deal with other congressmen or other matters. He should be in here, and he should have to explain everything. Because I cannot say in a sinister enough way the contempt I have for him and what he has done and what he was permitted to do.

But the importance on the Thurmond matter is John Jenrette thought he was dealing with the Mafia. By January 2 of 1980, Jenrette has gotten his insurance in order. What did he get his insurance in order over. Aristo is going under. John Jenrette is in a partnership for Aristo. If Aristo goes bankrupt, John Jenrette is responsible in part as a partner for any assets or liabilities. He shares in any assets, and he has to pay any liabilities.

Now, why would John Jenrette keep in effect a key-man life insurance policy as a partner on Aristo if it is going bankrupt, unless he thought he was going to die. Why would he keep a hundred thousand dollar policy in effect and pay a $4400 premium if he did not think his life was in jeopardy? He did that, I submit, because he knew that if he were to die any liabilities that he had as a partner survive him and that his wife Rita would have to pay that, and that would wipe out any estate he had, for her, and for his 15-year-old son. That is the evidence in the trial.

If John Jenrette thought that he was going to live in the first place, he would have taken $25,000 of the bribery money he supposedly got and saved Aristo, and in the second place, he would have let the policy go just like Aristo went. He would not have paid $4400 to save a key-man life insurance policy at a time he needed every penny he could get. He paid it in advance, a year in advance, and it wasn't even due. That shows how screwed up he was.

And why is it important? Because he knew that Weinberg had threatened him in January, and there is no tape of it. And Weinberg said, "Either come in there and you tell Tony, and he is a tough cookie," and all that sort of cool talk, "You tell Tony what you are are going to do in this immigration problem, or you better deliver that Senator." And they deny it. I believe Mr. Civiletti got on the phone to Senator Thurmond and assured him he would never have done such a thing. What a noble man he is. And Ivor Nathan. And Mr. Webster.

They come in here, they wouldn't raise their voice like me. They would sit here with a nice 3-piece suit on, and be very decorous, and lie to you just as straight and honest as they could. That is what they have done throughout Abscam. I don't care who they are and how long they come at you. They are doing it.

And they put the pressure on John Jenrette that he deliver or he better talk about Thurmond. And you better believe John Jenrette talked about Strom Thurmond. I would too, as much as I love the man

for what he did for me personally. I would have talked about him. But the only thing John Jenrette never did, he never tried to get a nickel on the Strom Thurmond matter. He said the man is expensive. He was lying. The fee is a hundred thousand. When Tony looked like he was going to pay a hundred, John said, "He wants one twenty-five, you better get clearance on that." The whole deal was that there would never be a front dollar paid on Thurmond because John Jenrette was trying to buy time to figure a way to get out of this mess, and he is talking in lies about Strom Thurmond, and he is not doing it publicly. Why should you sanction John Jenrette for talking in private about a senator that he has been threatened he better talk about or else? It is different if Mr. Jenrette had gone out in public and been critical of Senator Thurmond in a way that was unbecoming of a congressional member. But Mr. Jenrette was talking about a senator in a closed room, not knowing it was video taped, not knowing it was the government, to try to save his own skin, at a time that Mr. Jenrette thought his life was in danger.

George Richardson testified that the night before Abscam broke Jenrette was too drunk in King Street, South Carolina, that when George Richardson, a black man, asked for Mr. Jenrette's help in the State Senate race because there had never been a black State senator in that district, in the entire State I believe—there is one from Charleston now—in any event, George Richardson asked John Jenrette to help him in the summer in his election in the spring. And Jenrette, really not much different than one of these fellows you see out on the grate, out there on Dupont Circle during the winter, started crying, he told him,

If I am around I will help you, George, but you be careful in politics, things don't go the way they always are supposed to go.

He called his uncle, or his cousin, James Stevens, a very prominent lawyer and former legislator and senator of the State of South Carolina, in January and asked him to look after Rita. He didn't know Abscam was coming. These people are not all lying.

Mr. Fauntroy in the Congress was concerned about John's image, about his drinking. Dick Nolan sent him into the alcoholism program. They are not lying. John was tragic. And he lost Aristo. And when the FBI came at him on February 2, 1980, John Jenrette didn't know they were tape-recording the call. He didn't know Rita was tape recording the call at the top of the steps. John was drunk then. Doug Wendel, his aide, said John was drunk.

And John Jenrette, when he was told Amoroso is an FBI agent, said, "I am glad." You think Mr. Myers said, "I am glad?" You think that? You think a lot of the congressmen who were caught in Abscam, they were caught lying to the FBI. John Jenrette said, "I am glad." He was glad because he would live. And his life might not be worth a tinker's dam politically. He may go to prison. He didn't get a nickel. But he was glad.

He summed it up best. See if I can find it. He testified somewhere about these matters.

Page 3429. I asked Mr. Jenrette why he said, "I am glad." He said,

I was relieved. I knew at least, I knew I had been had, but I knew that I wasn't going to die. I knew that I wasn't going to be injured or die. I got pretty

mad about it afterwards, that I had really been taken down the road, but I knew my life was not in danger.

Question. And then why did you go to the Triservices Center after Abscam broke? Why did you do that?

Answer. Well, I didn't want to go, as you have heard testimony, but I still—I was still very much into drinking. My son was having some—has a reading difficulty—

"actually he has a very severe learning disability. "I was having problems with my ex-wife. It seemed from the Billy Lowe thing," which is the South Carolina probe, that it happened that Jenrette not being able to run for the Senate, "that is out the window, it seemed again everything was falling in."

Aristo was gone, the alimony was tough to pay, and I was hiding in alcohol. And it was—I didn't think I was in as bad a shape as I was. But Rick Nolan tells me continually how bad a shape I was in. And I had to get straight. And I am sorry. And I did. This scared me enough. What I had been through, that I knew that I couldn't get out on a limb ever again like that, if I was ever going to be anything at all. And whatever happens I am healthy, better mentally, emotionally, spiritually, for going in whatever, if this scared me into going, I know that I have the rest of my life to live, and i f it took this regardless of what happens here in this trial I am going to, I can make it. And that is why I went, not for any other reason. I just had to get straight.

Now, I say that that is a different kind of eloquence by a broken man than you have heard from any person, public official or middleman, who was caught up in Abscam. This is a tragic story about a man who regardless of what the jury said, did not get a nickel. The $10,000, yes, he got the $10,000. He held that money for Stowe. And if you look through my final argument in the trial you see that Stowe had squandered a million dollars at Myrtle Beach. And Jenrette had held money before in his law firm. And Jenrette wouldn't hold this money unless there was a note showing what this money was from. And when Jenrette in January, when he thought he was going to die, when he lost Aristo, when he had his insurance in order, when he was telling everybody he new that was close to him to look after Rita—he told Rita to take the $10,000 that he was holding for Stowe, and give it back to her parents, because they had invested $10,000 in Aristo, and Aristo was going down the tubes, and he might as well go to his grave knowiny that the in-laws didn't lose their $10,000 investment.

And so is the sanction going to be—I muddled that up.

Several people had $10,000 invested in Aristo. One of the parties that had invested $10,000 was John Jenrette's father and mother-in-law jointly. January 14, 1980, Aristo was going to be lost forever to John Jenrette. John Jenrette had already gotten his life insurance in order. He thought he was a dead man. He had discussed the Thurmond matter on the video tapes of January 7. He was holding $10,000 which he had made a receipt for with Mr. Stowe back on December 6. And he told his wife Rita to take that money and see to it that her parents did not lose their $10,000, and he told her to take care of them, and to tell them that he loved them. And I cannot believe that this committee will take and assign that $10,000 as being some kind of an obvious acceptance of a bribe for which John Jenrette should be sanctioned.

The government in their final argument at trial finally took the position that it doesn't matter whether John Jenrette got $40,000 or $10,000. And it doesn't. Under the law it doesn't matter. He doesn't

have to get a nickel under the law. Mr. Stowe's lawyer conceded that Stowe got the money and said, "It doesn't matter, we are going on straight entrapment." That is why Mr. Prettyman doesn't want Stowe's final argument in here. Because he conceded he got the money in final argument and told the jury it doesn't matter. What matters is they entrapped John Stowe.

The point is there is a file, the one volume on John Jenrette, three to four inches thick, where the FBI looked all over hell and half of Georgia for that money, looked for that money. They talked to every person John Jenrette ever has known. They followed every step he took since he supposedly got the money. And they cannot find it. They didn't look for that money with Mr. Stowe. They wanted the Congressman to have it. They cannot find it, because John Jenrette doesn't have it.

If you look in the record, you will see that during the trial we were so broke when he is fighting for his life that I sent my associate, driving in his car, 500 miles to Myrtle Beach where he met in the parking lot, in John Jenrette's old law office at high noon, and had all the witnesses down in South Carolina accept a subpoena and sign an affidavit that they would pay their own way to come up here. That is how rich John was when he was fighting for his life, that I had to pay the money for the gasoline for my associate to go down and serve the subpoenas.

In December, after John supposedly got $40,000, the evidence at trial showed checks were bouncing over here at the Sergeant-at-Arms credit account. That is how rich he was. And they don't want you to hear all that. They want you to say: Well, you know the jury said guilty, our hands are tied, this is Rule 14, let's go on and boot him out.

And I say that members of Congress on this committee, this is the rules and ethics committee. Republican or Democrat, you deal with each person individually. And it is not a reflection of each member on this committee if you don't kick John Jenrette out of the Congress. Because when all the facts are heard, your constitutents and your members in Congress don't expect you to deal harshly as a job, just to show that Congress can deal with its own kind. You have to deal differently with John Jenrette than you did with Mr. Myers.

Throughout these proceedings, Mr. Chairman, I have heard what has the Myers case got to do with this. Mr. Prettyman sometimes says that is irrelevant. And yet Mr. Prettyman tried his damndest in his brief statement before to show the comparisons, the similarities in the Myers case and the Jenrette case, because he wants you to shower the same sanctions on Jenrette that you showered on Mr. Myers. And that is not right.

Not one person in all of Abscam or BRILAB, not one person was pursued with the zeal for as long a period of time as they pursued John Jenrette. Not one person. I challenge anybody to show me that I am wrong. Everything I have predicted in preparing for this case has come true. That is why I can leave here with the satisfied feeling in my gut that we will win on appeal. And John Jenrette may have been destroyed by that Justice Department that has been after him for years, politically. Even then he lost by 2,000 votes when you have

members with far less evidence as far as talking on the video tape who got shellacked at the poles in November.

This man is a decent man. He lost by 2,000 votes, even after the conviction.

Why do the people, the constituents, rally around him? They know that he put the water and sewage in the poor people's neighborhoods. They know he got integration down there, where they don't have it someplace else. They know he helped the sharecroppers. They know he destroyed a bigot down there, and thumbed his nose at the fat cats down there who have all the money, even after he got to be one of the fat cats and had money at one time. And they have effectively taken him out of the Congress.

And if this committee—and I know it sounds corny sometimes, I know that. But if this committee can let a congressman go down like this, let the government do this, who is next, and why?

Did John Jenrette do something he should be sanctioned for when he talked about Senator Strom Thurmond? How would you have talked? Each of you who has had a drink before, maybe who has gotten drunk, say in college, when you maybe did those kinds of things, take your drunkest moment. And just pretend for a minute that the world was coming to an end. Someone had cancer in your family, or that you had been crippled by something, or that you are losing everything you ever had. Your girlfriend has left you. The world is falling apart. The whole world is caving in. And each of you puts yourself in a position where somebody who didn't like you got you in a room videotaped you and tried to give you a miracle cure, would you have taken it? Most any person would have taken it. And John didn't take it.

And you can talk about that bagman until you are blue in the face, it doesn't matter. He didn't send that bagman. You can talk about the tape where John is on the way to get it. You better believe he told him John is on the way to get it. He knew John was on the way to get it. He had Stowe taking advantage of him as a middleman. He has Amoroso and Weinberg squeezing him. He had the Justice Department in South Carolina shooting machine bullets at him. He was drunk and shaking. The political vultures were after him all over. And he was losing and he lost. And the only thing left that he can win on is that if all of you will not rush into this thing.

I wish that I could have presented evidence. I carry on. I maybe would have been a good person to filibuster in the old filibuster days, I know that.

I wish we could have had the witnesses here. I don't even know if I get to question them in here. I wish we had that opportunity. Because I submit if you read the record of what Mr. Prettyman gave you, you will see that every crucial witness in the case, Mr. Chairman, every one of them, was caught in a major lie. Now, that is an awful indictment against the government.

When the man who ran the video camera, Mr. Birch, lied repeatedly. When Tony Amoroso, the head agent, lied about why they didn't tape record. When Weinberg lied. When we get documents today that shows the lies. It is an awful situation.

You can say, well, we have heard that before, we hear these lawyers come in here, and they are always trying to find excuses why they lost, and what might have been different.

But I say to this committee that we would have won this case, we would have won the case even with the jury, had we gotten the law we wanted from the very beginning on duress.

Imagine yourself, just accept for the moment that there is no evidence to contradict what I am about to say. There is no evidence to contradict it. John Jenrette was scared, the thing about the insurance policy, telling people he was ready to die. This is all evidence that he was scared. This is all evidence he thought his life was in jeopardy. This all goes to duress. Why he didn't walk away, why he would talk about Senator Thurmond. And then the judge denied our request for an instruction on duress.

The CHAIRMAN. Well, since you have stopped, I am inclined to ask the committee if they would agree with me that instead of trying to finish this tonight, since you have a rebuttal, that we probably have a series of votes——

Mr. PRETTYMAN. I don't have very much, Mr. Chairman. But I do think it is important. I would very much appreciate a brief chance to rebut.

The CHAIRMAN. I was thinking about coming in tomorrow at 10 o'clock.

Mr. ROBINSON. I still have, what, 20 minutes?

Mr. SWANNER. Twenty-six minutes.

Mr. ROBINSON. I would prefer if we come in and conclude tomorrow. I would simply say that I have to be in Baltimore at 9 o'clock, I will be out of there by 9:20, I should be able to get back here by 10, but I would ask for maybe a 10- or 15-minute cushion.

The CHAIRMAN. Why don't we make it 10:30? Do you have an appointment tomorrow?

Mr. PRETTYMAN. No, I can be here tomorrow.

The CHAIRMAN. We will let you conclude your remarks, and then we will have Mr. Prettyman at that point.

Mr. ROBINSON. Thank you.

The CHAIRMAN. We will then recess for the evening and be back 10:30 tomorrow morning.

[Whereupon, at 5:20 p.m., the committee adjourned, to reconvene at 10:30 a.m., Tuesday, December 2, 1980.]

PENDING BUSINESS

TUESDAY, DECEMBER 2, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to call, at 10:30 a.m., in Room 2359A, Rayburn House Office Building, Hon. Charles E. Bennett (chairman) presiding.

Present: Representatives Bennett, Spence, Hamilton, Hollenbeck, Preyer, Livingston, Fowler, Thomas, Stokes, Sensenbrenner, Rahall and Cheney.

Staff present: John M. Swanner, Staff Director.

Also present: E. Barrett Prettyman, Jr., special counsel; Kenneth M. Robinson, counsel for Mr. Jenrette.

The CHAIRMAN. The meeting will come to order. The committee is in open session. The procedure for today will be as follows: Mr. Robinson will be recognized for the remaining 26 minutes of his final summary. Mr. Prettyman will be recognized for rebuttal for not to exceed 90 minutes. Mr. Jenrette will then again be permitted to address the committee if he elects to do so.

At that point the committee will resolve itself into executive session for the consideration of the in-camera-only documents Mr. Robinson referred to yesterday. Special Counsel for the committee and Mr. Jenrette and his counsel may remain in this session without objection. The committee will then take whatever action, if any, this new information may require.

Thereupon the committee will go back into open session and receive Special Counsel's Report on the Preliminary Inquiry and any Resolution on which he recommends the committee act. (Rule 11(a)).

At that time I will recess the committee, to be reconvened at 10:00 a.m. tomorrow, at a place we will announce and notify all Members of, at which time the committee will act on whether or not to proceed to Disciplinary Hearings under Phase II of Committee Rules 14 and 16, and set a date for these hearings.

As I stated yesterday, it is apparent that we will not be able to hold these hearings, act on a recommendation, report that recommendation and bring the matter to the Floor of the House if the House adjourns sine die on Friday, December 5th as I am advised it will do. If, however, the House should remain in past December 5th we may be able to finish these procedures.

Now I recognize Mr. Robinson.

Mr. PRETTYMAN. First of all, Mr. Robinson has agreed to let me finish up a minor housekeeping matter.

I received a letter when I got back to my office yesterday, from Mr. Robinson which I have marked Exhibit CC. I ask the committee to receive it. It sort of completes the record in regard to the exchange of letters between Mr. Robinson and myself. Where he castigates me in in many places, he compliments me once and I would like to have that in the record.

The CHAIRMAN. We do not often have people pay compliments and we have to know ourselves that we have done a good job and I think you have done a good job.

Mr. ROBINSON. Thank you. I will use your lecturn to try to end up, sir.

I am trying to make sure I do not take over 26 and a half minutes.

The CHAIRMAN. We will let you know.

Mr. ROBINSON. Mr. Chairman, I would like to conclude this morning by simply stating that I have called Judge Penn, just a moment ago. Judge Penn had not seen the in camera documents before, which were given to me by the government because apparently they are doing something in his chambers. But he has seen them since and he is checking with Mr. Kokelley to see if there is an objection to us having them. I have advised Mr. Prettyman, if the judge calls during my 26 minutes, I would try to address that matter during my 26 minutes. But I would like to have the opportunity, if the judge does get me back, to have, four of five minutes after that period.

The CHAIRMAN. We would allow you five minutes to do that but of course Mr. Prettyman would have similar rebuttal.

Mr. ROBINSON. Thank you, I understand that.

I would like to conclude the remarks not by discussing per se, every detail of the evidence because I know it is not humanly possible. It is very difficult. I am used to speaking about this case. I can retire it in my sleep and sometimes you have to talk faster than the stenographer can take it down to get it all inside two hours. I know that two hours is a long period of time to get to speak before a committee, so I appreciate the opportunity to have had two hours and can only say that I think there is an importance here in this document that I hope the judge is going to have submitted to this committee.

Throughout the case of John Jenrette, we had a theory that was more than speculation: That Mel Weinberg and Tony Amoroso, set out to find any Congressman they could in order to get Weinberg paid handsome benefits and in order to get the Justice Department and the FBI Director interested in the caper called ABSCAM. All the witnesses denied it. They also said no, it was kind of a fortuitous thing; no deliberate targeting of anybody. But the document that can be presented, not in camera, clearly shows the three people who would have known what evidence there was against John Jenrette in the spring of '79 are Weinberg, Amoroso and Good. Good and Amoroso are the two FBI agents. Weinberg got a recommendation for a $15,000 bonus in May and April of 1979 based upon the extraordinarily critical information he had gathered against John Jenrette a Congressman, which showed that John Jenrette was in financial trouble and was willing to do favors. They even represented to the Director of the FBI in this

memorandum which they denied existed in the trial, that John Jenrette was willing to do favors because he was in financial trouble; and that they had tape recorded and the agent Weinberg had been very persuasive and had done everything to save the Federal government billions of dollars in collection of stolen art. I cannot get into that part; that can be torn apart to show that the billion dollars that Weinberg had saved the Federal government, was a lie. They had people create certificates of deposit, then they arrested those people and would go to the FBI Director and say, "Give Weinberg a bonus because of what he has done."

They pursued this route until they could get approval for the budget to pursue the Congress. That is what ABSCAM is all about. I know I cannot stand here and try ABSCAM, I have been trying to try ABSCAM everywhere I have been. If it can be tried, John Jenrette would not be sitting here with a verdict of guilty. That memorandum written by the Justice Department turns up yesterday afternoon at two o'clock when I came in here. Michael Wilson is the head of the FBI ABSCAM operation from the central office in Washington. In other words, when John Good and Amoroso reported, they reported to Michael Wilson. Any bonuses or salaries paid to Weinberg had to be paid by Wilson. He sat in court every day during Jenrette's trial. He was aware that Judge Penn had a standing order that any documents dealing with this case were to be given to Judge Penn in camera. So, he can determine whether there was Brady information, something to help us in our theory of the defense.

Now a week ago, Michael Wilson, supposedly, finds in another file, a memorandum which he wrote which he has information on, that shows every witness of significance. Good, Amoroso and Weinberg lied about their motives, about how John Jenrette got targeted. They lied to the FBI back in 1979. They have the April and May tapes. In those tapes, it is clear John Stowe told Weinberg John Jenrette is not interested in any favors. He is having financial trouble. He is interested in no favors. What do they report to the Director when they get Weinberg a bonus? They say that John Jenrette is willing to do favors because he is in financial trouble. They say Stowe was under investigation in Columbia, South Carolina and Jenrette was a close confidant. Stowe was never under investigation in Columbia.

They tried to show a sinister relationship between Stowe and John Jenrette back in May of 1979, when they knew the antithesis of that was true.

[Short recess while Mr. Robinson has phone call.]

Mr. ROBINSON. I have just gotten permission from the prosecution and the judge to submit the matter. There is a reference to one name in the New Jersey case which I have to delete. As soon as that is deleted, I will address that document and then give it to the committee.

How much time do I have?

Mr. SWANNER. Seventeen minutes.

Mr. ROBINSON. I would like to continue with this point because it is significant.

If John Jenrette was convicted through a jury verdict as you all interpret conviction, based on the testimony of Amoroso and Weinberg, if the jury rejected our entrapment defense, what is the signifi-

cance of this false testimony? It is significant because the whole thesis of our defense at trial was to show the jury that Weinberg did not tape record things he did not want to tape record. Things obviously stolen with his cigars that he did not want to show up. Weinberg was out to deceive the Director into believing there was corruption afoot in the Congress in order to get the budgetary release to pursue people. Everything we have suggested throughout the pretrial matters has come true. I find it inconceivable that Michael Wilson, who was in the powerful role in the Bureau, who learned on November 12 that I had finally found out about the 25 volumes, finally found out—I must have asked that question about four different ways and finally I hit the bonanza because finally I asked the question in a coherent enough way because Good was afraid he would step into perjury and Puccio, when he reported the predisposition evidence to the Justice Department and the FBI Director—in other words, as to Senator Williams, he was trying to talk about doing things legally on his tapes. Senator Williams was trying to avoid criminal conduct. When Puccio made the recommendation about the exculpatory evidence and he knew it, that is how honest Puccio is. He is the one with the 25 volumes. And what does Government say now about this particular memorandum that I have been talking about for the last few minutes? They say in their cover letter that they just found this letter in another file Michael Wilson had.

Here is the first time the Congressman is being mentioned, the first time the Congressman and his name is mentioned as being corrupt when they know it is not true and this is being used to get Weinberg a $15,000 bounty. They do not even put in the general file. You know it is in the general file and you know they deliberately denied Judge Penn's order and obstructed justice, not necessarily Kottely, but Puccio and his agents. They attacked the Congress.

You say, what has that to do with what John Jenrette did? I say it has to do with whether or not he was a criminal, if he was not predisposed, if he was set up unfairly when he came to the townhouse on December 4, under all the stress and with the financial problems he had, which they denied.

Here is Weinberg now getting from the Department a $15,000 bonus because Jenrette has financial problems and he is willing to do favors, which is contrary to the truth.

Now let us look at John Jenrette's attitude when he came into that room, Senator Williams, with a little prompting, he boasted of his power to the Arab sheikh. No one has to remind you what Mr. Myers said when he went in there: money talks and something walks. He was the power man. He split up the pie. He was talking in a disgusting way about his power. The two chairmen on trial now boasted of their power. What did John Jenrette do? He told them any bill he introduced may be worth a piece of toilet paper. He told them that he might be charged, that he was not that powerful, that they needed a Senator for this type of thing. Why is this important? It shows that John Jenrette is conducting himself contrary to the way, today I am a big shot, I can park on the horseshoe, will not get a ticket, will not get towed. Next week, my car will be towed. You know, any politician, when he is trying to be a big shot, he ups the ante.

John Jenrette, when he had the opportunity to get a $50,000 bribe, when the money is brought up, he talks in a degrading way about how unimportant he is, about how he may be going to jail on something else. This is a statement of a scared man who knew he was in over his head. What did he do wrong? He went to a townhouse with an old friend who had been a client and an old poker buddy back at the beach. How many of you have gone to lunch with an old friend, constituent, to see if you could help an old friend?

John Jenrette went to lunch, got three or four double martinis, like the alcoholic does. He trusted his old friend whose son he was trying to get into the Air Force Acadamy. Then he goes to this townhouse to discuss an immigration problem, which you would have done. You would have discussed an immigration problem if you could have saved 500 jobs, and that is what he did.

In the first reference to mony he said you need money not to pay people, because that is the first thing people will think when a politician mentions money. Then when Jenrette was offered the bribe, what did he do? He backpedeled, did not take the money. If he was going to take the money, he would have taken it that night or he would not have gone there.

John Jenrette did everything opposite from what these other politicians did, those who got caught up in ABSCAM. He did not get the money. If he did not get the money, what was his motive? What was the man's motive if he did not get the money? When you move to the sanction stage, you have to determine what was he doing and why did he do it?

If Mr. Prettyman has any statement to make in his rebuttal which is challenging of anything I have said and of which any member of the committee wants an explanation, I ask an opportunity to give it. I know this man and I know what has happened in this case, I submit, better than anybody. I cannot help if the rules are such. I have been a prosecutor before. He gets rebuttal argument, but any question he wants to raise, I can beat him on the record. That is not as a braggart, that is based on the facts.

I say, until you have been where John Jenrette has been, you cannot judge him properly, you have to know what it is like to be at the pits of alcoholism.

You say, why is he raising that? Because that is where he was at the time. There are plenty of people on the Hill who do not want things revealed. I am John Jenrette at the most brittle time in his life, was know to the FBI. They had been on his tail 14 months, tape recording his conversations, trying to set him up, and they could not get him to break the law. Finally, when they had enough stress on him, he had to pull a coup.

In December of 1979, John Jenrette was struggling. He had testified for one of his friends in South Carolina. The jury had rejected the defense, which means John Jenrette was rejected. John Jenrette thought he was going to be indicted. He had to do something politically to show his constituents that he was serving his people. Let the Justice Department make their allegations. So what did Jenrette do? He went to a townhouse to discuss an immigration problem with an old friend to save 500 jobs. He is hit with a $50,000 bribe; he backpedels, does not

take the money. He is half drunk or is drunk and he thinks he was talking to the Mafia.

You can sit here in this beautiful room and say, "That is ridiculous," but if you have not walked in his shoes, you cannot say whether or not you thought it was a mobster.

Why did they use those names and images?

Why do they have three bars in that townhouse if they were not trying to unravel people's lack of a predisposition into doing something criminal?

I have covered the Senator Thurmond matter and I can only say to you members of this committee, there would not be enough time if we spoke for the rest of the week, to cover this whole trial. We called 25 witnesses. We had another score the judge would not let us call. Unless you have looked at every video tape and compared it to the conduct of the other Senator and Congressmen, who can you compare it with? What sanctions will you give John Jenrette based on Mr. Myers' conduct? They are not comparable. We are here under a Rule 14 hearing, under protest, two members of this committee voted in dissent and in a prophetic way, asked what would happen to Mr. Myers if the jury's decision were set aside? Would you be here under the proper vehicle? Myers has not been, but one has and ours is on the way, I submit.

Here we are under Rule 14 and I submit, this committee has no business voting to get John Jenrette on another stage in these proceedings based on a jury verdict, based on an unfinished piece of business because due process has not been dealt out yet. The judge has not folded his hands on this issue. We are not at an end on the matter.

It is easy for you to sit here with your colleague and with the responsibilities on you, to decide you have to clean your own house, but that is not why you are here. You are here to apply rules and ethics to John Jenrette.

The government has finally, through their persistence, been successful in getting a man defeated. You know what his political opponent said when he won the primary? I am not getting into Democrats and Republicans; I am a Republican. He said,

> The only way you will beat John Jenrette is to try him, convict him, put him in prison out of state and not let him run for Congress from the jail.

That summarizes the attitude of people who have been after John Jenrette. They have been after him and I cannot present evidence to you as to why this happened because we cannot go beyond the rules of this committee. There are people who bother some people and when they get targeted by some branch of government, they have their power and they think they can direct which way the courts are going to go and which way the Congress will act by indicting people. I went down to try to stop the indictment and they threatened to charge me with conspiracy and indict me.

I suggest that Mr. Prettyman got the 302 information from Mr. Nathan. They leak all this information. All the time, they leak information. As soon as a decision came down by Judge Fullum that might have helped Congressmen Thompson and Murphy, what does Nathan do? He releases a press statement saying that case is completely dif-

ferent. Why did he do that? To sabotage those Congressmen's right to have a trial. They are always there, invading the right of people. John Jenrette is a Congressman until you take him out. Congressmen have the same rights as anybody else. Do not be afraid to say that. I do not expect you to vote in my favor because I speak with passion and because you are not used to passionate speeches up here; and I do not expect you to be swayed by passion, but it is not right to let the government harass and beat a man, get you on a charge when they perjure the testimony and cause you to be defeated at the polls and then come before this committee showing major perjury on the whole thesis of the case.

You are not supposed, no matter what your religion is, to lead people into temptation or deliver them into evil. I say here in this room, none of you with the knowledge that you have acquired in life, from the university of experience, not one of you can be critical or should be critical of John Jenrette on those video tapes without fully understanding who he was when he was there; how drunk and scared he was; and how he spoke with humility as compared to the braggadocio of other public officials; and how he did not leave the room with the money, whereas others did.

You will cast a vote sometime today, just like casting a stone. He who is without sin, cast the first one.

If any of you have ever known a drunk or have had a friend who was frail, whose life was falling apart, put yourself in that friend's state of mind and then compare it to how it is that the government pursued John Jenrette because when you get to that fork in the road, you should be able to decide, whether the jury said guilty or not, should you get to the sanction stage. What are we here for? Kick him out of what? Congress adjourns on Friday. Do you have to make a recommendation to show everyone that you have done your job he cannot get his last pay check and get his affairs in order. He is paying more than that to Congress to represent your interest than his pay check is. What does he get? Is desk and chair for $50? He served well. His constituents love him and he is not guilty and the jury can say what they damn well please.

I will speak for John Jenrette to the Supreme Court. We are not doing it for money, but for truth if you cannot get truth in the Ethics and Rules Committee, then you cannot get it.

The CHAIRMAN. Thank you.

We will now hear from Mr. Prettyman.

Mr. PRETTYMAN. Mr. Chairman, may it please the committee, since references were made to the 302s, I did indeed get them from the Government, but it is interesting the suggestion that I get them in the first place came from Mr. Stowe's attorney.

Mr. Robinson began his talk yesterday by referring you to certain portions of Judge Fullum's opinion, and I would like to take a few minutes to get that opinion out of the way, because I think some of you and particularly the nonlawyers may be confused by that opinion and may feel it has some relevance.

I would like to show that it does not. First of all, the obvious point that it is an appealable decision. It is a district court decision that may or may not stand up to appeal.

The facts relied on by the court are not generally applicable in the Jannotti and Schwartz case. The court considered those were purely local crimes which had been artificially converted by the Government into Federal crimes. Here of course a Federal official is involved and we clearly have a Federal crime.

The court said, at least insofar as the Philadelphia aspects of the investigation were concerned, he emphasized that twice in his opinion, there was no suggestion that the putative sheikh required or expected any violation of the law in exchange for the payment. He merely wished to be assured that he had friends in high places.

That case is very different from this one. The only evidence in the Janotti and Schwartz cases was that they wanted friends in high places, not that they wanted a vote or a private bill, quite unike the case here.

Third, the court thought that the evidence in Philadelphia was at least consistent with a consulting-fee theory, that the money was being given as a legitimate consulting fee. No such suggestion of course has been or could be made in this case.

Finally, the defendants in that case made clear several times that no payments at all were necessary since the project would help their city. John Jenrette never said he would introduce the bills without a payment, and the statement that it would help his district was merely to give him an excuse for introducing his bill.

But for the entrapment and Government overreaching activities that the court in Philadelphia addressed, the court specifically stated that crimes were committed.

I suggest to you, therefore, that the holding was not that no crime was committed but that the Government would not be allowed to take advantage of the improper conduct that it engaged in. In this case, that is what we are interested in; not the governmental misconduct, if any is eventually found, but whether crimes were committed; whether improper conduct was engaged in.

As an aside, I might say the judge made it clear that entrapment relates only to those acts which a defendant is entrapped to do. He said a drug user can be entrapped into distributing and still be convicted of possessing a drug or any other offense not tainted by entrapment. I suggest if it eventually occurs that there was an entrapment in the initial stage of this case, it would not carry over to the Senator Thurmond portion of the case.

The ruling was also based on the *twig* defense. We are not concerned with improper governmental conduct here; we are concerned with what Mr. Jenrette did.

Now putting that matter aside, let me start with the sheets which you have not yet seen but which Judge Penn has now given you permission to see.

Mr. Robinson told you not 5 minutes ago that those sheets show Weinberg was getting a $15,000 bonus for getting Jenrette. I want you to look at those sheets carefully when you get them. They do not show any such thing. They show Mr. Weinberg was getting a $15,000 bonus because of his activities in ABSCAM and another unnamed operation which has been blotted out and because over the past year he had been responsible for preventing almost $2 billion in economic

losses. They are listed in there, the series of losses that he is given credit for preventing. This ABSCAM thing in its entirety was only one aspect of what he was getting the bonus for, and Jenrette was only a minor part of the ABSCAM thing.

I do not think these papers are helpful to Mr. Robinson; they hurt him. They show that the FBI in May 1979 was currently working on a case involving Congressman Jenrette and that telephone conversations recorded between a source and John Stowe have indicated that Jenrette is in financially bad shape and willing to do favors—an assertion borne out by the April tapes.

Finally it shows the FBI was focusing on what it regarded as corrupt political targets. I do not see how that aids Mr. Jenrette in any way.

Mr. Robinson tells you Mr. Jenrette did not take any money. Look at transcript 380WW. That is a transcript of a tape that was made on January 7, long after he got the money, where he is talking about getting the money, he is talking about serial numbers. What is he doing talking about serial numbers with Amoroso on money he never got?

I also refer you to the fact that he and his wife both testified that he gave $10,000 to his wife to give to her parents, so we know he at least got $10,000. Frankly, the only dispute in the record is whether he got 40 or whether he got 10.

It is absurd to say on this record that he did not get any money. He admits he got money.

Mr. Robinson said I do not want you to see the closing argument by Mr. Stone's attorney, Mr. Janus. I would be delighted for you to see the opening and closing statements of Mr. Janus. I did not put them in for the same reason I did not put the bench conferences in, because I thought they were extraneous. But in one instance, his own attorney refers to him as the "bag man."

I do not see how that can be helpful to Mr. Jenrette. If the committee wants those, it can have them.

Mr. Robinson was given an opportunity to present portions that he might have wanted to but he did not submit any. I will be happy to submit the closing and opening statements of Mr. Janus.

Mr. Robinson says there is a conflict as to when Mr. Jenrette was targeted. There is no conflict. John Jenrette surfaced in ABSCAM insofar as DeVito and Amoroso were concerned in April '79. That is when Weinberg mentioned to DeVito that Jenrette's name had come up on the tapes in his conversations with Stowe. But Mr. Jenrette's name was well known to the FBI, because he had been investigated a number of times, and Agent Good did tell Mr. DeVito to at one time that even then they had another investigation going on with regard to the Congressman. He alerted them to that fact but there is no conflict about this.

Mr. Robinson said that many people on the Hill are having drinking problems and are under stress. The implication is that many Congressmen would accept $50,000 and bargain for an additional $125,000 for a Senator. I refute that and consider it to be a slander on the House.

He says there is no evidence Mr. Jenrette knew when he came to the meeting that he would be offered a bribe. There was evidence that

Weinberg told Stowe before the meeting that the money would be offered and that later the same day, Stowe said it was all arranged and Jenrette would help out.

Then there is this evidence: Mr. Jenrette speaking, not on cross-examination, but when his own attorney is asking questions. He was asked why he went to the townhouse. Quote "My purpose of going to the townhouse was to help Mr. Stowe obtain financing for American Gear and Pinion Company in South Carolina and he had said on a number of occasions that these people just want to meet someone in Washington and he had said, that they might cooperate at some point in time, help me financially if I needed help or do me a favor."

He knew perfectly well when he went to the townhouse that they were going to talk money. At the meeting he did not show any surprise when they start talking about money. He does not say "What money"? He knows it is coming. After the meeting, not only was that money discussed, serial numbers and the rest of it, but they discussed additional money. "I need $115,000 because I am in trouble; I need $125,000 for Thurmond," et cetera.

Mr. Robinson says Mr. Jenrette was acting under duress. It seems strange to me that a man acting under duress never told the FBI, never went to anybody for help, never went to his friends, never told them he was being chased by mobsters, and so forth. He never even told his own wife. Do you think that a man in fear of his life would not tell his wife of the danger? If he thought these were mobsters and he was going to be put in cement, why did he get on the phone after the meeting and tell them he needed $150,000 because he was in financial difficulties? And why would he go back to the townhouse and talk about getting $125,000 for Thurmond?

Let us talk about this Thurmond thing. He is doing some tightrope walking on this Thurmond thing. He does not want them to bring Thurmond in here because he does not want him to know what is going on. He says, "You give me the 125, I will deal with Thurmond and he will put the legislation in, then after he puts the legislation in, let us give him the 125." That is pretty cute to think you are going to get away with this, with mobsters. I suggest to you, that it is absurd.

Now, Mr. Robinson says there were at least four alleged general refusals to take part in this. Now I have searched and I am having a great deal of trouble finding them. It certainly is true that in 1978, he was asked if he wanted to be involved in an illegal CD (Certificate of Deposit) deal and he declined. We can draw our own conclusions on that. It was perfectly obvious that it was doomed to failure and sure enough, some people were arrested. But he declined.

Then April 18th, there is a conversation between Stowe and Weinberg in which Weinberg says: "—so long as later on, I can ask him for a favor." And Stowe says, "Well, like I told you John has always done me a lot of favors."

Then May 13—Robinson specifically referred to the May 13 period of time. I refer that to you and if you can find anything in the transcript that appears to be a denial, I challenge you to find it.

Then there is May 2nd, a conversation between Stowe and Weinberg. Stowe says he had spoken to Jenrette and he is not interested

in a certain Myrtle Beach land deal and he said, "If he can help you he didn't wanna you know he's gotta be damn careful. That he could introduce you * * *" "He wants to know what kinda favor do you want?" "We don't need nothing right now." Stowe, "Johnny's a friend a mine so I lay everything up front with him. Ah if you want to call'em, I'll give ya his number."

Then December 4, that meeting where you know he refused to walk out with the money. That was a deferral. He gave the excuse he was under investigation. He did not know how it was going to come out. He said he was going to think about it and he would let them know and he sure did. He talked to DeVito the next day and said "It is ok."

Well, there is also an April 25th conversation between Stowe and Weinberg where Stowe says he is not sure he wants to put John on the hook but he also makes it clear in that conversation he has not even spoke to Jenrette yet. This is Stowe having qualms as to whether he wants to get his friend Jenrette involved.

Maybe there are other statements, I cannot find them. I do not see these turndowns that Mr. Robinson has made so much about.

I hope you noticed how little a portion of his two hours Mr. Robinson devoted to the Strom Thurmond situation. He referred to it mostly because Mr. Thurmond's name was on a building and because the FBI, according to Mr. Robinson, was trying to get Thurmond.

Let us look at how Mr. Thurmond's name came up, record 380-BB.

JENRETTE. I'll get that together. When do you think ahh going back to what we discussed the other night, when do you think your people will be coming over? I've talked with Rodino (phonetic) a little bit ahh just casual . . .

DEVITO. A huh.

JENRETTE. . . . about some help, in fact I've got, and I don't know I don't know what this is gonna ahh what we're gonna need to take care of this, but I think I've got a Senator in a position that he would want to very much and this on Johnnie's (phonetic) thing basically because of that, would want to ahh . . .

DEVITO. On ahh, wait a minute, on Johnnie's (phonetic) thing ahh . . .

JENRETTE. If he . . . this Senator is from South Carolina, is a . . .

DEVITO. Yeah.

JENRETTE. . . . was the one they dedicated this building that John's (phonetic) thinking about . . .

DEVITO. Ohh Ohh Ohh the the ahh ok.

JENRETTE. . . . and that's how I can sort of go in ta him, but ahh I find out he's been damn expensive, but he't gottin em through, I found that out. I didn't know, shit ya all taught me somethin' I didn't know when I was up here.

WEINBERG. Wha . . . what's he charge?

JENRETTE. I don't know, I can't get anybody ta tell me exactly. I found a doctor from ahh the Philippines that ahh was starting to be sent back and ahh a different doctor, and this guy took care of it and helped him.

WEINBERG. Now is that the Senator they named the building after?

JENRETTE. Yeah . . . (inaudible) . . .

WEINBERG. (Inaudible.)

STOWE. Strom Thurmond (phonetic).

WEINBERG. Strom Thurmond (phonetic) ?"

That is not the FBI after Strom Thurmond, that is John Jenrette trying to get an extra $125,000. He tried to get $125,000. It is on tape.

Mr. Robinson refers to four stolen tapes. There is testimony that those tapes had absolutely nothing to do with the Jenrette case. He refers to tapes that were not made of certain conversations. An explanation was given in the record as to why they were not made. For example, at one time, when DeVito and Weinberg were at Resorts In-

ternational, they had a cocktail suite, people coming in and out all the time. It was difficult to record all the time but more so, they did not know until after they got there that they were to have important conversations that day.

The important thing is on the tapes that do exist, and those convict Mr. Jenrette out of his own mouth.

Mr. Robinson and I agree on one thing. This is a tragic case. I agree with that. Alcoholism is a tragedy; being in debt is a tragedy. But the greatest tragedy is selling your office, selling your vote, and I submit that is the true tragedy in this case.

Mr. Robinson has presented each of you with a question; he did it yesterday: If you had had the difficulties and tribulations that Mr. Jenrette had and were in the condition that he was in, would you not have done the same things that he did? I hope the committee gives a resounding response to that question.

The CHAIRMAN. At this point in the announced schedule, this will be the last time in these proceedings that Mr. Jenrette will be offered the opportunity to address the committee. If you elect to do so, you can do so. It will be the last time you will be given an opportunity to do so.

Mr. ROBINSON. In view of the committee's rulings on the use of introduction of other evidence in which we were declined the opportunity, Mr. Jenrette declines the opportunity to testify. If there is any testimony by Mr. Jenrette, we will have to cover that later.

Mr. PRETTYMAN. Do you want to present your exhibit?

Mr. SWANNER. Is this to go in the open session?

Mr. ROBINSON. Yes. I believe Mr. Prettyman has put the letter in that I mentioned previously.

I would again renew my request that the Judge Fullum decision be admitted as an exhibit in evidence and ask if the committee would consider voting again on that matter. There was a vote 4 to 3 against it.

The CHAIRMAN. Since we have had a vote on it, I feel precluded to do it again. The only way I know to take another vote is if the request is made by some people who voted the other way.

There was a misinterpretation that I was trying to change the vote but it was just an explanation.

This will be accepted without objection.

Mr. ROBINSON. We will have to come back here sometime today, will we not?

The CHAIRMAN. I would not think so.

Mr. PRETTYMAN. I think it is at this point I submit my report, is it not, Mr. Chairman?

The CHAIRMAN. At this point, the committee will resolve itself into executive session for consideration of the documents no longer in camera.

Mr. PRETTYMAN. I think at this point I submit my report. I would make the suggestion that I did in the Myers case, that even though under the rules the other side is not entitled to the report, I would propose it be given to Mr. Jenrette and his counsel.

Mr. ROBINSON. Assume the report is submitted and the committee is to go forward. I have to know that sometime today. If there is any indication that will happen, if there is a determination my presence

will be required here for the rest of the week, there will have to be some intervention by you in getting a court case I am involved in continued. I do not want to be in a position if we hear from the committee tomorrow for any further proceedings to then have to advise the committee I am in trial and would be unavailable.

The CHAIRMAN. When are the times you cannot be here?

Mr. ROBINSON. The trial starts tomorrow and the only day I can be here is on Friday. The judge has been reasonable in postponing this case in the past.

The CHAIRMAN. What do you think reasonable time would be?

Mr. ROBINSON. If you, Mr. Chairman, would contact Judge Revercomb and convince him that there is a possibility the hearing will be set and everybody is on call because of the possibility of Congress adjourning Friday and there is a need for me to be on notice, Judge Revercomb would be amenable.

The CHAIRMAN. Are you telling the committee you could be prepared to have the hearings on the matter of sanctions this week?

Mr. ROBINSON. Mr. Jenrette has had letters go out to various witnesses to be present, some of which are Congressmen, and I have copies.

What I am concerned about, I have to put the cart before the horse here, because if I do not get excused from Judge Revercomb's courtroom tomorrow, then I am unavailable for the sanctions hearing and do not feel anybody could be here to represent Mr. Jenrette.

We would object to the committee continuing past this Friday if Congress adjourns.

The CHAIRMAN. If Congress adjourns, the law is that he is no longer, as I understand it, available for action, although there have been questions about that. But that has been the procedure in the past.

Mr. ROBINSON. My point is, if we get to that point and Friday is the only day I am available, there will be some criticism about my unavailability until Friday, and I am trying to serve notice now that if there is any possibility this committee may want to have further hearings, something should be done to get me out of the trial commitment.

The CHAIRMAN. You have a trial commitment tomorrow, but you could come Friday.

Mr. PRETTYMAN. The point he is making is very simple, that is, if you contact the judge, he can get out of the trial.

The CHAIRMAN. If someone will give me the telephone number.

The only thing that occurs to me is that we have not yet heard those tapes.

Mr. PRETTYMAN. You might want to use the report in connection with the tapes.

The CHAIRMAN. Any desire as to having them played in public, or executive?

Mr. ROBINSON. We have no problem in them playing in here publicly. We object to them being released to the media, because Judge Penn has denied them being released to the media.

The CHAIRMAN. Perhaps we should go into executive session.

Mr. ROBINSON. My only request is that if the committee plays the tapes, they play them in sequence.

The CHAIRMAN. All the other tapes, we have read them in a way in which you have agreed to.

Mr. ROBINSON. Which tapes will be played?

The CHAIRMAN. The one that you asked to have played, Miss Jenrette's.

Mr. LIVINGSTON. May I inquire of either counsel, are there any contestations that the transcripts of the tapes are inaccurate?

Mr. PRETTYMAN. No.

Mr. ROBINSON. No.

The CHAIRMAN. Mr. Spence.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k)(5) and 2 (g)(2)(B), I move we go into executive session, for today and one subsequent day.

The CHAIRMAN. The clerk will call the roll.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Hamilton.

Mr. HAMILTON. Aye.

Mr. SWANNER. Mr. Hollenbeck.

Mr. HOLLENBECK. Aye.

Mr. SWANNER. Mr. Preyer.

Mr. PREYER. Aye.

Mr. SWANNER. Mr. Livingston.

Mr. LIVINGSTON. Aye.

Mr. SWANNER. Mr. Fowler.

Mr. FOWLER. Aye.

Mr. SWANNER. Mr. Thomas.

Mr. THOMAS. Aye.

Mr. SWANNER. Mr. Stokes.

Mr. STOKES. Aye.

Mr. SWANNER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

Mr. SWANNER. Mr. Rahall.

Mr. RAHALL. Aye.

Mr. SWANNER. Mr. Cheney.

Mr. CHENEY. Aye.

Mr. SWANNER. Twelve members vote aye, Mr. Chairman.

The CHAIRMAN. All right. We will go into executive proceedings after the proceeding here and also tomorrow.

Mr. ROBINSON. Mr. Chairman, does counsel Mr. Prettyman get to appear in executive session?

The CHAIRMAN. It is not my plan to ask that he be here.

Mr. ROBINSON. I will not object to counsel being present if we are not present.

The CHAIRMAN. Although we have the power to do it, but we do not plan to do it.

Mr. ROBINSON. I have no objection to submitting the opening and closing statements of Mr. Stowe's attorneys.

The CHAIRMAN. You want to offer them as exhibits?

Mr. ROBINSON. Yes.

The CHAIRMAN. There is a question of relevance but we have been lenient. I do not see any evidentiary value.

Mr. PRETTYMAN. It would be Exhibit EE. both the opening and closing statements.

The CHAIRMAN. All right, we will clear the room and we will hear the tapes in executive session.

[Playing of tapes.]

[Whereupon, at 12:30 p.m., the committee recessed, to reconvene at 10:00 a.m., Wednesday, December 3, 1980.]

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF REPRESENTATIVE JOHN W. JENRETTE

INVESTIGATION PURSUANT TO HOUSE RESOLUTION 608

REPORT OF SPECIAL COUNSEL UPON COMPLETION OF PRELIMINARY INQUIRY

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INVESTIGATION PURSUANT TO HOUSE RESOLUTION 608

Report of Special Counsel Upon Completion of Preliminary Inquiry

On November 13, 1980, pursuant to House Resolution 608 (Ex. A hereto) and Rules 11(a) and 14, Rules of the Committee on Standards of Official Conduct (hereinafter "Committee Rule"), the Committee commenced a preliminary inquiry (Ex. J) into whether any of the offenses for which Representative John W. Jenrette was convicted on October 7, 1980, constitutes a violation over which the Committee has jurisdiction.

Attached hereto are copies of the documentary evidence received in the preliminary inquiry: a copy of those portions of the transcript of Representative Jenrette's trial on charges of violating 18 U.S.C. §§ 201(c) and 371 which counsel for Representative Jenrette and/or Special Counsel to the Committee deem relevant to the Committee's inquiry;[1] copies of the relevant exhibits from the trial;[2] and a transcript of the Committee proceedings of November 20, 1980, November 21, 1980, and December 1, 1980. Also attached are various motions submitted to the Committee on November 20, 1980, and on behalf of Representative Jenrette.

1. Indictment

On June 13, 1980, Representative Jenrette, along with John R. Stowe, was indicted by a Federal Grand Jury in the District of Columbia on two counts of

[1] By letter dated Oct. 17, 1980 (Ex. F), Special Counsel designated those portions of the trial transcript, and those trial exhibits, which he thought were relevant to the Committee's consideration. This was followed on Oct. 30, 1980, with another letter from Special Counsel (Ex. G), attaching a proposed Stipulation which he hoped the parties could agree upon. By letter dated Oct. 31, 1980 (Ex. H), Representative Jenrette's counsel expressed his intention to rely instead upon "the entire record of the District Court * * *," including "pre-trial and post-trial hearings and pleadings * * *." Under date of Nov. 3, 1980, Special Counsel agreed to include in the printed record all testimony in the case, even though he regarded some of it as immaterial to the issues before the Committee. However, he rejected the contention that bench conferences, pretrial hearings, legal pleadings and the like should be made part of the record (Ex. I). Additional correspondence followed (Ex. L, N and O), and an amended Stipulation was signed by both counsel dealing with the authenticity of transcripts and tapes (Ex. M). As a result of this exchange, the trial testimony plus certain exhibits are being reproduced as a Committee Print, and various other materials, such as tapes and additional portions of the trial record, have been received by the Committee without being reproduced but instead are available for inspection or viewing by the Committee.

[2] See footnote 1, supra. Audiotape and videotape exhibits, and transcripts of those tapes, were obtained pursuant to court order (Ex. B). Appropriate notice to affected parties was subsequently sent pursuant to said court order (Ex. C, D and E).

bribery and one count of conspiracy to violate the bribery statute. There followed a 22-day trial before the Honorable John G. Penn, United States District Judge for the District of Columbia, and a jury.

The first count of the indictment charged that from on or about November 15, 1979 until on or about February 2, 1980, Jenrette and Stowe conspired to violate 18 U.S.C. § 201(c) as alleged in the second and third counts. It was alleged that as part of the conspiracy, Jenrette and Stowe would agree to receive $100,000 in cash; Jenrette would in addition demand a substantial amount of money as a loan for Stowe to purchase a munitions plant in South Carolina; in return, Jenrette would promise to introduce a private immigration bill in the House of Representatives on behalf of a foreign businessman; Jenrette and Stowe would agree to receive $50,000 immediately, which they would share, and $50,000 for Jenrette alone after the private immigration bill had been introduced; Stowe would collect the payment for delivery to Jenrette; Jenrette and Stowe would solicit and agree to receive an additional $125,000 in return for Jenrette's promise to use his official position to influence Senator Strom Thurmond of South Carolina to introduce a similar private immigration bill; and Jenrette and Stowe would falsely claim that Jenrette had discussed such a bill with Thurmond (see Tr. 4721–26).[3] Twelve overt acts were alleged to have occurred pursuant to this conspiracy (see Tr. 4737–39).

The second count of the indictment alleged that between on or about December 5, 1979, and on or about December 6, 1979, Jenrette, aided and abetted by Stowe, corruptly sought, accepted, received and agreed to receive a sum of money for himself and Stowe in return for Jenrette being influenced in the performance of an official act as a member of Congress—to wit, the introduction of a private immigration bill in the House of Representatives (see Tr. 4741–42).

The third count of the indictment alleged that between on or about January 7, 1980, and on or about January 28, 1980, Jenrette, aided and abetted by Stowe, corruptly asked, demanded, exacted, solicited, sought and agreed to receive a sum of money for himself and others in return for Jenrette's being influenced in the performance of an official act as a member of Congress—to wit, causing Senator Thurmond to introduce a private immigration bill in the Senate (see Tr. 4742–43).

2. Summary of evidence at trial

Sometime in mid-1978, Melvin Weinberg, an FBI informant (Tr. 273, 644, 905, 912, 1163, 1308), began working on the so-called ABSCAM operation—ABSCAM being a code name derived from the name of a fictitious organization called Abdul Enterprises (Tr. 273, 1574, 1596). This organization, operated by the FBI, was allegedly in the business of investing money and was purportedly owned by two sheiks (Tr. 272, 273, 1574, 1596).[4] At this time, Weinberg was working on "buy-busts," in which individuals were willing to sell fraudulent certificates of deposit ("CD's") to Abdul Enterprises for seven percent, the certificates would be turned over and the money paid, and the individuals would be arrested. It was during this period, on October 10, 1978, that Weinberg received a call from Stowe, a businessman from Myrtle Beach, South Carolina and Richmond, Virginia (Tr. 414, 626, 1837). Weinberg did not know Stowe at the time, he could not recall what the conversation was about, and the call was not recorded (Tr. 1601–03, 1606, 2059, 2105). There probably was a second unrecorded call from Stowe to Abdul Enterprises on October 13, 1978 (Tr. 1602, 1606, 2106).

On October 17 and 18, 1978, there was a series of five or six telephone calls between Weinberg and Stowe, revolving about the possibility of bringing CD's into the United States from Switzerland. These calls were taped by Weinberg (Def. Ex. 2B, 28; Tr. 653, 1314, 2106). Without naming him, Stowe said that his contact was "a Congressman" whom Stowe knew and had talked to about the matter (Def. Ex. 28 at pp. 9, 11; Tr. 4095, 4120). According to Stowe, the CD's were to be brought in by the Congressman's wife, who had diplomatic immunity (id. at pp. 10–12). Stowe also said of the Congressman: "He's a big a crook as I am· (Laughing) Whatever" (id. at 12; Tr. 1948). Weinberg did not know at the time who the Congressman was (Tr. 4120), but the Congressman was later identified as Repre-

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[3] "Tr." references are to the trial transcript, which is attached as a Committee Print. "Ex." refers to a Government exhibit introduced at the trial and included, if not a tape, in the Committee Print. "Def. Ex." refers to an exhibit introduced at the trial by one of the defendants and included, if not a tape, in the Committee Print.

[4] The two sheiks were variously described in the record as Sheik Kamal, Yassir Habib, Kamir Abdul, Kambin Abdul, Kamir Ruhman and Kamir Rahman (Tr. 453–454, 591, 1014, 1311, 1184–85).

sentative Jenrette (Tr. 596), who was also from Myrtle Beach (Tr. 626, 1837). The delivery of CD's through Jenrete was never made (Tr. 625). Jenrette testified that he did receive a call from Stowe about CD's but that Jenrette rejected the proposition, knowing it was illegal (Tr. 3277–78, 3485–88).[5]

There were further calls between Stowe and Weinberg before the end of October (Def. Ex. 2C, 29, 3B, 30; Tr. 660, 666, 2106–07). At the end of that month, however, Weinberg was instructed by the FBI not to be engaged in any further "buy-busts" relating to CD's (Tr. 1314a). There were a number of additional calls between Stowe and Weinberg (most of them initiated by Stowe) between October 1978 and January 1980, and one meeting between the two in Florida in November, but the conversations were about land deals or legitimate matters and were not recorded (Tr. 1316, 1609–14, 1620–21, 1624, 2107–09).

On December 7, 1978, Anthony Amoroso, an FBI Special Agent formerly with the Organized Crime Section (Tr. 1228), was directed by his superior to move from the District of Columbia to Florida in order to become involved in an undercover capacity in criminal activities relating to Atlantic City (Tr. 403–404, 413–414, 471–472, 1160, 1164, 1168). It was at this time that he was given Weinberg's name as an informer (id.). Amoroso actually made the move in early January 1979 (Tr. 413–414), and became involved in the ABSCAM operation as the president or chairman of the board of Abdul Enterprises (Tr. 274, 906, 908, 909, 917, 923, 1575). He used the name "Tony DeVito" (Tr. 273, 400–401, 1179). It was when DeVito moved to Florida that he first met and began working with Weinberg (Tr. 1161–70). There were no further conversations between Weinberg and Stowe between January 31 and mid-April 1979.

On April 18, 1979, Weinberg and Stowe had a telephone conversation (which was partially recorded) in which Jenrette's name was first mentioned (Def. Ex. 4B, 31; Tr. 407–408, 670, 1316–18, 1626–27, 2060, 2072, 2109, 2118). As soon as Jenrette's name was mentioned, Weinberg began recording the conversation (Tr. 1317, 1325, 2064–65). Stowe told Weinberg that Jenrette needed financing on some land in North Myrtle Beach which he wanted to develop (Tr. 1325–26, 2063–64). Also discussed was a munitions plant in South Carolina named the American Gear and Pinion Company (hereinafter AG&P) which was in financial trouble and in which Stowe had an interest (id.).

A further telephone conversation (taped) occurred between Weinberg and Stowe on April 20, 1979, in which AG&P was discussed and then Weinberg asked, "Now, did ya get a hold 'a the Congressman?" and Stowe replied that he had not yet been able to because the Congressman was on vacation. Weinberg asked to have the Congressman call him in New York during the following week (Def. Ex. 4C 32 at p. 3; Tr. 676, 691–693).

It was after the April 18 or April 20 conversations that DeVito first became aware of Jenrette. Weinberg mentioned his name to DeVito, telling DeVito that he (Weinberg) had been dealing with Stowe on CD's and that Jenrette's name had first come up in connection with that aborted deal (Tr. 277, 623, 625, 1189, 1213–16, 1313, 1572, 1883–89, 2061–62). It was Weinberg's view that Stowe was a con man, shopping for deals, and that he had a connection with a Congressman (Tr. 680–681). It was this conversation with Weinberg that caused DeVito to listen for the first time to the October 1978 as well as the April 1979 tapes and to report their contents to his superiors in Washington (Tr. 398–399, 407–408, 461, 618, 680–681, 4040). Weinberg was thereupon instructed to keep in touch with Stowe (Tr. 278, 1321, 1665).

Between April 18 and September 6, 1979, there were eight recorded calls between Weinberg and Stowe. On one, Stowe said that "the Congressman" (later identified as Jenrette—Tr. 701) was "a very close personal friend of mine and, ah, ah, I, I don't know whether I want him to get involved in this or not" (Def. Ex. 5A, 33 at p. 1). Weinberg replied, "Well, if he wants it fine, its up to you" (id.). Stowe then said that we would contact "John" (also identified as Jenrette—Tr. 1680), and he asked what Weinberg had in mind. Weinberg referred to the property the Congressman wanted financed. Stowe said: "* * * you know you're going to want a favor in return * * *," and Weinberg replied, "* * * when I want a favor, alright, I'll pay for the favor" (Def. Ex. 33 at pp. 1–2). Stowe promised to call Jenrette and "see whether he wants to get involved or

[5] The matter of the CD's is discussed further in the trial record at 3170–73, 3174–92, 3197–98, 3202–10, 3229–32. One of the witnesses at the trial had been arrested in connection with this operation, but misdemeanor charges against him had been dismissed (Tr. 3164, 3183, 3210, 3228).

not" (id. at p. 4). Weinberg testified that in this conversation he was attempting to test Stowe to find out if he really knew Jenrette (Tr. 1671–72; see also Tr. 694–695, 700–704, 1668–80). At this time, Jenrette was still not a target of any investigation (Tr. 704).

On May 2, 1979, several events occurred. There were two calls between Weinberg and Stowe, only one of which was recorded (Tr. 1681–82; see also Tr. 706–713, 1680–87, 1981–90, 1995–98, 2065–67). In the recorded one, Stowe said he had talked twice to the Congressman, that the Congressman felt he had to be "damm careful," and that he wanted to know what kind of favor Weinberg wanted (Def. Ex. 6A, 34 at pp. 2–3). Weinberg said he was not sure. Stowe offered Jenrette's Washington office telephone number, and Weinberg took it down (Def. Ex. 34 at pp. 3–4).

On that same day, May 2, DeVito received a message from another FBI agent that the FBI was already investigating Jenrette in connection with some property called Heritage Shores (Tr. 604–605, 640, 891–892). This was the so-called "Billy Lowe" case, discussed further below.

On May 13, 1979, in a recorded telephone conversation, Weinberg told Stowe that he had not called "the Congressman" because "* * * I don't want to string the guy along, if I can't do nothing" (Def. Ex. 7A, 35, at p. 2; see also Tr. 881–888, 890, 1689–98, 1994–99). Weinberg said he had spoken to Tony DeVito, "the new Chairman of the Board," and that they wanted to fly Stowe and the Congressman to Florida to talk things over (Def. Ex. 35 at p. 3). He said that "Yasar's got plenty of money, alright," that Arabs "like to have friends in high office," and that Yasar had said, "definitely we help him [Jenrette] out" (id. at pp. 3–4).

There were two recorded telephone conversations on the evening of July 11, 1979. In the first, Stowe told Weinberg that "* * * everything's set up with the gentlemen [sic] in Washington" (Def. Ex. 8A, 36 at pp. 1, 4; see also Tr. 279–281, 892–896, 1701–03). The gentleman in Washington was identified at trial as Jenrette (Tr. 1704). A meeting was arranged for noon on August 6 at the Georgetown Inn in Washington (Def. Ex. 33 at p. 1). This was confirmed in the second call that same evening (Def. Ex. 8B, 37 at p. 3; see also Tr. 945–946, 1703–06).

Weinberg, with DeVito present, called Stowe on July 21, 1979. Weinberg started to record the call, but someone came to the door, and the recorder was turned off (Tr. 433, 1706). In this conversation, Weinberg discovered that the meeting place for August 6 had been changed from the Georgetown Inn to the Congressional dining room; when DeVito was alerted to this, he signaled Weinberg to cancel the August 6 meeting because he was afraid he would be recognized there (Tr. 279–282, 433, 896, 937, 1327–27a, 1706–07). Jenrette's diary showed no luncheon or dinner plans for August 6; it indicated that he might have been in Texas on that date. Jenrette denied having agreed to meet for lunch, and while other dining rooms on Capitol Hill were open on August 6, the official Congressional dining room was apparently closed (Tr. 3304–05, 3385–86, 3681–82).

The next recorded telephone call was on September 6, 1979, when Stowe asked if Weinberg had gotten in touch with "John" and Weinberg said he had been too busy with Atlantic City (Def. Ex. 9A, 38 at p. 1; see also Tr. 947–948). Stowe asked for a job during the conversation, and Weinberg suggested he send in a resume (Def. Ex. 38 at pp. 2–3; Tr. 2039, 2068–69). The talk turned to "the Congressman" (id. at p. 3), and Stowe said that "I was holding off until he really needs it and I think he's in that position now" (id. at p. 6). Stowe referred to the fact that the Congressman had "invited us into the Congress to have lunch * * *," and Weinberg replied that "We know too many politicians" who might have seen them with the Congressman (id.). There was a reference to setting up a new meeting (id. at p. 7).

Late in that same month, September, a house leased by the FBI at 4407 W Street, N.W. in Washington, D.C., was converted for use in the ABSCAM operation (Tr. 176–177, 413, 955, 3993–94). Hidden cameras and microphones were placed so that three rooms could be filmed and audiotaped at one time (Tr. 178–179).

On November 15, 1979, there were a number of telephone calls made that were not recorded (Tr. 395, 398, 937, 1197, 1729, 2109–10). Several reasons were given for the failure to record. Weinberg and DeVito testified that they were at a hotel in Atlantic City, and they did not know until they received a call from an FBI superior that they were meant to place an important call to Stowe on this date, and therefore they did not have recording equipment with them (Tr. 395–398, 434–435, 934–935, 1198, 1343–47). When they were challenged about their not hav-

ing recording equipment (Tr. 1519–56, 1849–53, 1864), they responded that (a) the equipment they had was not appropriate for recording, and (b) in any event, they were entertaining, and too many people were in and out of their suite to make recording feasible (Tr. 1343–47, 1731–32, 2069–70, 2082–86).

In any event, Weinberg called Stowe twice on this date pursuant to orders from Weinberg's FBI supervisor (Tr. 1728). In the first conversation, when Stowe returned Weinberg's call, Weinberg explained about his Arab clients who might need help if they came to this country after unrest in their own country. He asked Stowe to contact Jenrette to determine whether he would help out by having a private immigration bill introduced. Weinberg promised that Jenrette would receive $50,000 up front and an additional $50,000 when the bill was introduced (Tr. 284–285, 444–445, 452–459, 1347–49; see also Tr. 1635–36, 1727–32). In the second conversation later that evening, Stowe said that Jenrette would meet with Weinberg and DeVito and would aid them with the immigration problems. A meeting was arranged for December 3 at Georgetown Inn between Weinberg, DeVito and Stowe, and a second meeting was arranged for the following day, December 4, at which Jenrette would meet DeVito and DeVito would bring with him the $50,000 (Tr. 286, 1349–50). DeVito overheard Weinberg's side of each of these conversations (Tr. 551–552).

In a recorded telephone conversation on November 27, 1979, arrangements were finalized for a meeting on December 3 at the Georgetown Inn between Weinberg, DeVito and Stowe (Ex. 7B, 7C; Tr. 1350–54, 1732–35). When Stowe asked whether Weinberg would "have cash with you," Weinberg explained that that would take place the following day when they met with the Congressman at the "townhouse"—identified at the trial as the W Street address (Ex. 7C at pp. 2, 4; Tr. 1354–55). The point of the December 3 meeting was so that Stowe could meet DeVito and go over details (id. at pp. 4–5).

On this same date, November 27, Stowe's friend Billy Lowe was indicted, and afterward Jenrette had to fly to South Carolina to testify in his case (Tr. 3394–99) (see further discussion below).

On December 3, 1979, there was a 40 to 45 minute meeting at about 9 PM in the Georgetown Inn between Weinberg, DeVito and Stowe. Although the meeting was recorded on a Nagra body recorder, the background noise (including a Monday night football game on television) made parts of the tape inaudible (Tr. 287, 290, 570–572, 584, 986, 994, 1022–23, 1244, 1356; see also Tr. 1355–56, 1735–36). DeVito was introduced to Stowe as "our Chairman" (Def. Ex. 52A, 81 at p. 1). This was the first time DeVito had met Stowe (Tr. 1186, 1633–34). DeVito was told that "Johnny" was "in financial problems and he is looking for some help" (Def. Ex. 81 at p. 2). DeVito said that "We are dealing in a lot of money * * *" (*id.* at p. 3), and Weinberg said that he had promised "50,000 now and 50,000 when he works for it" (*id.* at p. 4; see also Tr. 289). Stowe pointed out that there was no guarantee that after sponsoring the bill, the Congressman could "succeed" (*id.* at p. 5). There was talk about meeting at the townhouse rather than in a restaurant because of the danger of carrying $50,000 around in cash (*id.* at p. 6). DeVito explained again about the possible plight of the Arabs (*id.* at p. 8), and he suggested that Stowe talk further with the Congressman to make sure he wanted to go forward (*id.* at p. 9). DeVito testified that he was not certain as a result of this conversation that Jenrette knew about the money, and therefore he sent Stowe back to the Congressman to make sure that he did (Tr. 982–985, 990, 997). Stowe was to see Jenrette and call back the next day (Tr. 291).

The next day, December 4, 1979, Jenrette's records indicate that he was to have lunch at the Monocle Restaurant in Washington, D.C., with "Stowe plus 2" (Tr. 3316, 3390–91). He did have either lunch or drinks with Stowe at the restaurant, but Stowe said his friends could not come (Tr. 3391). Jenrette denied that any bribe was discussed and testified that the purpose of the meeting was to help Stowe obtain financial aid for AG&P (Tr. 3391, 3392–93). Although Jenrette said that there was no mention of $50,000 (Tr. 3501), he conceded that Stowe discussed, along with AG&P, problems of citizenship (Tr. 3502, 3673), and that Stowe said that "they might could, at point in time, help me financially if I need help, or do me a favor" (Tr. 3392; see also Tr. 3499–500). Although he had a dinner reception planned that night with the Tobacco Institute, he did make arrangements with Stowe to go that night to the house on W Street (Tr. 3392, 3505).

At 2:15 PM that day, Stowe called Weinberg, and the call was recorded (Ex. 8B, 8C; see also Tr. 1357–61, 1736). Weinberg made clear that the Congressman

would have to "tell us he's gonna take care of it for us" at the meeting the next day, and Stowe replied that, "Yeah he will. * * * Even as far as citizenship if he want it" (*id.* at p. 3). Stowe wanted to make certain that there would be no "recordings," and he was reassured (*id.* at pp. 3–4). There were also references to a loan for AG&P (*id.* at p. 4; Tr. 1359–61).

That evening, Stowe picked up Jenrette and drove him to the house on W Street (Tr. 3507). Just prior to that meeting, DeVito stated on a videotape that he had with him $50,000 in cash (Ex. 2B, 3B, 25 at p. 1; see also Tr. 291, 295, 999). During the meeting that followed, about an hour was spent in the den and another 25–30 minutes in the living room—all recorded (Tr. 187–188, 291–292). Stowe, Jenrette, DeVito and Weinberg were visibly present, and a prosecutor and a special FBI agent were present but hidden from view (Tr. 183–184, 216, 234, 292). Near the beginning of the meeting, legislation was discussed by both DeVito (Ex. 25 at pp. 5, 11, 30) and Jenrette (*id.* at pp. 6, 7, 11, 24, 30, 32). DeVito made clear that if atrocities were charged against his clients, a lot more money would be involved (*id.* at pp. 7, 31). DeVito referred to the fact that he understood that Jenrette and Stowe had been in on many ventures together (*id.* at pp. 10–11). The discussion ranged around the fact that the Arabs' case could be held up for years (*id.* at pp. 14, 16, 22). DeVito explicitly referred to $50,000 now and $50,000 when the legislation was introduced (*id.* at pp. 14, 28). Jenrette said that they would know within six months whether they would prevail (*id.* at p. 16), and he mentioned the possibility of immunity from the President (*id.* at p. 16) as well as the fact that he was close to Representative Rodino (*id.*). Jenrette said that he had financial problems and needed a loan (*id.* at p. 17), and he mentioned the idea of help for his District as an excuse for his actions (*id.* at pp. 23, 30, 38, 39).

Jenrette then entered into a series of excuses for not taking the money that evening. First, he said he wanted to sleep on the idea because he was not sure he could deliver (*id.* at p. 24). Then he said he wanted to wait one day in order to check the applicable statutes (*id.* at pp. 26, 29, 31). He next said that he might want to have an attorney pick up the money as a legal fee (*id.* at pp. 27–28).[6] He also said that he wanted to wait until his attorney, Edward Bennett Williams, found out from Attorney General Civiletti whether certain other matters potentially pending against Jenrette would be dismissed (*id.* at pp. 32–35, 37). Finally, Jenrette expressed concerned that if he took the money and had to return it because he could not perform, Stowe would nevertheless feel that he should obtain his own share of the money (*id.* at pp. 35, 37, 43). At one point in the conversation, Jenrette admitted that he had "larceny in my blood. I'd take it in a goddamn minute" (*id.* at p. 39).

Part of this meeting was held only between Jenrette and DeVito. DeVito asked Weinberg and Stowe to leave because he thought Jenrette would be more comfortable talking to DeVito alone (Tr. 1073, 1362; Ex. 25 at p. 21).

Later, out of the presence of Jenrette, DeVito said that Jenrette was going to call the next day and that the two of them had discussed advancing money to help Jenrette's situation (Ex. 2B, 25; Tr. 1118–21).

In the testimony at trial regarding this meeting, it was revealed that the matter Jenrette was concerned about having settled with the Attorney General was the Billy Lowe case (Tr. 965–966, 1065) (see further discussion below). DeVito testified that he wanted to make certain that Jenrette was taking money in exchange for help on immigration, and that he (DeVito) was not going to give the money until he was satisfied that Jenrette had the whole picture (Tr. 1000–03. 1006, 1033, 1073). When Jenrette did not immediately take the money, DeVito thought he was simply stalling or hedging (Tr. 1039, 1042, 1044, 1071), and that he was interested in having someone else pick up the money for him (Tr. 1069, 1078). DeVito was concerned that if a "bagman" picked up the money, Jenrette might not actually receive it (Tr. 1081, 1082–83). DeVito was convinced that Jenrette wanted the money but was not sure how he wanted it picked up (Tr. 1084–85, 1092–93, 1095–96, 1099–1100, 1107–08, 1111, 1112). He said that Jenrette had exhibited greed, need, and no concern about mortality (Tr. 1098).

The tape reveals that twice during the meeting, Jenrette was given a drink (Ex. 25 at pp. 26, 27, 30, 46; Tr. 238). In his testimony at trial concerning the meeting, Jenrette claimed that he was already intoxicated when he arrived at the townhouse (Tr. 3315, 3317, 3509), that he was intoxicated during the meeting

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[6] Jenrette's law partner testified at the trial that Jenrette had never asked him to be a "bagman" or to pick up any money (Tr. 2610).

(Tr. 3529, 3533, 3537, 3542), and that he therefore remembered little of the meeting or what he saw on the tape (Tr. 3311–12, 3531, 3532, 3535, 3536, 3543, 3543). However, at one point he said: "I am not using that as an excuse, *or drinking either*" (Tr. 3509; emphasis added). He claimed that Stowe had not discussed a $50,000 bribe with him prior to the meeting (Tr. 3311, 3677–78), but he admitted speaking at the meeting of a 35/15 or 40/10 split of money between himself and Stowe (Tr. 3411, 3678; Ex. 25 at pp. 35, 37–38). He said this talk was just an excuse for him to get out of the meeting (*id.*).

Jenrette also testified that he had never met Weinberg or DeVito before the meeting and knew nothing about them (Tr. 3510), that he was shocked when DeVito proposed a $50,000 payment immediately and $50,000 later (Tr. 2514–15),[7] that he was very frightened of these people and thought they were mobsters (Tr. 3312, 3401–03, 3536, 3537, 3539), and that this was one reason why he did not take the proffered $50,000 (Tr. 3401–03). He summed up his feelings: "* * * I was drunk. I was afraid. I was frightened. I told him anything. I said I got larceny in my blood. I would have told him anything to get out of there" (Tr. 3536). He claimed he did not want any money (Tr. 3539), although if he had received as much as $29,000 he could have staved off defeat on a project he was interested in (Tr. 3318–19).

Although he had originally contended that the purpose of the meeting was to help Stowe in regard to AG&P, he admitted that the conversation at the very beginning of the meeting was about citizenship and the introduction of a private bill (Tr. 3510–12), and that AG&P was not even discussed until after Jenrette mentioned the possible refinancing of a bad loan of his (Tr. 3516–20). In fact, he conceded, very little was said at the meeting about AG&P (Tr. 3543).

Jenrette said he was constantly thinking of "excuses" during the meeting for not taking the money (Tr. 3521–23). Yet when he was asked, "* * * they are offering you a large sum of money to do a legislative act; is that not true?", he replied, "That is what comes forth in the film" (Tr. 3522). He also admitted that "* * * I would have introduced a bill * * *" (Tr. 3529, 3537). He said he had agreed with DeVito that investing in his District would help him in the sense of giving him a reason to support the sheiks (Tr. 3524–25, 3527–29).

DeVito and Weinberg repeatedly testified that they did not believe Jenrette was intoxicated at the meeting.[8] In addition, an expert on alcoholism testified on behalf of the Government that he had viewed the tapes of the December 4 meeting and had seen Jenrette's medical records relating to alcoholism (Tr. 4200, 4201, 4207, 4227). His testimony was limited to Jenrette's motor, verbal and memory skills and his thinking process, and the effect alcohol had on these at the meeting (Tr. 4208, 4228–47, 4330, 4333, 4359). His conclusion was that these skills and his thinking process were not unduly impaired during the meeting, that he did not appear to be frightened, that, in fact, there was *no* effect or impairment in these vital areas (Tr. 4229–44), and that he knew what he was doing (*id.*; Tr. 4311). He agreed that Jenrette was an alcoholic (Tr. 4280), but he said that Jenrette was not severely affected by the disease and was not in the final stages of severe alcoholism (Tr. 4228, 4288). He pointed out that Jenrette was drinking approximately one drink per hour during the tapes (Tr. 4268). While Jenrette was more affected at the end of the meeting then at the beginning (Tr. 4244, 4247), he always knew what he was doing (Tr. 4245–46, 4247).

A doctor on behalf of the defense disagreed. He to had seen the tapes (with Jenrette and his attorney) (Tr. 3001–02, 3063–64). He had been told that Jenrette had had five drinks (Tr. 3066–67), some before he arrived at the meeting (Tr. 3002). He testified that Jenrette was intoxicated (*id.*). he showed resistance to DeVito's offer (Tr. 3003), he was stalling (Tr. 3004, 3014), he was tempted (Tr. 3009–10, 3019, 3074), he was stressful (Tr. 3015, 3017), he was very persistent (Tr. 3021), but at the same time easily manipulated (Tr. 3015). The next day, said the doctor, Jenrette would remember only bits and pieces of what had occurred and would be frightened, thinking he had been with mobsters (Tr. 3003–04, 3006). At the same time, the doctor admitted that there was no indication that Jenrette had had a drink during the first forty minutes of the meeting (Tr. 3065), Jenrette knew he was being offered money to do something (Tr. 3064),

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[7] Jenrette admitted, however, that there was no sign of shock on the tape (Tr. 2518), and that he was not saying he was not interested in the money (Tr. 3516). He also admitted having said on a tape not shown to the jury that he was a con man (Tr. 3459–60).

[8] *E.g.*, Tr. 215, 476–478, 509, 528–529, 999–1000, 1026, 1248–50, 1267–68, 2022–23, 2035–36.

and the discussion of a 35/15 or 40/10 split indicated that he remembered facts from a prior occasion (Tr. 3068, 3070–71).

There were six telephone calls on the following day, December 5, but one was not recorded and two others were marked as exhibits but not played to the jury (Def. Ex. 39, 40; Ex. 25; Tr. 246, 364–365, 366, 367).

The first call, at about 9 AM, was from Stowe to Weinberg at the house on W Street (Tr. 1363–64). It was not recorded because Weinberg was in the shower when the call came through, and his recording equipment was in the basement (*id.*). According to Weinberg, Stowe asked if everything was all right, and Weinberg said "yes" (Tr. 1365). Stowe then said that there were problems—Jenrette wanted his attorney to pick up the money. Weinberg said Jenrette would have to talk to DeVito about that (Tr. 1365).[9]

At 4:10 PM, Stowe called DeVito at the W Street house (Ex. 9B, 9C; Tr. 352–353, 356–357). Stowe reported that Jenrette had said "Ok," he wanted Stowe to come and see DeVito that night and Stowe would take care of the delivery (Ex. 9C at p. 1). He said Jenrette was going to call DeVito (*id.*). DeVito said he had not heard from Jenrette (*id.*). Stowe added that Jenrette did not want to get into trouble (*id.* at p. 3).

At 4:50 PM, Stowe again called DeVito (Ex. 10B, 10C; Tr. 357, 358). Stowe asked if DeVito had yet talked to Jenrette, and DeVito said he had not (Ex. 10C at p. 1). Stowe said that Jenrette wanted to go ahead with the plan, even though he was already under investigation and was afraid the plan might blow up in his face (*id.* at pp. 2, 4). DeVito made a reference to the $50,000 (*id.* at p. 4). Stowe said Jenrette had surprised him by saying "yes" because Stowe thought Jenrette wanted an attorney to handle the matter (*id.* at p. 5).

At 6:40 PM Stowe called DeVito but put Jenrette on the phone (Ex. 11B, 11C; Tr. 364, 365, 1104, 3553). Jenrette said. "* * * I think we're all right in the same way we were last night and I'm ready to go forward * * *" (Ex. 11C at p. 1). Jenrette made clear that he had asked Stowe to come to W Street because Jenrette was on his way to a White House dinner (*id.*). DeVito suggested that Jenrette come by himself after the dinner (*id.* at p. 2). Jenrette replied that "* * * I'll come by or call you and come early, come in the morning. * * * I don't think I'll get out of there till ten" (*id.*). DeVito said he thought Stowe was a little nervous that "he's gonna get cut out of something" (*id.* at p. 3). Jenrette responded: Well, you know what I told you that he wanted and the reason I didn't mind him picking it up was because he's gonna get that" (*id.*).

After further discussion, Jenrette asked: "And all the document [sic] that you have uh are clean as far as numbers and all?" (*id.*). DeVito replied: "Oh yea * * *. No numbers will ever appear" (*id.* at p. 4). Jenrette gave assurances that he was "on the team" even though he could not promise "it will be done absolutely" (*id.*). He expressed concern that "your guys" understand if for some reason he could not produce (*id.*). "I don't. I don't like cement" (*id.* at p. 5). DeVito reassured him that if there were any problem, it would be with DeVito and not Jenrette (*id.*). Jenrette said he wanted "some names and addresses and places and all so I can start getting prepared" (*Id.*). Jenrette did not call later that evening or come by the townhouse (Tr. 1113).

In his testimony, Jenrette explained this tape by saying that he was afraid of DeVito and Weinberg, who he considered mobsters (Tr. 3552–53, 3559, 3564), that he was stalling (Tr. 3557, 3560, 3564, 3566–67), and that he was into alcohol (Tr. 3554, 3555). His reference to "cement" merely meant he was scared (Tr. 3405). He denied that he agreed in this conversation to go forward, labeling the whole call "excuses" (Tr. 3553–55, 3557). He admitted that he had been asked to introduce legislation (Tr. 3557–58), but he claimed that the only legislation he was willing to introduce was to help Stowe (Tr. 3555–56). He said he knew it would be illegal to take the money for the introduction of a bill (Tr. 3559). Finally, he denied that he had even attended a dinner at the White House that evening (Tr. 3564).[10]

Three audiotapes of telephone conversations and one videotape of a meeting were shown to the jury as having occurred on the following day, December 6, 1979.

The first audiotape was of a conversation between Stowe and Weinberg, and then with DeVito, at 11:05 AM (Ex. 12B, 12C; Tr. 367–369). Stowe said that he

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[9] See footnote 6, *supra,* in regard to the testimony of Jenrette's law partner on this point.

[10] For DeVito's discussion of this tape, see Tr. 1104–07.

had talked to the Congressman last night and that the plan was for Stowe to pick him up at 5:30 PM and bring him to W Street (Ex. 12C at pp. 1–3). DeVito agreed (*id.*).

A second call was made by Jenrette to DeVito at 4:10 PM (Ex. 13B, 13C; Tr. 369, 370, 3574). Jenrette apologized for being so late getting back to Devito, but said he had been at the White House until 1 AM (Ex. 13C at p. 1). He said he had just talked to Edward Bennett Williams and learned that he was "clean" on the matter they had previously discussed (*id.* at p. 2). Jenrette said that he had to leave immediately and he wanted Stowe to "take it"— a step that "keeps me just a little bit a one step away from a section in the code about, uh, public officials. * * * [W]'ve got these ethic rules about the amount 'a money that we can make. * * * [I]f my friend of twenty years, John, asks me to do something, *i.e.*, introduce some legislation, I'm gonna do it" (*id.* at p. 3). Devito said, "* * * you want him to pick up the money * * *" and asked what time Stowe would be over (*id.* at p. 4). In reply, Jenrette put Stowe on the phone (*id.*; Tr. 371). They arranged for Stowe to come over and pick up "the stuff" shortly after 5 PM (*id.* at pp. 5–7).

In regard to this call, Jenrette testified that he had been drinking, although he did not know if he was drunk (Tr. 3568), he did not really remember what happened (Tr. 3569–71), he was frightened (Tr. 3571), he would have told DeVito anything (Tr. 3577), and his talk about legislation was stalling (*id.*). He said he gave Stowe the phone with the hope that he could talk DeVito out of doing anything further (Tr. 3578), and that while whatever Stowe did for himself was fine (Tr. 3579), Jenrette did not intend for Stowe to pick up any money (Tr. 3572–73, 3579). He conceded that AG&P was never mentioned in the conversation (Tr. 3580).

The videotape for this date was of the meeting after Stowe arrived at W Street (Ex. 4B; Def. Ex. 26; Tr. 188–189, 372, 1121–22, 1365–66, 2045–48). The tape began with DeVito stating that he had $50,000 in cash (Def. Ex. 26 at p. 1). which was confirmed at trial (Tr. 937). When Stowe entered, he explained that Jenrette was scared; his best friend was facing a jail term. He was also worried that if he could not deliver, "these guys might get mad and come back" (id. at p. 2). DeVito asked that "when you get back to 'im, at least have 'im call me back, all right, and verify, all right?" (*id.* at p. 3). Stowe replied, "Sure will" (*id.*). The money, $50,000, was then delivered to Stowe (*id.* at p. 4; Tr. 372, 1366). DeVito testified that he intended this money for Jenrette (Tr. 1123, 1126), and that it had nothing to do with AG&P (Tr. 1126–27). On the tape there followed a discussion of the possible purchase of a plant so that Jenrette could say, "the guy's here because these people are working" (Def. Ex. 26 at p. 8). Stowe said that Jenrette actually needed $140,000 (*id.* at p. 9). He added that he had known Jenrette for eleven years, and that they had "been in a lot of things together" (*id.* at p. 10). Stowe unsuccessfully tried to call Jenrette (*id.* at p. 14).

The final audiotape for this date was recorded at 6:17PM, when Jenrette called DeVito at W Street (Ex. 14B, 14C; Tr. 373–374, 3584). DeVito asked: "You got the package * * * from John?" (Ex. 14C at p. 3). Jenrette replied: "Everything's fine. I'll do my share" (*id.*). He added that the plant was "a hell of an arguing point for me" (*id.* at p. 4).

Jenrette testified in regard to this tape that Stowe came back to his office, put bills on his desk, and said they were $10,000 (Tr. 3581, 3587).[11] Jenrette knew Stowe had gotten the money from DeVito (Tr. 3582). Stowe told Jenrette that he had to confirm with DeVito that Stowe was back with Jenrette (Tr. 3582). At one point Jenrette testified that "the package" in the conversation referred to a package relating to AG&P (Tr. 3585), but at another point he said he knew DeVito was talking about the $50,000 (Tr. 3685). According to Jenrette, Stowe asked Jenrette to hold the $10,000 for Stowe (Tr. 3583, 3587–88), and Jenrette thereupon insisted upon having his director of Staff Support Services prepare a note for $10,000 payable to Stowe (Tr. 3314–15, 3589–94, 3697).[12] Jenrette said he put the $10,000 in his desk drawer and it remained there until the following

[11] But see Tr. 3690–94, where Jenrette said he could not recall what Stowe said when he came back.

[12] The director testified that she prepared such a note and witnessed its signature (Tr. 3733, 3741–44, 3761). The note itself was introduced into evidence (Def. Ex. 130). There were several discrepancies between this witness's testimony at the trial and the testimony she gave before the Grand Jury (Tr. 3751–57, 3765–68).

month when he gave it to his inlaws (Tr. 3695, 3698; see also Tr. 3406–09).[13] Jenrette said, "I was very frightened as to what I had gotten myself into" (Tr. 3595). He conceded, however, that he did not go to any law enforcement authorities or to anyone in Congress about the matter (Tr. 3596–98), and that even after this event he asked Stowe to obtain a loan from DeVito for Jenrette (Tr. 3599–3600).

The Government's expert on alcoholism testified that he had listened to the audiotapes of Jenrette's telephone conversations on December 5 and 6, that he could form an opinion as to Jenrette's memory, thinking and verbal skills at that time, and that Jenrette showed he could remember prior events, including those on December 4 (Tr. 4248–49).

On December 8, 1979, there was a recorded call between Stowe and Weinberg (Ex. 15B, 15C; Tr. 1367–71, 2110). Stowe said that he had received a call from Jenrette, who was in trouble in Myrtle Beach over a golf course and needed $130,000; could Weinberg handle it by December 17? (Ex. 15C at pp. 1–2). Weinberg replied that he would have to talk to DeVito, who was out of the country,[14] and in any event the paper work alone would take 30 days (*id.* at pp. 3, 6). Stowe said Jenrette had been trying to reach DeVito (*id.* at p. 5).

On December 10, 1979, Weinberg in New Jersey called Jenrette in the District of Columbia (Ex. 16B, 16C; Tr. 381–382, 1373). Jenrette confirmed that he needed $150,000 in order to obtain a deed on part of a golf course (Ex. 16C at p. 2; Tr. 1371). He needed $50,000 in cash and by that Friday he had to have $2,500 to meet payroll expenses (Ex. 16C at pp. 2–3). Weinberg said he could "handle it," but it would take time (*id.* at pp. 3–4).

Jenrette admitted on the stand that he had talked to Weinberg about financing a project (Tr. 3600). He also admitted that during this period of time Weinberg brought up the subject of legislation and gave Jenrette some names which Jenrette wrote down (Tr. 3603).

The next day, December 11, 1979, Weinberg returned a call from Stowe, which was recorded (Ex. 17B, 17C; Tr. 1375–79, 1755–56). Weinberg said that DeVito had run into some problems and could not return from overseas (Ex. 17C at pp. 2, 4).[15] Stowe asked, "* * * how are we gonna take care of the congressman?" (*id.*). Weinberg said he would get a team to go down and check out the property, but he could not make the deadline (*id.* at pp. 2–3). Weinberg said, "It's easier to give like we did to him * * * [t]han to give this way" (*id.* at p. 6). Weinberg then asked Stowe, "between me and you," how much Stowe had made on "that deal" (*id.* at p. 8).[16] Stowe said, "I made ten," Weinberg asked, "He gave you ten?", and Stowe replied, "Yeah" (*id.*, see also Tr. 1756). Stowe referred to Jenrette being worried about wiretaps (*id.* at pp. 9–11).

According to the owner of AG&P, Jenrette called him around December 15, 1979, and said he wanted a commission if the company was sold (Tr. 2641, 2682–83). Jenrette admitted he had asked for a commission but claimed it was on an unrelated topic (Tr. 3397–98).

Between December 6, 1979, and January 7, 1980, DeVito had no further contacts with Jenrette or Stowe (Tr. 374–375). Weinberg set up a meeting on January 7 at the W Street house for several purposes: to learn the identity of the Senator Jenrette had referred to on December 4, to reaffirm that Jenrette had received money, to discuss Jenrette's financial arrangements, and to talk about the AG&P plant (Tr. 375). The meeting was attended by Jenrette, Stowe, DeVito, Weinberg and an FBI chauffeur who was introduced as an accountant (Ex. 5B, 5C; Def. Ex. 27; Tr. 377–380, 918, 1131–34, 3611, 1433–34, 1760–61). The meeting lasted about an hour and a half.

After a preliminary discussion (during which Jenrette asked for a drink but said, "Don't fix me any more, OK"—Ex. 5C at pp. 1, 4), the talk turned to Jenrette's financial problems, including the fact that his partner in one project had spent $25,000 that was intended to pay back taxes (*id.* at pp. 5–6) and the further fact that Jenrette owed his bank $1,465,000 (*id.* at p. 8) and soon had to come up with $160,000 (*id.* at p. 10). DeVito said he saw no problem in funding

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[13] Jenrette's director of Staff Support Services testified, however, that Jenrette put the note in his desk drawer and the *money* in his pocket (Tr. 3759–60).
Note also that Jenrette was shown financial statements of Jan. 7 and Jan. 10, 1980, which did not show an indebtedness from Jenrette to Stowe of $10,000 (Tr. 3701).

[14] In fact, DeVito was not out of the country at this time (Tr. 1370).

[15] Weinberg testified that, in fact, DeVito was sitting next to him when the call was made (Tr. 1378).

[16] "That deal" referred to the $50,000 pickup (Tr. 1756).

the whole project under discussion, whether Jenrette wanted to stay in the project or buy his way out (*id.* at p. 15). "I can get you the money" (*id.* at p. 17). Weinberg promised a $2,000,000 loan at about 12 percent interest (*id.* at pp. 18–19).

There was then discussion of the case of Jenrette's best friend who had been charged with obstruction of justice and contempt of court. Jenrette said that if the obstruction of justice count was dropped, he, Jenrette, would be in the clear, and he was 98 percent sure that this would happen (*id.* at pp. 21–22). Later, Jenrette asked, "when do you think your people will be coming over?", because he had already talked casually to "Rodino", and he thought he had a Senator in a position to help (*id.* at p. 28). He identified the Senator as Strom Thurmond from South Carolina, but said that he was "damn expensive" (*id.* at p. 29). Jenrette claimed that a doctor friend of his had told him that Thurmond had taken care of seeing to it that a Philippine doctor had not been returned to his country (*id.*). Jenrette said, however, that the Senator would not come to the townhouse but rather would go along with the legislation on the word of Jenrette and Stowe (*id.* at pp. 30–33, 34–37). There was also a brief discussion of AG&P (*id.* at pp. 33–34, 40–41). Jenrette got himself another drink (*id.* at p. 38), and near the end of the meeting he asked Stowe to fix him half a drink to take with him (*id.* at p. 49).

All except DeVito and Jenrette left the room at DeVito's request, and the following conversation took place:

TD [DEVITO]. Ahh I'm going see if this thing goes well, well ya know, when we have ta bring em in, ok. Ahh I'm gonna put another . . . (DeVito drops something) . . . excuse me . . . another twenty-five thousand on top of that ok (pause) all right? Are you satisfied with the ahh the way the fifty was . . .

JJ [JENRETTE]. Ohh yeah.

TD. . . . was divided up between you and him? Ok, good.

JJ. Yeah, then I would, yeah . . .

TD. OK . . .

JJ. . . . just . . .

TD. The bills were ok, I mean . . .

JJ. Ohh yeah.

TD. You know we were concerned about the serial numbers and what not. I didn't want ahh I I think theres' only one new pack of money, but the rest was all, ya know, old old used money and I I, ya know, I I just wanted to make sure you felt good about it.

JJ. Well I just got ahh, ya know, it's ahh (long pause) . . . I'll feel good after I finish up what we're supposed to da . . .

TD. Ok, well . . .

JJ. . . . I'll feel better about that.

TD. Like I say, I'm I ahh I talked with ah those people over there about this thing extensively, ok, about helping ya out, and ahh it's it, ya know, I said that I think that maybe the price was a little low on the fifty thousand and I said that, ya know, if it would be ok, that ahh, ya know, when when the move had to be made to put another twenty-five thousand on top of that, and and they said ok, so I ju . . . I just wanted ya to know, ok that ahh that was added on, and I just wanted to make sure that everything was ok and the . .

JJ. Ohh yeah.

TD. . . . the way the fifty thousand was . . .

JJ. And he did exactly what I told ya he was gonna do, but that's fine and I had no . . .

TD. Yeah.

JJ. . . . no argument about that, but I wanted, ya know, I I as in that heat. I feel much better now, next couple of days I'll . . .

TD. Aww hey, hey . . .

JJ. . . . feel a hell of a lot better, but I just didn't want it to come back to you . . .

TD. I I real . . . I realized when you told me, and you were very up front about it, that you know. ahh y . . . you didn't want to take it and leave and then have ta maybe come back ahh with thirty-five thousand instead of the fifty thousand because you had ta give him the fifteen and, you know, and it would have been embarrasing and I understand that, so and I'm and I'm, that's that was one of the reasons why I felt that, you know, you were being straight forward with me about it. That's why when I went over there, I told him, ya know, I, and

I laid the thing ou and so they sa . . . ya know, and I said I says look, how bout lets go a little more, and like I say, they they didn't trust in my judgement on on how ta handle things, ok, and I trust Mel's judgement on a lot of it. He's he's into the . . .

JJ. Finances.

TD. . . . the financial ahh aspects of these things a lot more than I am, but ahh, ya know, dealing with the people and what not, I think I have . . .

JJ. Ohh especialy, yea that. Yeah.

TD. . . . I have the edge ahh in in that respect so they they ok'd another twenty-five . . (IA) . . .

JJ. (IA)

TD. . . . but I just wanted to make sure that ahh you know, that everything was ok and that ahh that was, you know, I . . . I don't know a hundred dollar bill's were a little high, but I I made sure that they were all in, ya know, not in in numerical sequence, I think except for one pack was a little bit in sequence, but there was no problem, so as long as you're your're happy with it that way, there's no there's no problem. I'll get, we'll get it for ya for the nineteenth.

JJ. OK. [*Id.* at pp. 49–51.]

The conversation ended with a promise from Jenrette to call the Senator the next day and a statement, based on the information about the doctor, that the price would be within the range they had discussed (*id.* at p. 52). Jenrette and Stowe left, and this was the last contact DeVito had with Stowe until the trial (Tr. 383).

Jenrette testified that before this meeting, Weinberg had told him that if Jenrette did not get a Senator involved, there would be "hell to pay" (Tr. 3415–17). Jenrette said that his statements about Senator Thurmond had been false and just part of his stalling tactics (Tr. 3418). He also said that he had been drinking prior to the meeting (*id.*). Jenrette added that part of his reason for attending this meeting was the project in South Carolina that took up so much a part of the discussion (Tr. 3607, 3615, 3616–23). He admitted that he did not go to the authorities after this meeting, although he claimed to be still afraid (Tr. 3608), that legislation was discussed (Tr. 3608–09), and that he did ask when the Arabs were coming to this country (Tr. 3612). He said he was not as intoxicated as he had been on December 4 (Tr. 3607), and, in fact, that he was fairly sober (Tr. 3618, 3619). He did not mean, he said, to state that Senator Thurmond would take a bribe (Tr. 3609–10). And finally, he said that he thought he was going to pass on to one of three Senators the money that Stowe had given to him (Tr. 3614–15).

A social worker reviewed this January 7 videotape on behalf of the defendant Jenrette (Tr. 3001–02). He pointed out that Jenrette at the beginning of the tape was appealing to the people around him to stop him from drinking (Tr. 3020). The witness acknowledged, however, that at the beginning of the meeting, Jenrette did not appear intoxicated, and in fact, appeared to be very clear in his thinking (Tr. 3079–80). However, the expert on alcoholism for the Government also reviewed this tape and testified that Jenrette suffered no impairment of his senses, that his memory was all right, and that he had suffered no blackouts from previous occasions (Tr. 4248–56).

Mrs. Jenrette testified that during about the third week in January 1980, her husband came home with $10,000 (Tr. 2449). Jenrette told the same story, saying the money eventually went to his inlaws (Tr. 3409–10, 3412–13).

On January 25, 1980, Weinberg called Stowe (Ex. 18B, 18C; Tr. 1435–39, 1764–65). Stowe made a reference to Thurmond, said that Jenrette had had lunch with him, and that the Senator would "go along with anything to help me. In other words, whatever you wanted he'll do" (Ex. 18C at p. 2). However, "this guy won't go the way John did. It has to be in private" (*id* at p. 3). When Weinberg asked whether the Senator would take the money, Stowe replied, "He'll take the money, right" (*id.* at p. 4). Stowe said that DeVito could not even talk to the Senator about the matter (*id.*). On a different subject, Weinberg assured Stowe that the AG&P deal would go through on February 1 (*id.*)[17]

On the same day, January 25, but later in the evening, Jenrette called Weinberg (Ex. 19B, 19C; Tr. 383, 1439–42), Jenrette said he had made the initial con-

[17] It was not true that the AG&P would go through on Feb. 1, since this was when ABSCAM would be closed down (Tr. 1438). The "John" referred to on the tape was Jenrette (*id.*), and the "Senator" was Thurmond (Tr. 1439).

tact with "the man" (identified at trial as Senator Thurmond—Tr. 1442) (Ex. 19C at p. 1). Jenrette spoke of setting up a meeting with DeVito and the Senator, not at the townhouse but perhaps in a hotel (*id.*). Weinberg said the meeting would have to take place that week (*id.* at p. 2). Weinberg mentioned that DeVito was in London (although, in fact, he was not in London but rather present in Weinberg's room at the time—Tr. 1439, 1441) (Ex. 19C at p. 2). Weinberg said he liked a hotel because no one knows anyone and "I don't like carrying that stuff with me * * *" (*id.* at p. 3).[18] A meeting was planned for Thursday of that week (*id.*) This was Weinberg's last contact with Jenrette prior to the trial (Tr. 1450).

In regard to this call, Jenrette simply acknowledged making it and talking about Senator Thurmond introducing legislation (Tr. 3624–26).

The following day, January 26, DeVito in New York City called Jenrette at his home in Washington, D.C. (Ex. 20B, 20C; Tr. 384–386, 1443). Since DeVito was supposed to be in London, Weinberg acted as the long-distance operator on the call (Tr. 387). The purpose of the call was to find out if Jenrette had talked again with Thurmond (Tr. 384, 387). DeVito made clear in the call that he wanted to speak personally with Thurmond and make sure that the Senator wanted the money (Ex. 20C at p. 3). DeVito said he thought the figure they were talking about was "in the neighborhood of uh 75 to one" (by which he meant $75,000 to $100,000—Tr. 387) (Ex. 20C at p. 2). Jenrette said he would be back in touch with DeVito (*id.* at pp. 4–6).

In his testimony, Jenrette acknowledged the call (Tr. 3624), said that he had talked about Thurmond introducing legislation (Tr. 3625–27), agreed that he had offered to bring Thurmond to a hotel suite (Tr. 3627–28), and said that he knew that at some point he would have to sit down with the Senator and talk to him about the matter (Tr. 3628).

Two days later, on January 28, DeVito—actually in New York City but supposedly in London—called Jenrette at his home in Washington, D.C. (Ex. 21B, 21C; Tr. 387–388, 389). Jenrette said on the tape that he had tried all weekend to "find the guy" (identified at the trial as Thurmond—Tr. 389), that he did not know whether the Senator would meet in a hotel suite (Ex. 21C at p. 2), that Thurmond had become paranoid about the press (*id.* at pp. 2–3), and that Thurmond would do a favor for Jenrette knowing that "something" was coming later—in other words, there was no need for "upfront stuff" (*id.* at pp. 4–5). DeVito at first disagreeed, insisting upon a face-to-face confrontation with Thurmond (*id.* at pp. 5–6), and then said that he could live with the fact that the Senator "produces" and "then I pay" (*id.* at p. 7). Jenrette said: "I'm gonna say when it's done, there will be 'x'" * * * [a]nd when, it passes the Senate, it will be 'y'" (*id.* at pp. 8–9).

Jenrette then revealed that Thurmond was allegedly talking about $125,000 in view of the fact that that was what he got from the Philippine doctor (*id.* at p. 9, Tr. 389). DeVito replied that as soon as something was introduced, $125,000 was guaranteed (Ex. 20C at p. 10). It was emphasized between them that the deal had changed from that arranged with Jenrette—now no money had to be forthcoming until a bill was introduced (*id.*). This was the last time DeVito had contact with Jenrette prior to the trial (Tr. 390).

Jenrette in his testimony acknowledged this call (Tr. 3625) and the fact that he had talked about Thurmond introducing legislation (Tr. 3625–26, 3620–31). Jenrette denied both that he intended to give Thurmond $125,000 (Tr. 3629) and that he intended to get Thurmond to introduce legislation and keep $125,000 for himself (Tr. 3632–33, 3635–36).

The next day, January 29, there were two recorded telephone calls. In the first, between Weinberg and Stowe, it was explained that the Senator would not do anything "publicly," he did not need to be paid in advance, and he could be paid "afterwards" (Ex. 22B, 22C at pp. 2, 6; Tr. 1443–47, 1765–66).

Later the same day, January 29, Weinberg spoke to Stowe again (Ex. 23B, 23C; Tr. 1447, 1768–72) and made arrangements to meet with Jenrette the following Saturday so as to set up a meeting with "the Senator" (Ex. 23C at pp. 1, 3). The deal with AG&P was also approved (*id.*). Weinberg then asked a series of questions as to where Stowe would be on Saturday (*Id.* at p. 5), because that was the

[18] By "stuff," Weinberg meant the money (Tr. 1442).

day the FBI wanted to apprehend Stowe (Tr. 1768). This was Weinberg's last contact with Stowe prior to the trial (Tr. 1450).[19]

The denouncement was on February 2, 1980, when the ABSCAM operation ended (Tr. 274, 1381). Agents went to Jenrette's house and revealed that DeVito was an agent, and Weinberg an informant, for the FBI (Tr. 205, 210, 220–222). Jenrette said he would answer no further questions without an attorney (Tr. 212), but he also said, when told that DeVito was an FBI agent, "I'm glad" (Tr. 2439–40). Mrs. Jenrette called both the Representative's legislative assistant, who came to the house, and the Representative's attorney at the law firm of Williams and Connolly, who also came to the house (Tr. 222–223, 2433–34, 2543–47). Mrs. Jenrette was turned down in her request to record the interview, but she subsequently taped part of it on a recorder on the stairway—a tape that was played for the jury (Tr. 223–224, 2438–39). One of the agents testified that he did not think Jenrette was drunk or had been drinking at the time (Tr. 207, 212), but a defense witness testified that Jenrette's statement of "I'm glad" was consistent with alcoholism (Tr. 3017). Jenrette himself testified that he made this statement because he finally knew he was not going to die (Tr. 3429). Jenrette denied during his talk with the FBI that he had received any money (Tr. 224).

Senator Thurmond and his secretary testified at the trial. The secretary testified that on January 30, 1980, Stowe came by the office, saw the Senator's military assistant, and met her (Tr. 742–745; Ex. 26). She said that Jenrette called the office on the same day and said he wanted to see the Senator. An appointment was set for the next day, but Jenrette never showed up (Tr. 746–749; Ex. 27).

Senator Thurmond testified that he had known Jenrette for 20 years and had met Stowe briefly on January 30, 1980 (Tr. 772–773, 827). He knew that Stowe was trying to buy AG&P (TR. 774–775). No mention was made to the Senator of Arabs or any proposed legislation (Tr. 775). As a member of the Judiciary Committee, he did assist in an immigration bill for a Philippine doctor in 1979 at Senator Hollings' request, but he received for it only a small gift, the value of which was returned (Tr. 775–780). He denied receiving $125,000 (Tr. 780, 796–797). He confirmed that Jenrette had made an appointment with him but had never appeared (Tr. 780–781, 797). He knew nothing about ABSCAM until February 3, 1980 (Tr. 781–782). On February 5, he saw Jenrette at a reception, and Jenrette said that the FBI had tried to get Jenrette to bring Thurmond to the W Street house and that Jenrttte had refused (Tr. 782, 827–828). Jenrette did not ask the Senator for the introduction of a private bill in return for $125,000 (Tr. 782–783, 796–797).

3. Jenrette's defense

Jenrette relied on a wide variety of defenses at trial, including the character and conduct of the informant Weinberg, and the allegation that he had been targeted by the Government for political purposes or simply because he was a Congressman. However, as indicated above, one of Jenrette's primary defenses at trial was that he was an alcoholic and that, because of this disease, he did not have the requisite intent to commit the crimes charged against him. There was repeated testimony at the trial that Jenrette was indeed an alcoholic who had repeated instances of blackouts, particularly during 1979.[20] Jenrette himself said that he was drinking between one quart and one-fifth of alcohol a day (Tr. 3662–63). He attended alcoholic clinics both before and after ABSCAM broke.[21] He said that his reliance upon alcohol increased because of a number of governmental investigations of him (all of which he claimed were baseless and most of which he said were politically motivated). These investigations included ones relating to employee kickbacks, the misuse of his telephone, the misuse of stamps, campaign contributions, narcotics allegedly involving his campaign manager, and the so-called "Billy Lowe" matter in which he was purportedly linked with the foreman of a Grand Jury in a plot to affect an indictment (Tr. 2416–17, 2418, 2421, 3281–90, 3472–82).[22]

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[19] There were four missing tapes in ABSCAM, but they had nothing to do with the Jenrette case (Tr. 1200–01, 1461–62, 1569).

[20] E.g., Tr. 2399–2400, 2404, 2422, 2423, 2487, 2532, 2618, 2629, 2696–98, 2701–05, 2711–15, 756, 2765–71, 2823, 2826–27, 2831–33, 2842, 2845, 2847, 2849, 2865, 2918, 2936, 2967, 2981, 2986, 3001, 3010, 3031, 3015, 3028–29, 3061–62, 3041, 3093, 3029, 3061–62, 3041, 3092, 3111–12, 3119, 3190, 3248, 3365, 3290–91, 3308, 3409–10, 3737, 3748.

[21] E.g., Tr. 2431, 2466, 3265–67, 3429–30, 3267, 3277, 3301, 3402.

[22] For extended testimony in regard to the "Heritage Shores" investigation, see Tr. 2621–23, 2639, 3251–52, 3258–64, 3268, 3423–26, 3464–72, 3489–90.

On the other hand, there was testimony from a number of Jenrette's witnesses that he showed no fear during this period (Tr. 3121), that he never told them (including his own wife) about Arabs, the W Street house, mobsters, etc. (Tr. 2463, 2560–61, 2615, 2683), that he usually kept appointments and voted (Tr. 2550), that he was capable of intelligent conversations (Tr. 2832), and that he suffered virtually no physical damage, was not thinking of suicide and had no parranoia (Tr. 2900–01, 2918, 2927, 2929–30, 3050, 3051–53). The jury was instructed that Jenrette's consumption of alcohol could be considered as a cause for him not to have had the requisite state of mind that was an essential element of the offenses charged—namely, a specific intent to commit the crimes (Tr. 4751–53).

Another of Jenrette's defenses was that he simply never received the $50,000 (Tr. 3314, 3406), and that, as noted above, to the extent that he received $10,000, he was holding it for Stowe for his purchase of AG&P (*e.g.*, Tr. 3406). Jenrette testified that he never had any intent to do favors or accept a bribe (Tr. 3410–01, 3708).

Finally, Jenrette pleaded the defense of entrapment—an issue that was thoroughly explored at trial.[23] The court instructed the jury in regard to this defense and stated that if entrapment was proved, the jury must return a "not guilty" verdict (Tr. 4747–51).

4. The court's instructions

The District Court instructed the jury in detail in regard to the offense of conspiracy (Tr. 4721–41).[24] The Court also instructed on the elements of bribery, charged in the second and third counts (Tr. 4741–47). The three essential elements were, first, the act or acts of a public official in asking, demanding, exacting, soliciting, receiving or bringing to receipt anything of value; second, the doing of such acts in return for the public official's promise to perform an official act; and, third, the doing of such act or acts willfully and corruptly and with a specific intent to commit the act (Tr. 4744–45).[25]

5. The verdict

The jury found Representative Jenrette guilty on all three counts, as charged (Tr. 4764–65).

6. Committee proceedings

The Committee met on November 20, 1980, pursuant to Committee Rules 11 and 14, in order to give Representative Jenrette and his counsel an opportunity to make an oral or written statement concerning this preliminary inquiry. Attached is a copy of the transcript of that hearing, which was held in open session at the request of Representative Jenrette.

Counsel for Representative Jenrette presented to the Committee at this hearing three motions (Exhibits before the Commitee P, Q and R—hereinafer "Committee Ex.") seeknig to defer Committee proceedings on the grounds that (a) Representative Jenrette's conviction allegedly is not yet final; (b) additional witnesses should be called by the Committee; and (c) the Committee's intention to conduct disciplinary proceedings was inconsistent with the provisions of the bribery statute allowing for removal from office as a possible judicial sentence upon conviction. After oral argument by both counsel on these motions, the Committee deliberated in Executive Session and announced that it had voted to deny all three motions.

Counsel for Representative Jenrette then advised the Committee that in view of its denial of these motions—particularly the Committee's unwillingness to call additional witnesses—his client was unwilling to testify at that time. In response to questions from the Chairman, Jenrette confirmed that he would not accept the Committee's invitation to testify at this hearing.

Jenrette's counsel offered—and the Committee received—six pieces of evidence at this November 20 hearing:

1. Jenrette submitted one copy of the Representative's records of his attendance at the Schick Hospital for alcoholism. These records were offered into evidence at

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[23] E.g., Tr. 583–584, 615–617, 621, 625, 630, 631, 649–650, 691, 700, 708–709, 861, 980–981, 998, 1203–04, 1594, 1971, 1988, 1994–95, 2082.

[24] The instruction was quite similar to that given in the case of Representative Myers (see Report of Committee on Standards of Official Conduct in the Matter of Representative Michael J. Myers, Rep. No. 96–1387, vol. 1, 96th Cong., 2d Sess., at 58–60).

[25] For similar instructions in the Myers case, see the Committee's Report at 56–58.

trial as Def. Ex. 97 (see Tr. 2422) and their contents were discussed at length before the jury (*e.g.*, Tr. 2827, 2856–57, 2984–92). The records dealt with Jenrette's alcohol problems, which in turn have been fully discussed above.

2. The Committee received certain insurance documents which again had been introduced at the trial (as Def. Ex. 100-A through H and 101; see Tr. 2718–47) and considered by the jury. Jenrette argued that these records showed in part that he was putting his affairs in order because he feared for his life.

3. Jenrette's next exhibit was the tape recording made by Mrs. Jenrette when her husband was confronted by the FBI on February 2, 1980. It too was introduced at trial (Def. Ex. 95; Tr. 2436) and was played to the jury (Tr. 2438). Large portions of this tape are wholly inaudible. Nevertheless, Jenrette principally relies upon the fact that when he was told that Devito was an FBI agent, he replied, "I'm glad." What Jenrette's counsel failed to point out to the Committee was that prior to that statement, Jenrette had denied receiving any money and had even denied ever having called DeVito. In other words, his "I'm glad" was consistent with his confrontation attitude of innocence on February 2.[1]

4. Jenrette also introduced an audiotape between two unidentified individuals dated December 5, 1979. Even assuming that the voices on the tape are those of Stowe and Weinberg, and that the tape is authentic (no witness has authenticated it), Special Counsel submits that there is nothing on this tape that in any way conflicts with the basic case presented by the Government at trial. The tape essentially deals with the meeting that Weinberg and DeVito planned to have with Stowe at the Georgetown Inn prior to their proposed first meeting with Jenrette.

5. The next piece of evidence offered was a tape of December 9, 1980, which, as it developed, was already part of the Committee's records (see Nov. 20 transcript at pp. 30–31).

6. The final piece of evidence offered by Jenrette was an audiotape of a telephone conversation between Jenrette and Stowe sometime in early Febuary 1980, after ABSCAM had broken. Jenrette's counsel claimed that this tape exonerated his client because when Jenrette said that he never took any money, Stowe, instead of putting forth a denial or correcting him, replied, "Well, anyway, I think we both better get attorneys and let them discuss it together."[1] What counsel failed to note for the Committee were two facts that he had revealed to the District Court when he attempted to introduce this same tape at trial: first, that Jenrette had placed the call to Stowe, and, secondly, that *Jenrette* had taped the conversation (Tr. 3443). Moreover, during the conversation, Stowe stated his conviction that the "lines are wired"—meaning wiretapped by the Government. Therefore, with Stowe assuming he was being recorded, and Jenrette *knowing* he was being recorded, it is hardly surprising that their conversation was self-serving.

This was precisely the conclusion reached by the District Court when it rejected the tape: "I agree with the government. It is self-serving at most" (Tr. 3452). But the court went further. It added: "I am not even sure it is helpful to the defense, especially after hearing the tape" (*id.*). What the court may well have had in mind was that Jenrette admitted on the tape that he was "in major trouble," that the charges were "[v]ery" serious, and that "the paper" (*i.e.*, the $10,000 note) which Stowe had "forgot and left in your office" would prove "a great help." The Government had contended not only that the note was supposed to have been for $40,000 and not $10,000 but that the entire business of the note was "a sham designed by Mr. Jenrette to say: This is how we will cover up our trail. * * *" (Tr. 3448; see also Tr. 3449–50). This part of the conversation may well have been interpreted in this light by the court.

In summary, none of the evidence produced by Jenrette at the November 20 Committee hearing diminished in any way the case that had been made against him at trial.

Committee members asked Jenrette's counsel to make a detailed proffer of precisely which witness he wished the Committee to call, and to describe gen-

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[1] Since no transcript of this tape was received either by the District Court or by the Committee (the only transcript had been prepared by an attorney in the William & Connolly law firm and never authenticated), the Committee will have to decide for itself—to the extent that it can—what was said on the tape. The statements in the text above as to what Jenrette said are Special Counsel's own interpretation of the tape, which, of course, is not binding upon the Committee.

[1] As in the case of the tape by Mrs. Jenrette, no transcript of this tape was received by the District Court or by the Committee. Therefore, the quotations from the tape used in the text are those of Special Counsel and are not in any way binding on the Committee (see n. 26, supra).

erally the anticipated testimony of such witnesses. Following a proffer, and further deliberations, the Committee voted, 7–3, to instruct Special Counsel to seek to obtain the voluntary testimony of Mr. John Stowe, Jenrette's co-defendant at the criminal trial. The November 20 hearing then was adjourned.

On November 21, 1980, at 1 PM, the Committee met again, at the call of the Chairman. Representative Jenrette and his counsel had been given notice of the meeting but did not attend, instead sending word that they had prior commitments and that they protested the scheduling of the meeting (Committee Ex. S). At the November 21 hearing Special Counsel informed the Committee that Stowe's counsel had stated that Stowe would not appear before the Committee voluntarily and, if subpoenaed, would claim his Fifth Amendment privilege and would not testify. The Committee then voted to issue a subpena for Stowe's appearance at a hearing on December 1, 1980, with the understanding that the subpoena need not be issued or enforced if prior to that time Stowe himself, rather than his counsel, had submitted to the Committee an affidavit stating his intention to rely on his Fifth Amendment rights and to refuse to testify. The Committee then adjourned until December 1, 1980.

The Committee met again on December 1. Since an affidavit had been received from Stowe (Committee Ex. Z), as discussed above, he was not called as a witness. In the light of the statement by Jenrette's counsel at the November 20th hearing that Stowe, if called to testify, might prove that "you have the wrong man sitting here" (Nov. 20 transcript at p. 110; see also *id.* at 129), Special Counsel attempted to make a proffer as to what Stowe had told FBI agents on February 2, 1980, the day he was arrested. The Committee rejected the proffer. On December 1 and 2, 1980, counsel for Representative Jenrette and Special Counsel were each given two hours to present their respective summaries of the evidence and oral arguments. Transcripts of those hearings are attached.[1]

7. Special Counsel's Recommendation—Under Rule 14 of the Committee's Rules, the Committee is required to determine as a result of its preliminary inquiry whether one or more offenses were committed by Representative Jenrette over which the Committee has jurisdiction. While each case coming before the Committee must be individually considered, and not decided on the basis of a conclusion reached in any other case, it is nevertheless a fact that the Jenrette record bears striking similarities to that in the Myers case, and Special Counsel's recommendation in this case will be the same as in that one insofar as going forward to the second, or sanction, stage of its proceedings.[2]

The most basic difference between the two cases is that Jenrette did not personally take the bribe money from the FBI undercover agent. However, the evidence seems clear that he used a middleman—Stowe—to pick up and deliver the money not out of a sense of decency or decorum but rather as an attempt to seal himself off from a charge of bribery. He confirmed in a telephone call immediately after the Stowe pickup and in numerous conversations thereafter (particularly on January 7, 1980) that he had in fact received the money. He even showed concern about the serial numbers on the bills, to make certain they could not be traced to him. The basic offense, therefore, was no different than if he had taken the money personally.

The elements of intoxication and entrapment were not in the Myers case. The Committee will have to determine for itself whether Jenrette reveals on the tapes the requisite knowledge of what he was doing, the necessary specific criminal intent, and the predisposition to commit the crimes with which he was charged.[1] Special Counsel submits that the jury's conclusions on these issues were fully justified by the record as a whole.

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[1] On Dec. 2, 1980, Jenrette's counsel presented to the Committee seven sheets (with portions excised) from FBI files which he had just received the day before. These sheets are hardly helpful to Jenrette. They show that Weinberg was given a $15,000 bonus in June 1979 in connection with ABSCAM and another, unnamed, investigation, and that in the last year alone he had been credited with preventing almost $2 billion in economic losses. They also show that the FBI in May 1979 was "currently working on case involving Congressman John Jenretti (sic) * * *." and that "telephone conversations recorded between source and John Stowe have indicated that Jenrette is in financially bad shape and is willing to do 'favors' "—an assertion borne out by the April tapes. Finally, the sheets show that the FBI was focusing upon what it regarded as "corrupt political targets."

[2] See Committee's Report in the Myers case at 60–62.

[1] It should be noted that not even Jenrette claims to have been intoxicated during all of his recorded conversations. Moreover, the Government's expert on alcoholism, while acknowledging that Jenrette certainly was an alcoholic, strongly contended that on the key occasions recorded on the tapes, Jenrette was fully aware of the surrounding circumstances and of what he was doing.

There is an added dimension to this case that was not present in Myers. Here, Jenrette attempted to obtain an additional $125,000 from the undercover agent on the false claim that he would in turn bribe a United States Senator. Jenrette admitted that his claims in regard to Senator Thurmond were false. His actions in regard to this one matter alone would appear to demand the most severe sanction available to the House of Representatives. When this matter is included with all of the other actions taken by the Representative, Special Counsel submits that not only have offenses been proven over which the Committee has jurisdiction, but that—if the Committee votes to proceed to the sanction stage—Special Counsel will have no alternative but to recommend expulsion from the House as the only sanction remotely appropriate to the course of conduct revealed by the record.

There is no avoiding the fact that, as agent DeVito said, "I made the offer; at any time he could have walked out" (Tr. 506; *see* Tr. 867, 1785, 1989). And as Agent DeVito also said: "Jenrette demonstrated the qualifications in his mind for greed" (Tr. 527). The record clearly shows that this greed led Representative Jenrette to engage for many months in a pattern of conduct that violated the most basic rules and principles of the House of Representatives.

Accordingly, Special Counsel recommends that the Committee conclude, on the basis of the overwhelming evidence in the record, that Representative Jenrette did commit offenses within the jurisdiction of this Committee.[1] The Committee, therefore, should proceed promptly to a hearing to determine the most appropriate sanction for those offenses.

EXHIBIT A

[96th Congress, 2d Session, H. Res. 608]

Resolution authorizing an investigation and inquiry by the Committee on Standards of Official Conduct

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers, and employees of the House of Representatives and, among other things, prohibits the acceptance of gifts, directly or indirectly, from foreign nationals or their agents, or from any person having a direct interest in legislation before the Congress or the acceptance of compensation from any source for the exertion of improper influence, and provides that all such Members, officers, and employees shall conduct themselves at all times in a manner which shall reflect creditably on the House of Representatives; and

Whereas Federal law prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); prohibits the receipt of unauthorized fees relating to naturalization or citizenship (18 U.S.C. 1422); and prohibits conspiracy to commit any offense against the United States (18 U.S.C. 371); and

Whereas information has come to the attention of the House of Representatives alleging that certain Members of the House of Representatives have improperly accepted or agreed to accept money from undercover Federal agents and others in the course of an investigation initiated and/or conducted by the Federal Bureau of Investigation; and

Whereas clause 4(e)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with the authority (1) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representa-

[1] These include violations of House Rule XLIII, Clause 1 ("[a] Member * * * shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives'), Clause 2 ("[a] Member * * * shall adhere to the spirit and the letter of the rules of the House of Representatives and to the rules of the duly constituted committees thereof"), and Clause 3 ("[a] Member * * * shall receive no compensation nor shall he permit any 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"). See also Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2, p. B12 (July 11, 1958), ("Any person in Government service should * * * 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 government duties.")

tives, (2) to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities and, after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances, and (3) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation by a Member, officer, or employee of the House of Representatives of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry and investigation of alleged improper conduct which has been the subject of recent investigations (commonly referred to as ABSCAM) by the Department of Justice, including the Federal Bureau of Investigation, to determine whether Members, officers, or employees of the House of Representatives have violated the Code of Official Conduct or any law, rule, regulation or other applicable standard of conduct. The scope of the inquiry and investigation may be expanded by the committee to extend to any matters relevant to discharging its responsibilities pursuant to this resolution or the Rules of the House of Representatives.

SEC. 2. The committee may report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such disciplinary action, if any, that the committee deems appropriate by the House of Representatives and may provide such other reports of the results of its inquiry and investigation as the committee deems appropriate.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to request or compel—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person—

(i) at a hearing; or

(ii) at the taking of a deposition by one or more members of the committee; and

(B) the production of things of any kind, including, but not limited to, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, graphs, charts, photographs, reproductions, recordings, tapes (including audiotapes and videotapes), transcripts, printouts, data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and other tangible objects; and

(2) by interrogatory, the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) A subpena for the taking of a deposition or the production of things may be returnable at such places and times as the committee may direct.

(c) The authority conferred on the committee by subsections (a) and (b) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to or is unable to act, by the other acting alone, except that in the event either so declines or is unable to act, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised, and the committee shall be convened as soon as practicable to render that decision; or

(2) by the committee acting as a whole.

(d) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them. A subpena may be served by any person designated by either of them and may be served either within or without the United States

on any national or resident of the United States or any other person subject to the jurisdiction of the United States.

(e) In connection with any inquiry or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(f) Any member of the committee or any other person authorized by law to administer oaths may administer oaths pursuant to this resolution.

(g) All testimony taken by deposition or things produced by deposition or otherwise, or information furnished by interrogatory pursuant to this section, other than at a hearing, shall be deemed to have been taken, produced, or furnished in executive session.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of rule XI of the Rules of the House of Representatives, at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings as it deems necessary.

SEC. 6. The committee is authorized to coordinate its investigation with the Department of Justice and to enter into any agreements with that Department which the committee determines to be essential for the prompt and orderly performance of its duties: *Provided*, That such agreements shall not be inconsistent with applicable law or with any Rule of the House of Representatives unless otherwise provided herein for the purpose of this investigation. Without regard to clause 2(e)(2) of rule XI of the Rules of the House of Representatives, the committee may restrict access to information received from the Department of Justice to such members of the committee or other persons as the committee may designate.

SEC. 7. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and the House of Representatives in any judicial proceeding concerning or relating in any way to any inquiry or investigation conducted pursuant to this resolution, including proceedings to enforce a subpena.

SEC. 8. The authority conferred by this resolution is in addition to, and not in lieu of, the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedure as may be appropriate.

SEC. 9. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT OF THE HOUSE OF REPRESENTATIVES

MEMORANDUM ORDER

This comes before the Court on the Application for Authorization to Disclose Materials to Congress filed by the Attorney General of the United States. That Application was made as the result of a subpoena served on the Attorney General by the Committee on Standards of Official Conduct of the House of Representatives, calling for the production of the following:

> copies of all audio and video tape recordings and all transcripts of said recordings, which have been, or by the close of trial on September 12, 1980, will have been, admitted in evidence during the trial of *United States* v. *Jenrette*, D. D.C., Crim. No. 80-289-01.

The Application was presented to this Court since the Court is currently presiding over the trial of the *United States* v. *John W. Jenrette and John R. Stowe*, Criminal No. 80–289–01. The Court held a brief hearing on the Application on September 17, 1980, and advised the applicant, counsel for the committee, and counsel representing Mr. Jenrette and Mr. Stowe that it would issue an order on September 18, 1980. The government filed the Application and counsel for Stowe makes no position regarding the Application. Counsel for Jenrette opposes the granting of the Application and has filed, in support of his position, a copy of his Memorandum of Law filed in *In Re August 5, 1979 Grand Jury*, D. D.C. Misc. Nos. 80–0177 and 80–0190. Attached to the Application are two Orders, dated July 29, 1980 and September 3, 1980, filed by Chief Judge William B. Bryant, in the above two miscellaneous matters. Those matters concerned requests from the committee for access to "certain information and materials" which may have been related to Representative eJnrette among others.

After considering the Application and the arguments of the interested parties, the Court concludes that the Application should be granted and that *copies of* the video and audio tape recordings and the transcripts received in evidence by the close of trial on September 12, 1980, may be furnished to the committee pursuant to the subpoena served upon the Attorney General. The originals of the tapes and transcripts and any tapes and transcripts received in evidence may not be furnished pursuant to the subpoena.[1]

The concern over the release of the video and audio tapes to the public stems from the publicity given to this "Abscam" case and those in other jurisdictions. As the result of this publicity, it was necessary to carefully screen all potential jurors and thereafter to sequester the jury at great cost and expense to the Stowe cases, it becomes necessary to have a retrial, the problem of the selection of a fair and impartial panel to hear the case would be greatly [enhanced] diminished if the audio and video tapes have been released to the public. Unfortunately, the Abscam cases have been plagued with unauthorized disclosures, some of which have been the subject of an official investigation. Obviously, it appears in the best interests of all parties, including the government, that the tapes not be made available to the public, until the litigation in this case has been completed.

The committee, having requested the tapes and transcripts, consistent with their responsibilities under Article I, Section 5 of the Constitution, are entitled to the tapes and transcripts and have agreed to the entry of the following order and conditions. The Court is satisfied that the entry of this order does not run contrary to the earlier orders entered in Miscellaneous Nos. 80–0177 and 80–0190.

ORDER

It is hereby

Ordered that the government pursuant to the subpoena served on the Attorney General, may submit to the Committee on Standards of Official Conduct, copies of all audio and video tape recordings and transcripts of such recordings which have been admitted into evidence during the government's case-in-chief; and it is further

Ordered that the materials submitted to the Committee shall not, without the approval of the Court, be subject to subpoena or other mandatory process initiated by any third party; and it is further

Ordered that the materials submitted to the committee shall not be disclosed by the committee to the public or to any third party without first affording the Department of Justice, the defendants, and any individuals likely to be adversely affected by such disclosure ten days' advance notice.

JOHN GARRETT PENN,
U.S. District Judge.

September 18, 1980.

[1] It is the Court's understanding that the committee seeks only copies of the tapes and transcripts currently in the possession of the Department of Justice.

EXHIBIT C

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., October 10, 1980.

JOHN T. KOTELLY, ESQ.,
Deputy Chief, Fraud Division, Office of U.S. Attorney, Washington, D.C.

DEAR MR. KOTELLY: Judge Penn's Order of September 18, 1980, in *In Re Application of Committee on Standards of Official Conduct of the House of Representatives*, D.D.C., Misc. No. 80–2030, required that the House Committee on Standards of Official Conduct provide ten days' notice before disclosing to the public any of the materials provided to the Committee under that Order. The Committee does not at this time intend to provide to the public any videotapes or audiotapes that were made available under this Order. You are hereby notified, however, that the Committee may introduce as part of its record some or all of the tapes, and the transcripts of those tapes, which were introduced at trial in *U.S.* v. *Jenrette*, Crim. No. 80–289.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.,
Special Counsel.

EXHIBIT D

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., October 10, 1980.

MURRAY J. JANUS, ESQ.,
P.O. Box 826
Richmond, Va.

DEAR MR. JANUS: Judge Penn's Order of September 18, 1980, in *In Re Application of Committee on Standards of Official Conduct of the House of Representatives*, D.D.C., Misc. No. 80–2030. required that the House Committee on Standards of Official Conduct provide ten days' notice before disclosing to the public any of the materials provided to the Committee under that Order. The Committee does not at this time intend to provide to the public any videotapes or audiotapes that were made available under this Order. You are hereby notified, however, that the Committee may introduce as part of its record some or all of the tapes, and the transcripts of those tapes, which were introduced at trial in *U.S.* v. *Jenrette*, Crim. No. 80–289.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.
Special Counsel.

EXHIBIT E

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., October 10, 1980.

KENNETH M. ROBINSON, ESQ.,
Washington, D.C.

DEAR MR. ROBINSON: Judge Penn's Order of September 18, 1980, in *In Re Application of Committee on Standards of Official Conduct of the House of Representatives*, D.D.C., Misc. No. 80–2030, required that the House Committee on Standards of Official Conduct provide ten days' notice before disclosing to the public any of the materials provided to the Committee under that Order. The Committee does not at this time intend to provide to the public any videotapes or audiotapes that were made available under this Order. You are hereby notified, however, that the Committee may introduce as part of its record some or all of the tapes, and the transcripts of those tapes, which were introduced at trial in *U.S.* v. *Jenrette*, Crim. No. 80–289.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.,
Special Counsel.

EXHIBIT F

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., October 17, 1980.

[*By Hand*]
KENNETH M. ROBINSON, Esq.,
Washington, D.C.

DEAR MR. ROBINSON: We understand that you are planning to represent Congressman John Jenrette in connection with any proceedings which may be initiated by the House Committee on Standards of Official Conduct as a result of the Congressman's recent conviction. The purpose of this letter is to give you notice that Special Counsel will be recommending to the Committee, at its next meeting (which we expect will be scheduled in approximately two weeks) that the Committee should begin proceedings promptly against Congressman Jenrette pursuant to Rule 14 of the Committee's rules.

If the Committee decides to proceed under Rule 14, we are currently planning to attach to the Report of Special Counsel at the Conclusion of Preliminary Inquiry, *see* Rule 11(a) of the Committee's rules, and to make part of the record, substantial excerpts from the record of the trial of Congressman Jenrette in the United States District Court for the District of Columbia. Available in my office for immediate inspection is a copy of the transcript of that trial, with a line drawn in the left margin opposite those portions of the transcript which we believe irrelevant for the Committee's purposes (*e.g.*, bench conferences concerning peripheral legal arguments), and which we therefore intend to delete from the version of the transcript to be submitted to the Committee. In addition to the pages so marked, we also intend to delete all of pages 3–120, 1276–1303, 1404.–1432, 1454–1484, 1498–1513, 2249–2384, 2772–2797, 3320–3380, 3782–3845, 3858–3876, 3911–3977, 3990–4190, 4383–4438, 4599–4657. Finally, we intend to introduce the following trial exhibits: Government's Exhibits, 2B, 3B, 4B, 5B, 5C, 7B, 7C, 8B, 8C, 9B, 9C, 10B, 10C, 11B, 11C, 12B, 12C, 13B, 13C, 14B, 14C, 15B, 15C, 16B, 16C, 17B, 17C, 18B, 18C, 19B, 19C, 20B, 20C, 21B, 21C, 22B, 22C, 23B, 23C, and Defendant Jenrette's Exhibits 2B, 2C, 3B, 4B, 4C, 5A, 6A, 7A, 8A, 8B, 9A, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 130.

If you wish to suggest any additions or deletions to the excerpts of the transcript and exhibits which we are proposing to submit to the Committee, please inform us specifically of your proposals as soon as possible, so that your suggestions may be appropriately considered.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT G

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., October 30, 1980.

KENNETH M. ROBINSON, Esq.,
Washington, D.C.

DEAR KEN: As I indicated in my October 17, 1980 letter to you, I will be recommending shortly to the House Commission on Standards of Official Conduct that it proceed to a preliminary inquiry in connection with the recent conviction of Congressman Jenrette. In that regard, I propose to introduce as exhibits in the Committee's record the materials referred to in my earlier letter. If you have any suggested additions or changes, I would appreciate your contacting me right away.

Since we have already agreed orally that the audio and video tapes I intend to use are authentic copies of the originals, and, in addition, that I need not obtain a certified copy of the trial transcript, I would propose that we enter into a stipulation formalizing these understandings. In addition, the stipulation would recite those portions of the trial record which we agree are relevant and material to the Committee's investigation (reserving our respective rights, of course, in regard to whether *all* designated portions are relevant and material). Enclosed is a draft of such a stipulation for your consideration.

It is my hope that we can resolve these matters within the next two weeks. Once the Committee meets—which is now tentatively scheduled for November 13—I may have to insist upon a very short period thereafter in which to receive your response. I look forward to hearing from you soon.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

UNITED STATES HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Investigation Pursuant To House Resolution 608

IN RE REPRESENTATIVE JOHN W. JENRETTE, JR.

STIPULATION

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representatives ("the Comittee") and counsel for Representative John W. Jenrette, Jr. that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Criminal Case 80–289 in the United States District Court for the District of Columbia ("the trial") now in the possession of Special Counsel shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audiotapes that are now in the possession of Special Counsel, the originals of which were introduced at the trial as Government Exhibits 2B through 5B, 5C, and 7B through 23B, and Defendant Exhibits 2B, 2C, 3B, 4B, 4C, 5A through 8A, 8B, and 9A, shall be deemed true and accurate copies of the original tapes, so that a witness need not authenticate the tapes now in the possession of Special Counsel for purpose of admission into the Committee records.

3. The transcripts of videotapes and audiotapes that are now in the possession of Special Cuonsel, the originals of which were introduced at the trial as Government Exhibits 7C through 23C, and Defendant Exhibits 25 through 38, shall be deemed true and accurate copies of the original trial transcripts, so that certified copy of the original exhibit need not be made a part of the Committee records.

4. The copy of trial Defendant Exhibit 130 that is now in the possession of Special Counsel shall be deemed a true and accurate copy of the original of such exhibit, so that a certified copy of the original exhibit need not be made a part of the Committee records.

5. Those portions of the trial transcript and the exhibits recited above that have been designated by Special Counsel and cross-designated by counsel for Congressman Jenrette shall be deemed the only portions of the trial record that will be considered relevant and material to the Committee's investigation, *provided,* however, that by so stipulating neither Special Counsel nor counsel for Congress man Jenrette concedes that all such portions are necessarily relevant and material to such investigation.

KENNETH M. ROBINSON,
Special Counsel to the Committee.
E. BARRETT PRETTYMAN, Jr.,
Counsel for Representative Jenrette.

EXHIBIT H

KENNETH MICHAEL ROBINSON, P.C.,
Washington, D.C., October 31, 1980.

Re The Honorable John W. Jenrette.
MR. E. BARRETT PRETTYMAN,
Special Counsel, Committee on Standards of Official Conduct,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. PRETTYMAN: In response to your letter of October 17, 1980, please be advised that it is our intention to rely upon the entire record of the District Court for any inquiry by the House Committee.

Since it should be clear that an informed decision can only be made on the entire record—including pre-trial and post-trial hearings and pleadings, I would specifically request the inclusion of all such material. Any decision made by the Committee in the absence of such evidence cannot be viewed as fair. The Committee should understand that the Court's rulings which excluded certain instructions, defense theories and issues from going to the jury will be reversed and Mr. Jenrette will win on the retrial.

In the event of any formal presentation to the Committee I would estimate that we would require a minimum of three days in order to adequately explore the facts. Thank you for your cooperation in this matter.

Best regards,

KENNETH MICHAEL ROBINSON.

EXHIBIT I

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 3, 1980.

[*By Hand*]
Re Representative John W. Jenrette.
KENNETH M. ROBINSON, Esq.,
Washington, D.C.

DEAR KEN: This is in response to your letter of October 31, 1980, which I received this morning, concerning the record and procedures with regard to any hearings that may be conducted by the House Committee on Standards of Official Conduct as a result of the recent conviction of your client, Representative John W. Jenrette.

As you are aware, I have designated for inclusion in the Committee record all portions of the trial transcripts containing evidence presented by, or favorable to, Representative Jenrette, as well as substantial excerpts from the case presented by the Government. I have proposed excluding other portions of the transcript simply because in my view they are totally irrelevant to the case and would expand needlessly the already substantial bulk of the anticipated Committee record. Nevertheless, in view of the concerns expressed in your letter, I will include in the Committee's record the testimony of witnesses Wilmore, Harding, Fisher, Jamar, Skyler, Bell, Ricks and Askeland, which I had proposed to be excluded. With the inclusion of that testimony, the proposed transcript excerpts will include all of the substantive testimony at trial. If you disagree, please inform me immediately.

I cannot agree with your contention that such extraneous materials as bench conferences, pretrial hearings, and legal pleadings should be included as part

of the record of the Committee's proceedings. As you are aware, the Committee's Rules do not call for a redetermination of every legal issue which might have been raised at trial or which might now be raised on appeal. However, in the event that you insist upon the appropriateness of placing before the Committee other parts of the criminal trial record, I am prepared as an accommodation to Representative Jenrette to recommend to the Committee that such mattrials be made part of the official Committee record, *so long as you provide me with legible copies of such materials by no later than noon, Tuesday, November 11, 1980.* I have no guarantee, of course, that the Committee will adopt my recommendation. I should emphasize, moreover, that I will additionally recommend that the Committee not undertake the expense of printing or otherwise reproducing the additional materials you may propose for inclusion in the record, since I am strongly of the view that they are wholly irrelevant to the issues which are now, or which may become, pending before the Committee.

With regard to your statement concerning the length of your anticipated presentation before the Committee, the Committee of course will decide how much time is appropriate for the presentation of Representative Jenrette's case, and the Committee can do so only after being apprised of the nature of the evidence which you propose to submit. Nevertheless, you should be aware that under the procedures set forth in Committee Rule 14, the issue before the Committee in the first phase, or "preliminary inquiry," of its proceedings is simply whether the record of a Congressman's conviction demonstrates that an offense occurred which is within the Committee's jurisdiction; in making that determination, the Committee relies upon the evidence presented at the criminal trial, rather than accepting new evidence, or re-hearing the same evidence that was before the court. Unlike the procedures set out for the second stage of disciplinary hearings, *see* Committee Rule 16(f), the Committee's Rules and procedures provide only for a sworn statement by the respondent Congressman, and not other witnesses or evidence (beyond the trial record), during the preliminary inquiry phase.

Finally, regardless of any decision you might make relating to the matters discussed above, I would appreciate your reviewing the Proposed Stipulation previously sent to you and, if necessary, rewriting it in a form acceptable to you. I am particularly referring to those portions which deal with subjects we have already orally agreed to on the telephone.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT J

RESOLUTION

Whereas, on October 7, 1980, Representative John W. Jenrette, Jr. was convicted in the United States District Court for the District of Columbia of criminal violations of the following sections of the United States Code:

(Count I)—Title 18 United States Code § 371 [conspiracy]
(Count II)—Title 18 United States Code § 201(c) [bribery]
(Count III)—Title 18 United States Code § 201(c) [bribery]

And Whereas, under federal law, each of the foregoing criminal offenses is punishable by a term of imprisonment of at least one year;

Now therefore be it Resolved, in accordance with Rule 14 of the Rules of this Committee, that this Committee conduct a preliminary inquiry pursuant to Rule 11(a) to review the evidence of the foregoing offenses and to determine whether they constitute violations over which the Committee is given jurisdiction under clause 4(e) of Rule X of the Rules of the House of Representatives;

And be it further Resolved, that Representative Jenrette and his counsel be immediately notified of this action and informed of the Member's rights pursuant to the Rules of this Committee.

EXHIBIT K

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C. November 13, 1980.

Hon. JOHN JENRETTE, Jr.,
U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR REPRESENTATIVE JENRETTE: This is to inform you that on November 13, 1980, the House Committee on Standards of Official Conduct ("the Committee") passed the attached Resolution authorizing a preliminary inquiry into the matters for which you were recently convicted in the United States District Court for the District of Columbia.

Pursuant to Rule 11 of the Committee's Rules, you have the right to present an oral or written statement to the Committee during its preliminary inquiry. A complete set of the Committee's Rules is attached for your information.

If you wish to present a written statement, it must be received by the undersigned by 9 a.m., November 20, 1980. If you wish to appear before the Committee to present oral testimony under oath, you must so inform the undersigned within three days of the date of this letter, and a Committee hearing will be scheduled for 10:00 a.m. on November 20, 1980, for the purpose of receiving that testimony. Failure to respond within these time limits will be deemed a waiver of your rights to present a statement during the preliminary inquiry.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.
Special Counsel.

EXHIBIT L

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 14, 1980.

Re Representative John W. Jenrette.

DEAR KEN: As I have indicated to you in my letters of October 17, October 30, and November 3, I would be happy to enter into an agreement with you to stipulate the authenticity and/or scope of the record to be considered by the Committee at its forthcoming proceedings with regard to your client, Representative John W. Jenrette. However, I must insist upon an extremely prompt response to my proposals or we will be required to proceed without such an agreement.

Despite my serious misgivings concerning the relevance of any portions of the trial record other than those set forth in my proposed designations of record in my letter to you of November 3, I offered to recommend to the Committee that additional portions of the criminal trial be made part of the official Committee record, "so long as you provide me with legible copies of such materials by no later than noon, Tuesday, November 11." I received no response from you regarding that proposal. Nevertheless, your associate, Mr. Hart, yesterday informed us orally that there might be unspecified additional parts of the criminal trial record which you would wish to introduce, and he also indicated that there were aspects of the proposed stipulation which we had sent you which you would wish to have revised. In spite of the fact that the November 11 deadline had passed, as a further accommodation to you and your client, we proposed yesterday a compromise version of the stipulation and presented it to you at the meeting we held with you yesterday at the courthouse. Enclosed is another copy of that new draft stipulation. You stated you would respond to our new proposal by the end of the day yesterday. We have not received such a response.

In view of the fact that the Committee has scheduled a Committee hearing for November 20, 1980, at 10 AM, and that we will be printing portions of the record prior to that hearing, I cannot continue to agree to numerous extensions of the deadlines for your counter-designation of portions of the record. Accordingly, the final deadlines with regard to designation of the record are as follows: If you wish to enter into a stipulation along the lines we have discussed, I must receive your signed copy of the stipulation no later than 10 AM Monday, November 17, 1980. In addition, if you wish me to recommend to the Committee that additional materials be made part of the official Committee record, beyond those set forth in my letters of October 17 and November 3, I must receive legible copies of such materials by no later than 10 AM Monday, November 17, 1980. If I have not received such materials by that time, it will not be possible even to consider having them printed as part of the printed record for the preliminary inquiry, and I will reserve my right to oppose having them included in the unprinted portion of the record, as well.

As I have repeatedly indicater, we wish to give Representative Jenrette the opportunity to have placed in the record any relevant portions of the criminal trial record. We have tried to accommodate you by offering on several occasions to add any portions of the trial record that you deem relevant, even if we disagree. Nevertheless, your continued failure to respond to our letters and proposals will make it impossible to enter into such a stipulated record.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

United States House of Representatives, Committee on Standards of Official Conduct

IN RE REPRESENTATIVE JOHN W. JENRETTE, JR.

INVESTIGATION PURSUANT TO HOUSE RESOLUTION 608

Stipulation

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representatives ("the Committee") and counsel for Representative John W. Jenrette, Jr. that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Criminal Case 80–289 in the United States District Court for the District of Columbia ("the trial") now in the possession of Special Counsel shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audiotapes that are now in the possession of Special Counsel, the originals of which were introduced at the trial as Government Exhibits 2B through 5B, 5C, and 7B through 23B, and Defendant Exhibits 2B, 2C, 3B, 4B, 4C, 5A through 8A, 8B, and 9A, as well as any other exhibits that were introduced at the trial and which may hereafter be offered into the record of the above-captioned proceeding by either party, shall be deemed true and accurate copies of the original trial exhibits, so that a witness need not authenticate them for purposes of admission into the Committee records.

3. The transcripts of videotapes and audiotapes that are now in the possession of Special Counsel, the originals of which were introduced at the trial as Government Exhibits 7C through 23C, and Defendant Exhibits 25 through 38, shall be deemed true and accurate copies of the original trial transcripts, so that certified copies of the original trial transcripts used need not be made a part of the Committee records.

4. The copy of trial Defendant Exhibit 130 that is now in the possession of Special Counsel shall be deemed a true and accurate copy of the original of such exhibit, so that a certified copy of the original exhibit need not be made a part of the Committee records.

KENNETH M. ROBINSON,
Counsel for Representative Jenrette.
E. BARRETT PRETTYMAN, JR.,
Special Counsel to the Committee.

EXHIBIT M

United States House of Representatives, Committee on Standards of Official Conduct

IN RE REPRESENTATIVE JOHN W. JENRETTE, JR.

INVESTIGATION PURSUANT TO HOUSE RESOLUTION 608

Stipulation

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representatives ("the Committee") and counsel for Representative John W. Jenrette, Jr. that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Criminal Case 80-289 in the United States District Court for the District of Columbia ("the trial") now in the possession of Special Counsel shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audiotapes that are now in the possession of Special Counsel, the originals of which were introduced at the trial as Government Exhibits 2B through 5B, 5C, and 7B throug_h 23B, and Defendant Exhibits 2B, 2C, 3B, 4B, 4C, 5A through 8A, 8B, and 9A, as well as any other exhibits that were introduced at the trial and which may hereafter be offered into the record of the above-captioned proceeding by either party, shall be deemed true and accurate copies of the original trial exhibits, so that a witness need not authenticate them for purposes of admission into the Committee records.

3. The transcripts of videotapes and audiotapes that are now in the possession of Special Counsel, the originals of which were introduced at the trial as Government Exhibits 7C through 23C, and Defendant Exhibits 25 through 38, shall be deemed true and accurate copies of the original trial transcripts, so that certified copies of the original trial transcripts used need not be made a part of the Committee records.

4. The copy of trial Defendant Exhibit 130 that is now the possession of Special Counsel shall be deemed a true and accurate copy of the original of such exhibit, so that a ceritfied copy of the original exhibit need not be made a part of the Committee records.

KENNETH M. ROBINSON,
Counsel for Representative Jenrette.
E. BARRETT PRETTYMAN, JR.,
Special Counsel to the Committee.

EXHIBIT N

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 17, 1980.

Re Representative John Jenrette.
KENNETH MICHAEL ROBINSON, Esq.,
Washington, D.C.

DEAR KEN: This is to confirm that at approximately 10 a.m., today your associate, Mr. Hart, came to our office and provided us with copies of certain materials in response to my letter to you of November 14.

You have provided us with a signed copy of the stipulation which we sent to you with our letter of November 14. In addition, Mr. Hart stated that you propose that the following materials be included in the official Committee record, in addition to those set forth in my previous letters to you: a) all portions of the trial transcript which we have not designated; b) the docket entries from the criminal case; c) defendant's Exhibit 124; d) defendant's Exhibit 97; 3) defendant's Exhabit 81 (a transcript of a meeting tape recorded on December 3, 1979); and f) a transcript of a meeting tape recorded by Mrs. Jenrette on February 2, 1980. Mr. Hart indicated that the above materials, together with the materials we have previously designated, and the transcript of the ongoing post-trial hearing before Judge Penn, comprise all of the materials you propose for inclusion in the official Committee record.

In response to your "counter-designation," we will include in the printed version of the Committee record the stipulation you have signed, defendant's Exhibits 81

and 124, and the docket entries from the criminal trial. The remaining portions of the trial transcript which you have proposed for inclusion are, in our view, too bulky for printing and not relevant to the Committee's proceedings (as they consist primarily of legal arguments and bench conferences). Nevertheless, we have agreed to accommodate you by offering no objection to including these materials in the official, non-printed record which will be presented to the Committee at 10 a.m. on Thursday, November 20.

You understand that it is your responsibility to bring with you to the hearing legible copies of those materials for inclusion in the record. We are not willing to agree to have included in the Committee record the transcript of February 2, 1980, since that transcript was not accepted as accurate by the trial court or admitted into evidence. We have agreed, however, not to object if you wish to offer into evidence on Thursday copies of the tape recording of that meeting. Finally, with regard to defendant's Exhibit 97, you wanted only certain pages of that exhibit submitted to the Committee. We had no objection to the exhibit's inclusion in the official Committee record, and we offered to print it, as well, but we felt that for the sake of clarity, completeness and fairness, the entire exhibit should be reproduced rather than selected pages from it. You responded that Representative Jenrette would prefer that that exhibit *not* be printed, but that a single copy be made a part of the Committee's records. We therefore are omitting the exhibit from the printed record we are preparing now, and we assume you will bring with you on Thursday a legible copy of the entire exhibit.

If your understanding of the agreements we have made concerning the Committee record differs in any way from what I have recited above, please let me know immediately.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT O

KENNETH MICHAEL ROBINSON, P.C.,
Washington, D.C., November 17, 1980.

E. BARRETT PRETTYMAN, Jr.,
Special Counsel, Committee on Standards of Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR MR. PRETTYMAN: Pursuant to your November 13, 1980 letter, notification is hereby made of Congressman Jenrette's desire to submit a written statement concerning the Rule 11 preliminary inquiry now scheduled for November 20, 1980.

In addition, Congressman Jenrette wishes to appear in person at the scheduled hearing and present live testimony under oath. I also feel that an oral presentation by myself regarding the jurisdictional issues is of critical importance and would request the opportunity to do so at that time.

At the November 20th hearing we plan to supply those documents that could not be printed in the bound record but which we feel are critical to any consideration on the merits. These documents will consist of any trial transcript excluded from the printed record; hospital records whose confidentiality prevents their publication; material used at trial and subsequently sealed by the trial Court; and various tape recordings heard by the jury during the course of the trial.

As per our agreement, a copy of the written submission will be provided to you prior to its delivery to the committee.

Barrett, there are many matters which distress me about the scheduled procedure before your committee. First, I believe the rules are being misapplied and that Rule 12 & 14 are specifically being misinterpreted by you and the committee. Motions will be filed this week which fully state our position on the issues; however, we are concerned that:

(1) The U.S. Code, Title 18 § 201 et seq., specifically provides for a three pronged penalty upon conviction of bribery. They are:

(a) Up to 15 years imprisonment;
(b) Three times the amount of the proven bribe;
(c) May be removed from Congress.

(2) A verdict of guilty is not a conviction until sentencing. It is not final until the exhaustion of all appeals. That is the expressed intent of Congress in that bribery statute and the U.S. Supreme Court as a matter of law.

(3) Director William Webster, Mr. Benjamin Civiletti, John Good, F.B.I., and Phillip Heymann, Justice Department should be subpoenaed to testify before the committee. None of these witnesses could be called before the trial jury.

Since the conviction is not final and more importantly, there is none yet as there has been no sentencing, Rule 14 is not the proper procedural route. It is clear that you have used Rule 14 in order to prevent our use of Rule 12 which provides 21 days to reply and present a full defense.

Barrett, your role is equal to that of a prosecutor. The Committee is equal to a grand jury. No interpretation of due process permits the prosecutor and grand jury to charge a crime, as you have done; avoid a trial, as you are trying to do; and then sentence. I object to any further ex parte appearances by you or your staff before the Committee. We are entitled to be present at all stages since the Committee members are equal to judges and jurors and ex parte proffers by you violate the spirit of the canon of ethics, due process and the very laws passed by the Congress.

Moreover your unjustified rush to judgment on this case raises serious problems of double jeopardy since you apparently are intent upon usurping the role of the Courts in the administration of justice.

The matters listed above do not, of course, cover all objections which we will wish to raise concerning this proceeding and this letter should not be viewed as any waiver of issues in this regard.

Best regards,

KENNETH MICHAEL ROBINSON.

EXHIBIT P

United States House of Representatives, Committee on Standards of Official Conduct

IN THE MATTER OF JOHN W. JENRETTE, JR.

REQUEST FOR EXTENSION OF TIME IN WHICH TO SUBMIT RESPONDENT'S PROPOSALS FOR INCLUSION IN THE OFFICIAL RECORD

Respondent John W. Jenrette respectfully petitions the Committee for an extension of time in which to submit documents for inclusion in the Official Record before the Committee. As grounds for such request, respondent would show that:

1. Special Counsel has set November 20, 1980 as the cut-off point for the submission of material for inclusion of material.

2. It has been the consistent position of respondent's counsel that all portions of the District Court proceeding must be included in the Committee's Official Record for an informed judgment by this Committee. It is the position of special counsel that self-designated portions of the District Court proceedings are "not important" enough to justify their inclusion in the bound version of the record now before the Committee. As a consequence, it has become the respondent's burden to supply the portions of the District Court proceedings which special counsel has deemed "not relevant." This can be done only after an examination of the printed record to discover what portions have been omitted. Counsel for respondent obtained this printed record at 3:00 p.m. on November 19, 1980 and has been unable to complete the required examination and subsequent duplication of the required pages.

3. Special counsel has refused to include in the printed record the proceedings held in District Court on November 12 and 13, 1980. The transcript of these proceedings are not yet available for inclusion.

4. Significant testimony on material issues still awaits the December hearings scheduled by Judge Penn for December in United States District Court.

Respondent John W. Jenrette believes that simple fairness requires the record before the Committee to be held open until such time as all of the evidence can be presented. Any decision made without all of the evidence present can be termed neither fair nor impartial.

Respectfully submitted,

KENNETH MICHAEL ROBINSON.
DENNIS M HART,
Counsel for Congressman Jenrette.

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing motion was hand delivered to Special Counsel for the Committee on Standards, this 20th day of November, 1980.

DENNIS M. HART.

EXHIBIT Q

United States House of Representatives, Committee on Standards of Official Conduct

IN THE MATTER OF JOHN W. JENRETTE, JR.

REQUEST FOR THE ATTENDANCE OF WITNESSES PURSUANT TO RULE 11(a)(2)(d)

Congressman John W. Jenrette hereby petitions the Committee on Standards of Official Conduct, pursuant to its Rules, to require by subpoena or otherwise, the attendance of certain witnesses.

By way of letter to the Committee's counsel, dated November 17, 1980, the Committee was informed of Mr. Jenrette's desire to call as witnesses the following individuals:

William Webster, Federal Bureau of Investigation.
Benjamin Civiletti, Department of Justice.
Philip Heymann, Department of Justice.
John Good, Federal Bureau of Investigation.

Petitioner submits that it is only through the examination of these witnesses that the Committee can properly conduct a complete and impartial hearing into the actions of John W Jenrette. The above named individuals were the architects and guiding forces behind the investigative conduct which created the crimes for which John W. Jenrette now stands charged. Any examination of conduct without these witnesses can only be judged as incomplete and ineffective as a disciplinary proceeding.

Respectfully submitted,

KENNETH MICHAEL ROBINSON.
DENNIS M. HART,
Counsel for Congressman Jenrette.

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing motion was hand delivered to Special Counsel for the Committee on Standards, this 20th day of November, 1980.

DENNIS M. HART.

EXHIBIT R

United States House of Representatives, Committee on Standards of Official Conduct

IN THE MATTER OF

JOHN W. JENRETTE, Jr.

MOTION BY CONGRESSMAN JENRETTE TO DEFER PRELIMINARY INQUIRY, OR, IN THE ALTERNATIVE, TO DEFER DISCIPLINARY HEARING

The Committee on Standards of Official Conduct has determined to proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction if any to recommend to the House of Representatives on Representative Jenrette as a result of a jury verdict of guilty for bribery and conspiracy. In the course of this determination, the Committee through Mr. Prettyman has indicated that Congressman Jenrette must proceed to hearing forthwith despite the fact that (1) he has not been sentenced; (2) due process motions are still very much in issue; (3) a motion for judgment not withstanding the verdict has not been ruled upon. Moreover, evidentiary hearings held in connection with these pending motions reveal more and more evidence of government perjury that is being uncovered each week.

The Committee is apparently listening to its counsel without all the facts. In its consideration of the Myers inquiry, the Committee used three factors: (1)

even if the trial court would conclude that the government's conduct in the case violated the Congressman's rights under a due process guarantee, such a decision would not impact on the evidence reviewed by the Committee; (2) that the jury verdict of guilty constitutes a "conviction" within the meaning of Rule 14 of the Committee's Rules despite the fact that the due process issue has not yet been addressed by the trial court; and (3) that in view of the impending Congressional adjournment, Congressman Myers had failed to show cause for departing from that interpretation.

Congressman Jenrette and his codefendant as well as all "ABSCAM" defendants raised the issue of due process violations pre-trial, contending that such violations mandated the dismissal of the indictment. All the trial courts have deferred hearings on the due process issues after a verdict.[1] The hearing in Congressman Jenrette's case on this issue has not yet been completed. Some facts relevant to this issue were established at trial. A substantial record on the issue was developed in connection with related cases in Philadelphia and New York. However, there are still important facts to be established in this case at the due process hearing.

The essence of the due process defense is that the nature and extent of the government involvement in the crime were so overreaching as to *bar* prosecution. *United States* v. *Twigg*, 588 F. 2d 373, 377 (3d Cir. 1978). The Congressman has asserted before the district court that the criminal conduct alleged in the indictment was the product of government overreaching in that the acts were inextricably intertwined with a scheme initiated, planned, and executed by the Government.

The Courts have acknowledged a need for judicial sensitivity to the problems presented by such law enforcement activity.

> Infiltration of criminal operations by informers and undercover agents is an accepted and necessary practice. Yet, this court cannot "shirk the responsibility that is necessarily in its keeping . . . to accommodate the dangers of overzealous law enforcement and civilized methods adequate to counter the ingenuity of modern criminals."

United States v. *Twigg*, *supra*, quoting *Sherman* v. *United States*, 356 U.S. 369, 381 (Frankfurter, J., concurring in result).

> Prosecutors and their agents naturally tend to assign great weight to the societal interest in apprehending and convicting criminals; the danger is that they will assign too little to the rights of citizens to be free from government-induced criminality.

United States v. *Archer*, 486 F. 2d 670, 677 (2d Cir. 1973).

It is the position of John Jenrette that the conduct of the government in this case was so outrageous that the government should have been precluded from bringing the charges against him. *This issue has not yet been decided in the first instance by any trial judge.* While the Court decided that the issue should be resolved after the jury returned its verdict, that verdict remains, in a very real and significant sense, a contingent verdict. It was for this reason that counsel moved to keep open stage one of the disciplinary procedure. In law and in fact, there has been no conviction because the case has not yet been completed.

Our position is supported by Rule 32(b)(1) of the *Federal Rules of Criminal Procedures* which clearly refers to a judgment of conviction as being entered after sentence is imposed.[2]

> [A] judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence.

See United States v. *Lee*, 509 F. 2d 400, 405 (D.C. Cir. 1974); *Thomas* v. *United States*, 121 F. 2d 905, 907 (D.C. Cir. 1941); *Crawford* v. *United States*, 41 F. 2d 979, 980 (D.C. Cir. 1930) ("it takes the judgment of the Court on the plea or

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[1] The Courts also rejected the defense contention that the due process defense should be submitted to the jury. In the typical criminal trial matters of due process are determined before trial. For some reason these "ABSCAM" cases have generated new rules and procedures as if Congressmen do not qualify under the inscription above the U.S. Supreme Court—"Equal Justice Under The Law."

[2] Of course, sentencing cannot take place until after the resolution of the due process issue. Judge Penn intends to review 25 volumes of written memorandum which are six (6) feet in height. Prior to hearings on Nov. 27, 1980, the prosecutors had misled the judge or at a minimum misstated the truth based on information given them by Justice Department and FBI sources close to the ABSCAM cases *re* the total absence of written documents on the case(s).

verdict to constitute a conviction"). *See Also:* Rule 4(b) Federal Rules of Appellate Procedure [Appeals in Criminal Cases]. Rule 58 Federal Rules of Civil Procedure [Entry of Judgment]. The distinction between verdict and conviction should not be ignored. Therefore, it is respectfully submitted that the Committee erred in finding that a jury verdict of guilty constitutes a conviction within the scope of Rule 14 of the Committee's Rules. Mr. Prettyman has no law to support the argument he has presented to *ex parte* to the Committee. Clearly, the intent of Congress has always been that a conviction means sentencing. The bribery statute itself, 18 USC § 201 *et seq.* provides such language and the penalty of any convicted public official "may be removed from Congress." That provision when read with Supreme Court cases about what constitutes a conviction, renders unescapable the conclusion that Congress intended for the sentencing and appellate process to be exhausted before a member of Congress could be removed from Congress.

The critical nature of the distinction between a verdict and a judgment of conviction is more than a mere technicality in the present case. The Supreme Court has written that a judgment of conviction can be "imposed only after the whole process of the criminal trial and determination of guilt has been completed." *Corey* v. *United States*, 375 U.S. 169, 174 (1963). There should be no dispute that the criminal trial of John Jenrette is not now complete as to the fundamental matters at issue. As the Supreme Court noted: "Final judgment in a criminal case means sentence. The sentence is the judgment." *Berman* v. *United States*, 302 U.S. 211, 212. In fact, in its present intermediate posture, the questions and issues raised by Mr. Jenrette cannot, under the rules be subject to any form of appellate judicial review. *Korematsu* v. *United States*, 319 U.S. 432, the Committee's attempt to leap-frog the accepted process of criminal jurisprudence casts serious doubt on the Congress' respect for its own legislation.

Mr. Jenrette is before the Committee because of a verdict of guilty on a bribery case. The Congress passed 18 USC § 201 (bribery) outlining the crime and the penalty. The penalty provided, in part, for expulsion—if convicted—and the Congress passed federal rules of criminal procedure which at Rule 32(b)(1) defined a conviction as *after sentencing*. There is no escaping the historical precedents in law and Congressional intent *supra*. Therefore, this Committee is, with all due deference, flagrantly defying the intent of the entire Congress, the federal courts, its own drafted federal rules and all fair play when it (the Committee) gives itself the power to apply Rule 14 (Committee Rules) rather than Rule 12 and calls Mr. Jenrette's present verdict—still under review by the presiding judge (pursuant to Rule 33)—a conviction. No lawyer of experience would make such an outrageous determination as this Committee is attempting to do to Mr. Jenrette and as its counsel has thus far done without legal or legislative authority in *ex parte*, unrecorded proceedings.

Our position is supported by the cases interpreting Rule 609 of the Federal Rules of Evidence. Rule 609 allows a party to attack the credibility of a witness with evidence that he or she has been *convicted* of a crime punishable by death or imprisonment in excess of one year or involving dishonesty or false statement. Several courts have faced the issue of whether a jury verdict of guilty upon which judgment has not been entered qualifies as a "conviction" for impeachment purposes. Although a number of courts have found that there is no distinction between a jury's finding of guilty and the entry of a judgment of conviction for impeachment purposes[3], the rationale of these decisions requires a different conclusion in the circumstances of this case.

The most significant operative fact on which the courts rely in allowing impeachment by proof of a guilty verdict prior to judgment is that "the entry of judgment is usually 'nothing more than a ministerial act . . .'" *United States* v. *Vanderbosch*, 610 F. 2d 95, 97, (2d Cir. 1979). This is so because a verdict of guilty carries an assurance of finality.

> Because the judgment of a jury is favored in our law, a court may not lightly disturb a jury's verdict.

United States v. *Klein*, 500 F. 2d 1236, 1241 (5th Cir. 1977).

In this case, there are significant issues to be resolved before the entry of judgment becomes purely ministerial. The pendency of these issues belies the finality

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[3] See *United States* v. *Vanderbosch*, 610 F. 2d 95, 97 (2d Cir. 1979); *United States* v. *Duncan*, 598 F. 2d 839, 864–65 (4th Cir. 1979); *United States* v. *Klein*, 560 F. 2d 1236, 1239–41 (5th Cir. 1977); *United States* v. *Rose*, 526 F. 2d 745, 746–47 (8th Cir. 1975).

of the jury's verdict. The trial of Mr. Jenrette is not yet complete. Judge Penn has ordered the post-trial motions to continue. We have had two days of testimony post-verdict and have three set for December. The motion for new trial is still under advisement which means there is merit to our claim that there was insufficient evidence to justify the case having been sent to the jury. Under these circumstances, it is respectfully submitted that it is erroneous to treat the verdict of guilty as a conviction for purposes of Rule 14 of the Committee.

Moreover, the suggestion, by the Committee in its resolution that dealt with Congressman Myers' due process rights, that such an infringement of basic rights would neither impact on nor detract from the evidence ignores the significance of such a finding. As Justice Powell observed in *Hampton* v. *United States*, 425 U.S. 484, 495 n. 7 (1976) (Powell, J., concurring),

> Police overinvolvement in crime would have to reacch a demonstrable level of outrageousness before it could bar conviction.

Thus, a determination by the District Court that the government violated Congressman Myers' or any other person's right to due process would necessarily include a finding of egregious government conduct. See *United States* v. *Twigg*, 588 F. 2d 373, 381 (3d Cir. 1978) ("This egregious conduct on the part of the government agents generated new crimes by the defendant merely for the sake of pressing criminal charges against him when, as far as the record reveals, he was lawfully and peacefully minding his own affairs. Fundamental fairness does not permit us to countenance such actions by law enforcement officials and prosecution for a crime so fomented by them will be barred").

Congressman Jenrette's case is far different from that of Mr. Myers. The Committee proposes to look solely at the activities of John Jenrette. Yet it fails to recognize that it was the action of the government agents which was the exclusive cause of the defendant's reactions. To separate the action-reaction and to limit an examination only to the reaction is to view the facts with such limited perspective so as to make an informed judgment impossible. Moreover, if one of the circumstances surrounding his involvement is "outrageous" conduct by government agents, it is most certainly relevant to the sanction determination. To deny Congressman Jenrette the right to have his conduct evaluated in that light is to deny his his constitutional rights merely because he is a Congressman. And to suggest that the impending adjournment of the House necessitates haste in this matter renders the opportunity to be heard a mockery.

Prior to the expulsion of Mr. Myers, no Congressman had been expelled since 1861. That means Senator Brewster who was convicted of bribery was permitted to exhaust his appeals and be dealt with at the polls. Eventually Mr. Brewster was successful on appeal and he is not "convicted" to this day. Mr. Diggs was permitted to exhaust his appeals. Others, including Mr. Bauman were not even brought before the Committee. It is only the ABSCAM cases that have caused the Committee to misread, misapply and misuse the rules. The reason is clear. Congress is concerned with its image due to some of its members having been video-taped taking money in exchange for promise of favors. Regardless of the due process claims, Congress and its image has been hurt in the eyes of many. Nonetheless, the Congress writes the laws and it cannot stampede a Member's rights to due process simply because to do so would look good to the public. It is indeed dangerous to turn loose a Committee and its counsel in a race to expel a man from Congress who has not exhausted the rights which the Congress and our forefathers named Jefferson and Adams, etc., gave him. As the Supreme Court observed in Senator Brewster's case:

> The process of disciplining a Member in the Congress is not without countervailing risks of abuse since it is not surrounded with the panoply of protective shields that are present in a criminal case. An accused Member is judged by no specifically articulated standards and is at the mercy of an almost unbridled discretion of the charging body that functions at once as accuser, prosecutor, judge, and jury from whose decision there is no established right of review. In short, a Member would be compelled to defend in what would be comparable to a criminal prosecution without the safeguards provided by the Constitution. Moreover, it would be somewhat naive to assume that the triers would be wholly objective and free from considerations [408 US 520] of party and politics and the passions of the moment.

The passions of the moment in the present case must not be permitted to control this Committee's actions.

There is other evidence which must be reviewed. The trial court denied counsel's motion to call William Webster and others during trial. The legitimate defense of "duress" was rejected by the Court. That was reversible error. Many areas of relevance were rejected by the trial judge before the jury. There are aspects of double jeopardy and due process here. The counsel for the Committee has improperly been permitted to appear *ex parte* before the Committee which may very well try and sentence Mr. Jenrette. That violates every canon of ethics, right to due process, congressional intent in federal rules and federal court case law. We cannot be rushed to a November 20, 1980 hearing with the record as it now exists.

Respectfully submitted,

KENNETH MICHAEL ROBINSON.
DENNIS M. HART,
Counsel for Congressman Jenrette.

CERTIFICATE OF SERVICE

I, Dennis M. Hart, certify that a copy of the foregoing motion was served, under protest to E. Barrett Prettyman, Jr., Special Counsel Committee on Standards by hand, with the request for oral presentation by counsel before any decision is reached in this matter, this 20th day of November 1980.

DENNIS M. HART.

EXHIBIT S

KENNETH MICHAEL ROBINSON, P.C.,
Washington, D.C., November 21, 1980.

CHARLES E. BENNETT,
Committee on Standards for Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN BENNETT: At 11:20 a.m., today, November 21, 1980 I learned through my associate, Dennis M. Hart, that Mr. Prettyman has scheduled a Committee hearing for 1:00 p.m. I cannot adequately state the anger that I have nor the contempt that I feel for what Mr. Prettyman has done. It was apparent yesterday at the hearing that there was a vote 7 to 3 in favor of hearing the testimony of Mr. Stowe. Mr. Prettyman knows that Mr. Stowe, not Mr. Janus (his attorney), should be given the opportunity to testify. At the conclusion of the hearing yesterday you, Mr. Chairman, tried to have a recount on a vote which would have had a devastating effect on Mr. Jenrette. Mr. Jenrette objected to any recount and none was ordered. You then abruptly called the hearing to an end and did not reset the hearing for any definite date. At that time you, as well as Mr. Prettyman, knew that I had committments in numerous Courts in the D.C. area and you were aware that Mr. Hart was unavailable. In fact, you knew as did Mr. Prettyman that Rita Jenrette is to appear before the federal grand jury today under subpoena and that Mr. Jenrette would be with her at that very stressful moment.

I have not spoken to John Jenrette since approximately 6:00 p.m., last night. I have tried to reach him a number of times this morning unsuccessfully and finally spoke to his wife Rita. At this time he is unavailable and will probably be with me and Rita at 1:30 before a federal grand jury trying to clarify matters.

Mr. Prettyman knows or should know that the 5th Amendment belongs to the client and not his attorney. In fact, Mr. Chairman, you specifically had Mr. Jenrettt exercise the option to testify or not to testify after I had repeatedly advised the Committee that Mr. Jenrette would not testify.

It is clear from my conversation with Murray Janus that the situation is not as Mr. Prettyman has related. No one has spoken with Mr. Stowe. Mr. Janus has been unable to reach him in the few hours since the Committee last action. Because of this it is requested that any representation made by Mr. Prettyman to the Committee be made under oath.

It is further requested that any action by this Committee in the absence of Mr. Jenrette and counsel be made in open session with all members of the press present.

As this letter was being written Mrs. Jenrette walked in to my office and informed me that Mr. Jenrette has left town. She tells me that she is supposed to meet him in Texas this evening. Mr. Jenrette has no knowledge of the Committee's proposed action Counsel specifically objects to any action in the absence of notice.

Rules 14 and 11 must be complied with. The vote of the Committee yesterday made it clear that my arguments about those rules are accurate interpretations of those rules. This Committee cannot and must not do what Mr. Prettyman is attempting to do. It is incomprehensible and reprensible for Mr. Prettyman, a member of the District of Columbia Grievance Committee, to so arrogantly violate the rules, the canon of ethic, due process, human and pursue Mr. Jenrette with such outrageous zeal.

I object to what you are doing.

Best regards,

KENNETH M. ROBINSON.

P.S.—We didn't even have time to write and proof read this letter.

EXHIBIT T

NOVEMBER 21, 1980.

Hon. CHARLES E. BENNETT,
Chairman, Committee on Standards of Official Conduct, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN BENNETT: I find it inconceivable that you would consider proceeding on today with the disciplinary hearings on my husband, John W. Jenrette, Jr. As was made patently obvious to you yesterday, my husband's attorneys will not be available today because of the need to be with me for a required appearance before a federal grand jury. As was also made clear to you, my husband is not available to appear today either.

I cannot understand why the committee would proceed so summarily, given the devastating impact that this action would have on my husband. While I understand the duties and responsibilities that the committee has in this matter, the expedient action which you contemplate will reflect poorly on both your committee and the House of Representatives. I find your conduct totally lacking in fundamental fairness.

I want to emphasize that by any rule of fairness, my husband has an absolute right to testify before your committee in this matter, and he continues as he did yesterday—to reserve that right to testify at a later date.

Sincerely yours,

RITA C. JENRETTE.

EXHIBIT U

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
November 21, 1980.

Hon. JOHN W. JENRETTE, Jr.,
U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR COLLEAGUE: Mr. James informed Special Counsel this morning that Mr. Stowe would decline to testify before the Committee on Standards of Official Conduct in your case and that if subpoenaed by the Committee, Mr. Stowe would plead the Fifth Amendment.

In addition to informing you of this fact, I wish to notify you and your counsel that the Committee will continue its preliminary inquiry in your case on December 1, 1980 at 10:00 a.m. in Room B-318, Rayburn House Office Building and would appreciate you and your counsel being present.

Sincerely,

CHARLES E. BENNETT, *Chairman.*

EXHIBIT V

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 21, 1980.

MURRAY JANUS, Esq.,
Richmond, Va.

DEAR MR. JANUS: This will confirm my telephone conversation at 2:15 this afternoon with your partner, Mr. Donald, during which I informed him that the House Committee on Standards of Official Conduct had just voted in the matter involving Representative John W. Jenrette to subpoena your client, Mr. Stowe, for an appearance before the Committee on December 1, 1980 in Washington, D.C. The subpoena will not be served upon Mr. Stowe if I have in my hands by next Wednesday, November 26, a signed, notarized statement by Mr. Stowe to the effect that he will not voluntarily appear and testify before the Committee, and that if subpoenaed to do so, he will invoke the Fifth Amendment and decline to testify.

I want to make clear that the Committee is *not* prepared to grant any type of immunity to Mr. Stowe.

Sincerely yours.

E. BARRETT PRETTYMAN, Jr.,
Speical Counsel.

EXHIBIT W

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 24, 1980.

KENNETH MICHAEL ROBINSON, Esq.,
Washington, D.C.

DEAR MR. ROBINSON: As you will see from page 11 of the enclosed transcript of an Executive Session of the Committee on Standards of Official Conduct held on Friday, November 21, 1980, the Committee adopted my suggestion that a transcript of that day's session be sent to Representative Jenrette and to you, even though that action was not required by the Committee's rules.

You will also note from pages 9 and 13 of the transcript that the Committee voted to issue a subpoena to Mr. Stowe for his appearance at 10:00 AM on December 1, 1980, unless I receive prior to that date a statement signed by Mr. Stowe under oath stating that he will not voluntarily appear before the Committee and if subpoenaed will plead the Fifth Amendment and will decline to testify. I have informed Mr. Janus of the Committee's action both telephonically and by letter, and I have also informed both Mr. Heymann's office and Mr. Nathan of the Committee's action.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT X

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 25, 1980.

KENNETH MICHAEL ROBINSON, Esq.,
Washington, D.C.

DEAR MR. ROBINSON: In regard to your letter to Chairman Bennett dated November 21, I will not address your personal attack upon me, but I do want to correct a few misstatements of fact made by you in that letter:

1. I did not schedule a Committee hearing for 1:00 PM on November 21, as you state. That meeting was scheduled by the Chairman, presumably in consultation with other members of the Committee.

2. The situation with respect to Mr. Janus is precisely as Mr. Snyder and I described it to the Committee. I never stated that Mr. Janus had spoken with Mr. Stowe. On the contrary, as reflected at pages 161–162 of the November 20 transcript and at pages 2–3 of the November 21 transcript, I specifically made clear to the Committee that Mr. Janus had not yet spoken to Mr. Stowe.

3. I am not a member of any Grievance Committee (nor am I a member of the District of Columbia Board on Professional Responsibility).

4. I categorically deny that I have violated any rules, any canons of ethics or due process. Nor am I "pursuing" Mr. Jenrette. I am, in good conscience and with every attempt at fairness, carrying out my responsibilities as Special Counsel to the Committee.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT Y

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 25, 1980.

Hon. JOHN JENRETTE,
U.S. House of Representatives,
Washington, D.C.

KENNETH MICHAEL ROBINSON, Esq.,
Washington, D.C.

MEMBERS OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: I would like to apologize to each of you for a misstatement I made during the session of the Committee on Standards of Official Conduct on November 20, 1980. I claimed at that time that Mr. Robinson was in error in stating that no member of Congress had reported ABSCAM contacts to the authorities prior to February 2. I made that statement in good faith, because I thought I had a clear recollection that at least one and possibly two Congressmen had told me during the course of my investigations that they had in fact contacted the FBI about ABSCAM prior to February 2.

After the session, however, I checked my notes and found that in each case, the Congressmen had contacted the FBI immediately *after* February 2. In order to make certain of my facts, I called Mr. Nathan at the Department of Justice, who confirmed that to his knowledge no Congressmen did contact any authorities in regard to ABSCAM prior to February 2.

I apologize for the error.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

EXHIBIT Z

E. BARRETT PRETTYMAN, Jr., Esq.,
Special Counsel to the House Committee on Standards of Official Conduct,
Washington, D.C.

DEAR MR. PRETTYMAN: Please be advised that I will not voluntarily appear before The House Committee on Standards of Official Conduct and testify in the Jenrette matter. If I am subpoeaned by the Committee concerning this matter, I will refuse to testify based on the recommendation of my counsel on a 5th Amendment basis.

Very truly yours,

JOHN R. STOWE.

Sworn to and subscribed before me this 26 day of November, 1980.

ROIN LYNN KLOTZ,
Notary Public.

EXHIBIT AA

[Subpena Duces Tecum (Hearing)]

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Kirby H. Major, Federal Bureau of Investigation, Washington, D.C. Pursuant to Sec. 4. (c) of House Resolution 608, 96th Cong. 2d Sess.

You are hereby commanded to be and appear before the House Committee on Standards of Official Conduct of the House of Representatives of the United States of which the Hon. Charles E. Bennett is chairman, in Room B–318 of the Rayburn Building, in the city of Washington, on Monday, Dec. 1st, at the hour of 10:00 AM, then and there to produce the things identified on the attached schedule and to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To Any employee of the Committee to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 25th day of November, 1980.

CHARLES E. BENNETT, *Chairman.*

Attest: *Edmund L. Henshaw, Jr., clerk.*

SCHEDULE

Two (2) Form 302 Reports which the Federal Bureau of Investigation made in connection with interviews of John R. Stowe on February 2, 1980.

EXHIBIT BB

United States House or Representatives, Committee on Standards of Official Conduct

IN THE MATTER OF JOHN W. JENRETTE, JR.

PROFFER OF FURTHER EVIDENCE TO PRESENT PURSUANT TO RULE 11

On Thursday, November 20, 1980 counsel appeared before this committee for purposes of what the committee ruled was a Rule 14 hearing. Counsel filed three (3) motions which the Chairman permitted to be read aloud. Thereafter, the committee ruled that the word "conviction" as used in Rule 14 means judgment of guilty by the jury and not judgment (which is upon sentencing) as is the case in a judicial proceeding.

Counsel argued successfully that a Rule 14 proceeding encompasses Rule 11 (a) which gives the accused the right to provide testimony or a written statement before the committee. It was made clear that once the accused either testified or waives said right then the committee *may* provide the options of other proof available in Rule 11(a) (1) (A), (B), (C), (D) and (E). Those provisions (B)–(E) state that counsel can interview designated witnesses, call witnesses under oath, review documents, other exhibits and written memorandums as well as permit probes on other probative evidence. It was discussed that since counsel for Mr. Jenrette had earlier successfully introduced evidence before the committee which was not evidence presented before the Jenrette trial jury then Rule 11(a) (1) (A–E) could and should be read as permitting other evidence to come before the committee. It was suggested that counsel for Mr. Jenrette proffer what other evidence was considered a probative or relevant by counsel. A vote of 7 (ayes) and 3 (nays) favored the taking of co-defendant John Stowe's testimony (without immunity). Counsel was led to believe that Mr. Prettyman would make arrangements for Mr. Stowe's appearance on either December 1 or 2, 1980, since counsel stated unequivocally that he was unavailable for the entire day of Friday, November 21, 1980. Neither Mr. Prettyman nor anyone else suggested that counsel's unavailability for November 21 caused any problem. Chairman Bennett adjourned the hearing on Thursday, November 20, 1980 at approximately 4:15 p.m. There was no stated date for return of parties.

At 11:20 a.m., on Friday, November 21, 1980, counsel's associate, Dennis M. Hart, received a call from Mr. Prettyman advising us to be at a resumption of hearings set for 1:00 p.m., that day. Neither counsel nor Mr. Hart nor Mr. Jenrette were available. In fact counsel was set to present Rita Jenrette before acting Chief Judge John Lewis Smith of the United States District Court for the District of Columbia *in re* a grand jury subpoena that was totally unnecessary. Over objection Mr. Prettyman had set the hearing, purportedly with the Chairman's approval, for 1:00 p.m., knowing of counsel's inability to be present. Counsel submits that such conduct exceeds the role of an advocate and amounts to reprehensible conduct. This committee is entitled to something more in representation and Mr. Jenrette and counsel are entitled to more courtesy and fairness. Regardless of the foregoing historical recitation, counsel has learned that the Committee, upon one member's urgings, re-set the hearing after a brief executive session on November 21 to December 1, 1980. Mr. Stowe will be under subpoena at that time and he can then either testify or exercise *his* privilege to invoke the Fifth Amendment.

Prior to the proffer of further evidence *infra* counsel notes that Representative Sensenbrenner advised counsel, on the record, on Thursday, November 20, that Mr. Jenrette should give careful throught to his right to testify before the committee as *another* member of Congress might decide to bring the expulsion issue to vote on the floor at which time Mr. Jenrette would have but one hour to meet the charges. Counsel reacted forcefully to said representation until both Messrs. Livingston and Jenrette advised counsel that the member's proffer was being most likely misconstrued by counsel.

As a consequence of all the above facts, counsel appears today, December 1, 1980, to renew his efforts to defend Congressman Jenrette's rights to advance further evidence before the committee. That evidence is:

1. Rita Jenrette was prohibited from giving detailed testimony of her knowledge of the "ABSCAM Caper" because she had been permitted to sit in and hear the opening statement of the trial. Counsel argued at the time that Mr. Stowe's objection was misplaced and that the court's ruling on the rule on witnesses had not been violated; nonetheless, Judge Penn put a heavy lid on Mrs. Jenrette's testimony.

As a result the defense was deprived of substantial evidence which Mrs. Jenrette could have provided. She talked to Mel Weinberg on the phone—twice. She observed Mr. Jenrette deterioration from pressures, stress and alcoholism during the period in question. She has specific knowledge of $10,000 which was part of the $50,000 "bribe" paid to Mr. Stowe. She knows exactly what Mr. Jenrette did and did not do. She tape recorded the F.B.I. agents on February 2, 1980 and knows important facts about the issue of credibility.

2. Irv Nathan coordinated the probe of Mr. Jenrette between the South Carolina/Reed Weingarten and Washington/Tom Pucchio/ABSCAM cases. He threatened counsel prior to this indictment and has personal knowledge of the 25 volumes of ABSCAM's "paper trail" which his subordinates denied existed at trial. This does not deal with government misconduct as a primary point. Nathan's testimony and the 25 volumes deal with the validity of the verdict since the "paper trail" shows impeachable points in the government witness sworn testimony.

3. The twenty-five (25) volumes of "ABSCAM" documents must be subpoened to this committee. The committee can study them over the Christmas holiday and use them upon its return in early January 1981. No presentation can be adequate without this committee's having access to those 25 volumes. Mr. Prettyman has had since November 12, 1980 to subpoena those files. That was when the existence of the documents surfaced in Judge Penn's courtroom. Mr. Prettyman should have advised the committee of the existence of the volumes of documents and let the committee decide on relevance prior to counsel's arrival last Thursday. He does not have the powers and discretion he has attempted to exercise in these proceedings. Simply stated, counsel Prettyman is a highly competent, highly priced "hired-hand." The committee has the votes from subpoena power to discretion to recommendation of sanctions. Any delay now over documents should be assigned to Mr. Prettyman and not to counsel Robinson.

4. Phillip Heymann, Assistant Attorney General, Criminal Division, should be a witness to discuss his overall knowledge that Mr. Jenrette's actions here in ABSCAM were no different than those of Senator Pressler prior to the offering

of the $50,000. The $50,000 was thereafter offered to Mr. Jenrette who said no. A phone call was made immediately before Mr. Jenrette's rejection which said offer the money. When Senator Pressler had discussed certain immigration problems an F.B.I. agent called from the adjacent, two-way mirror room and told Tony Amoroso not to offer the Senator the money. Thereafter, the Senator did not return, did not get any money and did not report the incident to the authorities until February 4, 1980 (two days after ABSCAM broke).

Counsel intends to show that Mr. Jenrette's actions were no different than those of the Senator but for the fact that Mr. Jenrette was intoxicated and had Mr. Stowe involved who returned and took the money. Consequently, the video tapes of the Senator should be subpoened by the committee and shown in contrast to the December 4, 1979 Jenrette tapes.

5. Agent Steve Bussey, F.B.I., was the bartender at the townhouse. He should be present to testify about the three *bars* at the W. Street townhouse and his orders to provide liquor to congressional guests.

6. Tom Pucchio, Chief Strike Force, Brooklyn, New York, ran ABSCAM. He has been under counsel's subpoena since August 1980. He repeatedly fails to testify due to the stated excuse that he is busy trying other "ABSCAM" cases. Mr. Pucchio has custody of the 25 volumes of F.B.I., files. He knows, in counsel's view, of perjury in the government's cases and has not brought such evidence to the court's attention as his obligation. Counsel refers here to the contrasts in the statement of Messrs. Webster, Civiletti, and Heymann versus the sworn testimony of Messrs. Goode, Amoroso, Burch and Mel Weinberg.

7. Counsel earlier offered the names of William Webster, Director of the F.B.I., Keith Jones, Charleston, South Carolina, and John Stowe, co-defendant to Mr. Jenrette.

Counsel must be permitted at least one to two days to coordinate the schedules of the various above referred to witnesses. Also, counsel notes that if the committee moves forward and recommends further charges then counsel has substantial witnesses he would call at any sanctions hearing.

Those witnesses include Congressman Pete Stark, Rick Nolan, Walter Fauntroy, M. Davis, former Representative James Mann, Greenville, South Carolina, Governor Dick Riley, South Carolina, and others.

Counsel must present substantial evidence on both the merits and at sanctions, if we get to said point, in able to demonstrate substantial variances between the Myers matter and the Jenrette case.

Respectfully submitted,

KENNETH MICHAEL ROBINSON.
DENNIS M. HART,
Counsel for Congressman Jenrette.

EXHIBIT CC

KENNETH MICHAEL ROBINSON, P.C.,
Washington, D.C., November 26, 1980.

Mr. BARRETT PRETTYMAN,
Hogan & Hartson,
Washington, D.C.

DEAR BARRETT: Thank you for your two letters I received today, November 25, 1980.

First, it was highly commendable for you to correct your misstatement on Congressmen not reporting bribe attempts prior to February 2, 1980. A lot of lawyers would not have admitted such a mistake. I hope you can appreciate why I was so upset with your error as it would have dealt a hard blow to my continued theory in Mr. Jenrette's case.

Second, I was led to believe that the 1:00 p.m., Friday, November 21, 1980, meeting was scheduled after you reported to the Chairman that Mr. Stowe would take the Fifth Amendment. Mr. Janus told me that he had spoken to you and advised you that he not not spoken to Mr. Stowe. Mr. Dohnal advised me on Thursday that he had not spoken to Mr. Stowe and that he had explained that to Mr. Snyder. I told you on Friday at about 11:30 a.m.. that I could not be present and that the privilege is that of the client and not that of Mr. Janus. You told me that it was not necessary to tell you the law.

The point, Barrett, is that you (1) knew I would not be present, (2) knew my viewpoint as a lawyer, (3) let the Chairman set the hearing for 1:00 p.m., and did not explain to him all the favorable aspects of my arguments which I feel you had an obligation to do and (4) went to the hearing in our absence and suggested that you make your final argument and that we could argue December 1. Such a proposition is contrary to every standard of procedure, strategy and advocacy. More importantly, it would have literally meant that the hearing of new evidence aspects of our case would have been closed despite (7 to 3) and (5 to 5) votes in our favor on Thursday. All of the above was being done with no input by me or Mr. Jenrette and I say that you know better than to do that. Such a practice violates *ex parte* canons of ethics and every attorney is entitled to more courtesy.

Again, I am sorry that we are in such disagreement with one another on interpretations of the rules, the constitution, etc., but feel that lawyers can and should argue their points. Hopefully, we will be present at all phases hereafter.

Best regards,

KENNETH MICHAEL ROBINSON.

EXHIBIT DD

JUNE 1, 1979.

From: Director FBI.
To: FBI Brooklyn-Queens, FBI Miami.

Reference Brooklyn-Queens letter May 14, 1979, and Miami teletype May 21, 1979.

Authority hereby granted to pay captioned informant a $15,000 lump sum payment for services rendered and expenses incurred in connection with the AB SCAM and investigations described in referenced communications. Brooklyn-Queens insure future requests are submitted by teletype.

NOTE.—Necessary approval for above payment is on CID addendum to referenced Miami teletype.

MAY 1979.

Re BQ Letter to Bureau, May 14, 1979.

ABSCAM Itsp. Brooklyn-Queens,
Goldcon, Few; Rico

Referenced letter from BQ requested lump sum payment to BQ 6774-C of $15,000.00. For information of the Bureau, says source has been operated for the past 10 months jointly in Miami Division and has given information on individuals who are con men and organized crime individuals. Numerous cases have been opened and prosecution is pending currently in Miami on at least five individuals.

Miami has not requested payment for BQ 6774–C this date in that Brooklyn-Queens office has main control of source. However, for the information of the Bureau, source has been responsible for the following preventive economic losses in the Miami Division sonce July, 1978: 54 million dollars in July, 1978; 200 million dollars, November 1978; 800 million dollors, November, 1978; $300,000.00, November, 1978; 600 million dollars, January, 1979; 400 million dollars, January, 1979, and 384 million dollars, February, 1979. This is a grand total of one billion nine hundred and thirty-eight million three hundred thousand dollars preventive economic loss that source has recovered along with undercover agents in Miami with absolutely no cost to the Bureau.

In addition, the Bureau paid * * *, and due to source's resourcefullness, was able to obtain a "kickback" in excess of $25,000.00, which was returned to the Bureau.

Miami is currently working on case involving Congressman John Jenrette, Democratic Congressman from South Carolina. Telephone conversations recorded between source and John Stowe have indicated that Jenrette is in financially bad shape and is willing to do "favors". Jenrette was subject of main ?? case in the Columbia Division along with Stowe. Information from Columbia indicates that Jenrette is in financially bad shape and that Stowe is a close associate of his. It is anticipated that undercover agents and source will be meeting with Stowe and/or Jenrette in next two weeks aboard undercover yacht in south Florida.

In addition, source has been of utmost help in giving numerous agents leads on white collar cases in the Miami Division. Goldcom north operation will be in full swing again in two weeks when source returns to Florida. Yacht is currently being repaired and should be fully operational in two weeks.

It is requested the Bureau take into consideration all the above information in considering payment to BQNY 6774–C. Bureau will be kept advised of all future developments.

ADDENDUM: CRIMINAL INVESTIGATIVE DIVISION (CID)

CID agrees with SAC, Brooklyn Queens and SAC, Miami that informant's actions resulted in significant accomplishments and are worthy of a $15,000 lump sum payment. In the attached Brooklyn Queens letter dated May 14, 1979, and Miami teletype dated 5/21/79, source has been credited with $1,938,300,000 preventive economic loss,

Critical information concerning Congressman John Jenrette, Democrat from South Carolina. In addition, this informant has provided information in the matter captioned.

Since April, 1978, source has been provided with a total of $27,000 in lump sum payments. The most recent was a lump sum payment of $5,000, 4/9/79, for previous information which included the bribe paid.

[U.S. Government Memorandum]

MAY 14, 1979.

To: Director, FBI.
From: SAC, Brooklyn-Queen (137–14579) (P).
Subject: BQ 6774–C.

This is a request for a lump sum payment of $15,000 for above captioned source.

For several months, captioned source has been in contact with [deleted] in connection with the case entitled, "ABSCAM ITSP; (00:BQ)." On 2/12/79, [deleted] came to the offices of Abdul Enterprises, Ltd., Holbrook, New York, the undercover company of said case, to update Chairman of the Board of Abdul, John M. McCloud, regarding the progress being made by [deleted]. It should be noted, [deleted] was paid [deleted] on [deleted] to aid Abdul Enterprises in securing a [deleted] in [deleted]. Prior to the meeting with McCloud, the source impressed upon [deleted] that he should detail [deleted], willingness to cooperate with Abdul Enterprises in securing that license. Note that [deleted] Chairman of the [deleted].

It is the function or the [deleted] to rule as to who [deleted] to [deleted] in [deleted].

To reward the source for the outstanding manner in which he not only skillfully established a major federal violation against a major political figure, but also obtained information as to additional corrupt political targets, a $15,000 lump sum is requested.

EXHIBIT EE

OPENING STATEMENT BY MR. JANUS

(After recess, Jury not present.)

THE COURT. Mr. Janus, with respect to the motion to sever the Court will give that matter further consideration and rule on it on Monday. At this time I will ask that you go forward with your opening statement.

Mr. JANUS. Yes sir.

[Whereupon, the jury returned to the courtroom.]

THE COURT. Counsel ready to proceed? Mr. Janus?

Mr. JANUS. If Your Honor please, Mr. Kotelly and Mr. Weingarten, ladies and gentlemen of the jury, as you were told yeserday towards the end of the afternoon and I was talking to you as prospective jurors, my name is Murray Janus and together with my partner who is sitting next to me over at counsel table, Mr. Dennis Dohnal, we represent the defendant, John Stowe. We are going second today just as we went second yesterday, second in order of defendant and that's because we are the number two named defendant. But it's even more a significant

reason. This is the Congressman Jenrette trial as you're going to hear from the evidence throughout. John Stowe, as you're going to hear thoughout, is the person, not a mayor. He's not a Congressman, not a Governor but an ordinary man who happened to be the victim of all of these circumstances. That's going to be the evidence that you're going to be hearing over the next several days and hopefully it would just be days.

His Honor is going to charge you as to the law at the conclusion of the evidence, at the conclusion of counsel's argument. There are certain things that he's already told you. They bear repeating because you took an oath that you're going to follow and accept those basic tenants.

That is John Stowe, just like John Jenrette, is presumed to be innocent. The fact that he's here and the fact that he's been indicted is not evidence against him.

Mr. Dohnal and I are from Richmond, Virginia. As I mentioned again to you, talking to you prospective jurors yesterday, we are here because John Stowe, our client, was living in Richmond at the time of all of the significant events as charged in the indictment. John Stowe's entire life or a good segment of it is going to come before you in evidence. This trial is going to be a microism of his life, if you will. Mr. Robinson stood up in one of the first remarks he made in his opening statement and my opening statement and Mr. Kotelly's nine of this is evidence, only what we think the evidence is going to show. Because the evidence that you are going to hear is going to come from that stand where the Marshal is seated right there. That's the evidence.

But Mr. Robinson said we deny what the Government said. We will, ladies and gentlemen of the jury. We don't deny a good part virtually everything the Government said. We don't deny it because that's the way it happened. That's the way you're going to see a good part of it on the television screen. That's the way you are going to hear a good part of it or see a good part of it through tapes that were secretly made by taping from the Government side. Not even the Government's side, their undercover and informant's point of view, these telephone calls. That's what you're going to hear. We don't deny it.

But we think after you hear all of the evidence that you're going to have a better overall view as to why it happened.

You were asked certain questions either individually in the conference room or in open Court. You heard a word called entrapment. You are going to hear that again and again. We anticipate although His Honor is only going to instruct you as to the law as it is applicable based on the evidence, but we anticipate you are going to be charged as to the defense of entrapment. Because if you want a highlight of this defendant's story, his defense, it's exactly that.

We think the evidence is going to show that John Stowe, starting in September of 1978, was induced. He was seduced and at that time he was unwilling but he was seduced by an expert and we'll talk a little bit more about what we think the evidence is going to be from that expert, that expert being Mel Weinberg, master con man, professional con man, convicted con man.

John Stowe is from Grove City, Pennsylvania. Went to college there 1948. This will come up. Went there to college for two years. Then went over to Korea. Served there from 1950 to 1955, United States military in the Air Force. And this will be relevant and you'll hear from the evidence a little later on. There he was a pilot. He served his country for five years. When he came back to Grove City, Pennsylvania, in 1955, he had three bronze stars, three bronze stars.

In 1955 when he went back home he finished college. In 1957 he graduated from Grove City College in Grove City, Pennsylvania. At that time he went into business with his daddy. His father had had a vending machine business, a food service company there. It was actually a food service company. The vending machine business was something that John Stowe took up on his own later on in Myrtle Beach in 1967, 1968 or later on.

He went in business with his father. Things went well for him. He was in business for his father for a few years.

In 1967 he wanted to get away from the close family ties in Grove City and he moved to Myrtle Beach, Myrtle Beach, South Carolina. There he met a lot of the people, came in contact with a lot of the names that you are going to be hearing about throughout. One of the people he met the next year was John Jenrette. He wasn't Congressman Jenrette then. There will be evidence that John Jenrette was his friend. John Jenrette was a lawyer he used. But more important, they were in the same social set. And yes, John Stowe when he came

to town did well. He went into the mobile home business. He had two mobile home lots. Things were going well for him. Things continued to go well.

We don't know what kind of car he drove into town with. It's not really important whether it was a Lincoln or a Plymouth or what have you. That was a figure of speech. It may very well have been a Lincoln but that's not relevant. I am trying to confine my remarks, which will be brief, to those things that are highlights.

But things went well and they probably peaked for John Stowe in Myrtle Beach around 1973. At that time he had gone into business in the vending machine business. He had been able to buy that business because his father, his daddy died in 1972 and left him an estate. His father as you recall had been in business back in Pennsylvania but with the father's health had been such he had to move to Canada and had been semi-retired from his business. Be that as it may, John Stowe, who had a nest egg, if you will, of about $300,000, that he was able to purchase a business. He also started branching out into real estate and he got a real estate license in 1973. If there was a peak in his life financially on the ladder of success it would have been about 1973 because things were going well for him.

'74, 75, things took a turn for the worse. Several things happened. Real estate investment was foreclosed upon by a bank and you'll hear this from the witness stand. The market, the stock market where he had some investments took a turn for the worse. Some of his stocks were used as collateral for his real estate investments. Along about that time, perhaps because of it or coupled with it, his marriage was going bad and he became separated from his wife. So by 1975 the high, the pinnacle that he had seen in '73 was heading down and it was to go a lot lower. That was to come.

In 1975 he left Myrtle Beach and prior to that in '73 he had been a member of the country club. He had a boat. It wasn't as big as the Government's boat that we'll hear about from master Melvin Weinberg but it was big. It was a 38 footer. I believe the Government had a 62 footer that they put Mr. Weinberg and Tony DeVito in for the use of their own kind or what have you, the ABSCAM. And he was running around with people that were important because by then Mr. Jenrette was a Congressman. Perhaps some of the other people. He was in the upper crust. But he left that behind.

Whether he left town in a Plymouth or what have you, he went down to Florida. He got his divorce in Florida and the downhill slide was such that he was looking for a job. And that's significant, because he went to an employment agency just as many people do. He met an employment agent by the name of Nola Skyler. Mr. Robinson, if he had any room left—I don't see any room—perhaps if I were to go over there and write the names on the board, maybe I would add the name Nola Skyler. S-k-y-l-e-r. She's just an employment agent, but John Stowe got to meet her, took her out, dated her, saw her socially. He then met his present wife in Florida.

The job didn't work out. The job he was looking for because Mrs. Skyler didn't get him a job. It didn't work out. And he met some people there including a lawyer by the name of Ted Fisher that represented him in his divorce and in November, 1976, John Stowe moved to Richmond, Virginia. He had no connection with Richmond, Virginia. The only reason he moved there because after this bad year and a half he found a job. He found a good job. It was to be with a company called National Vending Company. You will recall that in South Carolina with the money that he inherited from his father's estate, he bought a vending machine company of his own. So he was familiar with that business.

But instead of being his own boss and instead of being a member of the country club, he was working for someone else, which is fine, but still a comedown for him. They wanted him to move to a central location and he was relocated in Richmond, Virginia, a very fine town, I might add.

He came to Richmond in Thanksgiving, 1976, and minding his own business, making a good living, and then in September of 1978 something happened. He got a call from Nola Skyler. He had been away from Florida for two years. And hadn't seen Nola Skyler in well over two years. Out of the blue Nola Skyler calls John Stowe, says, "John."—there will be evidence that Stowe was told, reminded, "are you still looking for money? Do you still want to make investments? Because John Stowe was perhaps, still is, a dreamer not a schemer. I will quote Mr. Robinson because we may very well differ and have different defenses in this case. Be that as it may, a lot of what he says is consistent with Mr. Stowe's theory

of the case. It's only at the end when we have different versions of what happened.

But Nola Skyler calls him two and a half years later from Florida. "Still interested in an investment, John?" And as a result of that he's put in touch with a man he's never heard of before named Herman Weiss and there and perhaps the podium blocks your view—that's the name Mr. Robinson told you about, Herman Weiss over on the right-hand side of the ledger. Nola Skyler will be right over here. Herman Weiss knows some people and he's got some money available, something about a lot of Arab money. And Mr. Weiss or Nola Skyler says yes, Master Mel Weinberg, he's the agent, he's the money man. Herman Weiss is on the right-hand side as you look at this.

But the reason why Herman Weiss went over to the left-hand side, your right—I've got it vice versa—is because Gunner Ackler is the equivalent of Jack McCloud over here, didn't know McCloud was running his own undercover, covert operation with Weinberg over here and they happened to talk to each other on the telephone and it was decided perhaps by higher ups that Herman Weiss fit in better with the Mel Weinberg thing, the Mel Weinberg fraud.

So Weinberg was allowed to use Herman Weiss. There wasn't a breaking off perhaps. As a matter of fact, there may be some evidence that Weiss was distantly related, first cousin, second cousin of Mel's.

Be that as it may Weiss went over and it was the hierarchy of McCloud to Weinberg to Weiss and then John Stowe on the bottom. And that's a good place for him because that's where he was and that's where he is and the totality of this entire scheme at the bottom. Not even a middleman but somebody who happened to be there. And that would have been in September or October of 1978.

Weiss talked to Stowe and Stowe talks to Weiss and then Stowe is put in touch with Weinberg and it's significant here because the government will not show you any tapes or let you listen to any tapes of any conversations in September of '78 or any tapes in early October of 1978. The first tapes that we will show you is October 17th, 1978, and that starts right in the middle because you will hear—I don't know what you'll hear—but Mr. Weinberg or Mr. Amoroso or Mr. Kotelly in his argument will tell you, well, they just weren't taped.

We anticipate the evidence is going to show that Weinberg taped what he wanted to tape, turned the switch when he wanted to turn it both on and off.

And then on October 17th you start picking up. In the middle of something. And what is John Stowe talking about? What does he need this money for? He calls it a dream. And he will tell you the dream was a project about Cape Eleuthera. Cape Eleuthera is a cape in the Bahamas. It is a hotel, a resort, a whole complex. He was in financial trouble. Potentially, John Stowe thought it was a gold mine, but it was in financial trouble.

And if he could have several million dollars that was necessary to put it on its feet, that was his dream. That would get him back into the proverbial Lincoln Continental, put him back in the boat or what-have-you. He could go back to Myrtle Beach or whatever he wanted.

And Weinberg played the game. John Stowe couldn't get several million dollars from the bank. And Mel Weinberg will tell you what the definition of a mark is. A mark is somebody who is the victim of the con, of the sting, the marks are the people the Mel Weinbergs of the world play with.

Of course, he couldn't get it from the bank. The ony person he could get it from was the rich Arabs. And Mel Weinberg was the contact.

And John Stowe at that point had never been convicted of a crime. He was an honest businessman. A businessman who had trouble, but an honest man. And he gives Mel Weinberg plats and pictures. And he is working himself to the bone trying to get this package together. He is going to be the manager. He is going to get this money. And he sees visions of this huge resort, and this is going to be possible, because Weinberg is playing right in the palm of his hand.

These Arabs have more money than they know what to do with. Ordinary people do not think of three or four million dollars. Nobody can get that kind of money. But the Arabs, they acquire it. They have to invest $100 million, whether it's per year or per month because they want to get it into this country.

And Stowe moves right along. And then Weinberg starts talking about there is this other deal. We've got these CD's. He is explaining it and he is talking faster than Stowe is thinking. And he's going to talk and be able to talk faster than Stowe can think through everything. From October 17th, 1978 to February 2nd, 1980, the CD's are necessary to free up the Arab money, because they need col-

lateral over in the Arab banks and they need to free up the cash. And Stowe is listening. You will hear evidence that Stowe hasn't got the slightest idea of what he's talking about. He is playing along.

He even calls someone for advice. Is this okay? Can I do this? Because Weinberg is promising you are going to get a commission. Forget about this loan. You are going to get a commission. It will be $.5 million. Well, that is more money than this man had even at the height of his success. Of course, it is. And he was listening, being played. Being played by Weinberg, who was orchestrating this entire thing.

And then every time—you will hear many conversations—in October of 1978, another call in October of 1978, and one on the 20th and one on the 30th. And all John Stowe wants to talk about is Eleuthera and all Weinberg says—and because Weinberg, remember, knew Herman Weiss and Weiss knew Nola Skyler and Nola Skyler knew that he knew John Jenrette, they were friends—she knew that back in September and October of '78, which is consistent with what Mr. Robinson is going to tell you he is going to produce.

This master government scheme. This government has people undercover with informants that know all these things that other people have no way of knowing, because they are not privy to the conversations. Then they are talking to different people about different things, with tenacles reaching out. They are just individuals.

That is what John Stowe was. And then Weinberg comes into that knowledge. Stowe knows a Congressman. That registers. Weinberg has that information. He has it in October. It was mentioned on the telephone call. It was mentioned in the transcripts, which are just telephone tapes, typed up. And you will have those as they are introduced in evidence, so you can read them and follow them on the tapes.

And then there is a gap. Why is there a gap? Mr. Kotelly told you: because the sting was such that when it cleared, its tentacles cleared its net. Anytime someone came back in with the legitimate business deal, we didn't want it. Because people, all the people out there that had dreams, legitimate honest businessmen, this is my answer: I can get this Arab money, whether it's $10,000 or $100,000 or $1 million. But when it was a legitimate deal they cut him off. They weren't interested in legitimate deals and that, we think, the evidence is going to show, is why they turned off John Stowe beween the end of October '78 until April '79.

Mr. Weinberg will have to tell you he called him back. Perhaps there were calls in between. Why he resumed taping. Because the next tape is April 18, 1978. What is happening then? John Stowe, the tapes first mention, Eleuthera has gone by the boards. Somebody else picked that up. The dream is over. The bubble has burst on Eleuthera.

But then there is this other deal, this other legitimate deal. It is a company, a plant in Myrtle Beach, South Carolina, called American Gear and Pinion. And you will hear that name quite a bit. It is plant that was making timing devices for explosives, but is was equipped to make clocks, any kind of timing device that can be put on munitions or other such things. A legitimate business that was in trouble.

And trouble is what the con man plays on, whether it is the alcoholic trouble, like Congressman Jenrette, or the money trouble of the John Stowes of the world. Trouble. I've got this thing that I want to get into. I want to finance for my friend, Jim Neal, American Gear and Pinion. And what answer does Weinberg have? What about your friend the Congressman? What is his name? His name is Jenrette.

But let me tell you about American Gear and Pinion. And you will see, we will point out three weeks from closing argument—hopefully less than then—we are going to point these things out. But until we point them out, listen to them, hear and listen to them, on the tapes. Follow what Weinberg is doing. Follow how he is playing John Stowe.

Stowe is saying American Gear and Pinion. Would you like to make that financing? And Weinberg says yes, sure, let's talk about the Congressman. And Stowe says American Gear and Pinion. And Weinberg says will the Congressman meet me? It's back and forth.

And you will see from the evidence, a child-like quality in John Stowe. Do I have a deal? Yes, from Weinberg. No kidding. I do? And these will tapes that you listen to. Yes, sure, you do. I really do? The child with the candy and that goes on. Back in April of '79, back and forth.

And you will see how John Stowe was protective of his friend, the Congressman. He says, you don't need to meet the Congressman. He is a straight guy. If I introduce you to him you are going to want a favor, and I don't want him on the hook. You are going to hear that.

Let me just tell you about American Gear and Pinion. Not only did poor Mr. Stowe produce the pictures and the plats of the Eleuthera project, but there were the pictures and the appraisals for American Gear and Pinion. Perhaps you will see them. It is a real, life plant. This is what he wanted.

Sometime in April it became obvious in the spring that Mr. Neal wasn't going to be able to run it. Things were going badly for that company and Mr. Stowe had the dream that he wanted to buy it, not just get the financing and get the commission, but buy it again; have his own business in Myrtle Beach, where he left three or four years before—three years before.

And you are going to find there is a little bit more about Mr. Weinberg, who is going to tell you he is a convicted felon. We will anticipate he is going to tell you that he has been a swindler over the past 20 years of his life. That he makes his money preying on people, on people that are down and out. That he had promised them something and he is going to define something to you, He is going to tell you what a mark is. And there is a general term that he uses in the Congress called DM. We are going to ask him what a DM is and we think he is going to tell you that a DM is a desperate man. That is what John Stowe was.

In 1977 John Stowe probably reached financial bottom, because in Richmond he filed bankruptcy. '73 hits down to the bottom in '77, when he actually filed bankruptcy, and he was discharged from his debts there and every one of his assets were taken and he had to start all over.

You will hear all of these tapes and you will hear American Gear and Pinion, and you will hear Stowe saying let me tell you about this, let me tell you about all these things. And you will also hear Weinberg coming back, what about the Congressman?

Mr. Weinberg's accent is inimicable. You will have to hear him and hear him on television to judge for yourself his credibility, but you will see what he is doing, because, in retrospect, it is obvious; at the time, to John Stowe, it wasn't.

And then in May there were other calls. And you will hear Weinberg saying, we'll do any deal for the Congressman. The Arabs like to be able to impress people and say we know a Congressman. That is their way of life. You will hear a conversation about that. That is important to them. Give us the Congressman. We will do a deal with him and then we will do American Gear and Pinion.

In the summer of 1979 Stowe still has ambitions about American Gear and Pinion and says let me tell you about another deal. There is this Holiday In.., American Motor Inn. a corporation in Virginia that owns dozens of Holiday Inns, and they want to go into Atlantic City and they need $100 million. I will put you in touch with them. And Stowe knew them because he serviced some of their Holiday Inns through National Vending, because the vending machine company has cigarettes, coffee, candy, what have you.

I will give you a name. And he does give a name. And let me have the commission on that deal if it goes through, whether it is a 5 percenter, as Mr. Kotelly calls it or what have you. That will be my piece of the action, 5 percent or whatever it is.

By Weinberg, pursuant to his instructions: legitimate deal. No. Congressman. Shady deal. Yes. And you will see how he brings him in again.

And then, perhaps, in the most sympathetic bit of conversation, we get to a call September 6th, 1979. At that point in time, John Stowe is going on 50 years of age, which doesn't make him an old man by any means, but it was significant to him, because in September of 1979 he was informed he had a medical problem. Was of a sexual nature and he was going to have an operation.

Stowe—there will be evidence that he told Weinberg that—and he was afraid that he was going to lose his masculinity; that coupled with the fact that on his next birthday he was going to be 50 years of age and bankrupt two years before. It was a middle-age crisis for him. It was a crisis in his life.

And he tells Mel Weinberg on September 6, 1979, Mel, how about a job? Weinberg says, sure, send me a resume. Well, I don't have one. Type one up. But you will hear it all here, the tone of voice from the evidence, what he says.

And he had been playing the game, dropping names and playing the big shot role—my friend, the Congressman. But on this one brief moment all of that is gone by and he says, Mel, how about a job. Weinberg comes back, what about the Congressman?

And then you have a gap from September 6, 1979. Mr. Weinberg will tell you he was busy doing his operation on other people. He left John Stowe alone. What happened next? This is significant. You will hear evidence—perhaps a special agent Amoroso, perhaps Weinberg—that there was a meeting, a conference November 13th, 14th, 1979 and it was discussed that we've got to bring this ABSCAM thing to a close. It's been here a long time. Let's wrap it up. What else do we have in the files in the evidence? Weinberg says well, I've got this little guy Stowe for a year and nothing has come up. The CD deal, we have not gone through with that. We were advised not to. Nothing has come of any other thing because they were all legitimate.

But Weinberg tells them, he says, he knows a Congressman, Jenrette, Weinberg, whether it's deliberately or not, says he knows the name. He is sly like a fox. Perhaps he knows who he is. I assume he does. Then Amoroso, as Mr. Kotelly tells you, they make a decision and Amoroso has an agent in charge by the name of Good and he says, okay, call him and make a last ditch effort to reel him in. He's been drifting out there.

Mr. Robinson talked to you about the ocean. Mr. Stowe had been drowning in his ocean. Go ahead and try and give it one more time. Shoot at it one more time and see if he bites. But he's got to bite quickly because we want to wrap it up.

And then, ladies and gentlemen of the jury, there is going to be evidence that there were at least two calls—maybe more. The government is going to admit to you—Mr. Kotelly I believe admitted—not admitted, but said he anticipated two. But they called Stowe—Weinberg called Stowe—and they are unrecorded.

And I hope we wait and hear Mr. Weinberg's explanation—if he has any—as to why those vital conversations which were made immediately after the decision to go after Stowe, not because we want Stowe, Stowe was a nothing, but Stowe knows Jenrette. And they are unrecorded.

What did he tell them? Why did he tell him? You will have to wait and hear from the evidence. The government has not seen fit through its agent, Mr. Weinberg, to record those conversations.

The next one that is recorded is November 27th, I believe, 1979 and there you hear the evidence. You hear the testimony then. What about the Congressman? We are setting up a meeting, and a meeting was supposed to be set up. And you will hear evidence, and perhaps a tape and perhaps not, of a meeting at the Georgetown Inn on December 3rd, 1979 in which Mr. Stowe is present. There he meets Tony DeVito, who is really the FBI agent, for the first time, and Mel Weinberg. But you do hear a tape and a good part of it is inaudible.

The recording voice was on microphones that were secretly strapped on either Amoroso or Weinberg's body, or both, and it was the normal clamor that you have in a bar. You hear drinks clinking and waiters coming and what have you. Some of it is audible and some of it may not be. You will hear evidence that Stowe was told we want you to meet DeVito the night before because we got the Congressman coming to meet us December 4th. Meet us then, because it looks better, like you know him the next day. It is part of a setup.

And you will hear why they asked Mr. Stowe to bring the Congressman. Because back then Stowe is saying American Gear and Pinion. They are in more trouble. I am going to lose it. I need it. I want it. American Gear and Pinion. My dream. And they are saying what about the Congressman? What about the Congressman? You need the juice. Before we will talk to you about American Gear and Pinion, bring us the Congressman. We will do a deal for him first, then we will do your deal, Mr. Stowe. That is first.

We submit that that is part of the inducement you will hear more about in His Honor's charge at the conclusion of the evidence.

And there is a meeting on December 4th, 1979. And, as Mr. Kotelly has told you, there is talk about taking money, taking bribery, in the amount of $50,000. Mr. Jenrette was present, Mr. Kotelly told you it was a four-way conversation. You will see visions of four people on the television screen. It wasn't a four-way meeting. It was a two-way meeting, Weinberg had served his purpose and Stowe served his purpose and he can be discarded now. He is used trash. It is a two-way conversation, but 90 percent of it being Tony DeVito and Jenrette. What do we need Stowe for any more?

Then there are conversations back and forth on the 5th, and even on the 4th. If the Congressman will sponsor this immigration bill for you, then will you give me my bill, my American Gear and Pinion, which is legitimate? And he will say that four different times on December 4th, talking to Weinberg. As soon as that is done, will you do it?

And then, the 5th, Stowe calls. He is out of town. He is in Harrisonburg, Virginia, but he is calling Washington. Has the deal gone down? Why? Because he wants American Gear and Pinion financed. That is the condition the government has set before they will go through with the deal.

On December 6th, yes, John Stowe comes back and gets the $50,000. There will be no denial from the defense on that. He gets it. It's put in a paper bag and he leaves. And you'll hear evidence later on as to what happended to the $50,000. There may be from that point on a conflict in the versions between what Mr. Stowe tells you what happened and what Congressman Jenrette tells you what happened. But keep in mind Congressman Jenrette, there's evidence—we assume there will be evidence, Mr. Robinson says he's in a bad condition based on alcoholism, personal problems or what have you. There will be different versions. One of the questions you asked and you answered in the affirmative, you would be able to judge each case separately. It may very well be difficult for you but you all did not respond in the negative. We are asking you to just view Mr. Stowe's case. He took the $50,000. He went to Congressman Jenrette's office and he knew it was intended, when it was given to him, it was intended by the people as a bribe. There's no denial of that. There will be no denial of that. But he was induced and he was seduced and he was entrapped.

The Government then says it will give you segments of a meeting from January 7th, 1980, when they come back and that's on the television again. Whatever tapes there are the defense will ask you to view as a whole because the man is on trial for his life. We are not asking you to look at segments. We are going to ask you to view all of the tapes whenever you can. And then you will hear various discussions about Senator Thurmond.

Well, ladies and gentlemen of the jury, you're not going to hear any evidence at all that John Stowe had anything to do with Senator Thurmond. Oh yes, name dropping again. "The senator is a friend of mine, too." Like me, too, like a little boy again. And look for that in the evidence. Look for that childlike me-too quality that you're going to hear from John Stowe. "I know him too, fellows," because the conversation is with Congressman Jenrette. But everything having to do with Senator Thurmond is between Jenrette and DeVito and maybe Weinberg coming in. They are asking Stowe, you know, "What's happening?" And you'll hear Stowe say on the tapes, "You'll have to ask Jenrette about that. Jenrette's doing that."

There will be evidence that John Stowe met with Senator Thurmond. I believe it was on January 31st, 1980. Why? Because he had a letter of introduction from Jim Neal that owned American Gear and Pinion. And American Gear and Pinion had used government contracts as part of its business and he want to Senator Thurmond and he said, "If I buy it because I've got a loan coming up will you continue to help me?" We anticipate the evidence is going to be Senator Thurmond said nothing out of the way whatsoever but that, "If it's in my congressional state, my senatorial state"—that being South Carolina—"I'll do anything to help my state and if it means putting people back to work I'll do what I can." Nothing out of the way whatsoever.

That's what Stowe was doing, taking off time from his work because he thought on January 25th, 1980—on January 21st, 1980, hey, the deal's going through. Again you'll hear a conversation when Stowe says to Mel Weinberg, "What about the deal? I'd like to get going on American Gear and Pinion." Weinberg says, "You'll get it." He says, "I beg your pardon?"

"You'll have it."

"I'll have it?"

"Yes, you will."

Back and forth. He can't believe it. It's coming to a close and finally he's supposed to come for the closing, he being Stowe, on February 2nd, and that's when he's going to have the closing on his loan and everything else has gone by. He's done what they have asked him to do. They have asked him to take the $50,000 to the congressman. They have asked him to introduce them before that. He's done it.

"Now can I have my birthday cake? Can I have my reward?" And on February 2nd, 1980, he's met by the FBI. There will be evidence he was met by television crews. He was met with a royal welcome. And he didn't get his loan and that was the end of his birthday party and that leaves up to today.

I have gone on a little bit longer than I anticipated and I thank you very much for your patience. I know it's been a long day the first day listening to the

evidence—not even evidence. You had to listen to the lawyers and that's more difficult than the evidence as you'll hear it.

I'm almost through. But at the end of the evidence you are going to see the Government hasn't proved John Stowe guilty of anything. You're going to see that he's not a criminal and that he's not a swindler and that he's certainly not a con man. He's certainly not in the league of Master Melvin as far as a matching of wits.

You are going to see he was a dreamer and that he wanted something more than anything in life, that being to go back not necessarily to Myrtle Beach but just to be back on his feet, to have American Gear and Pinion and yes, it was at Myrtle Beach where he had been in '73 and where he had been in the country club.

But with respect to any difference in versions as to what Mr. Jenrette is going to offer proof on, we are not concerned about that. We are asking you only to consider John Stowe. At the conclusion of all of that evidence, all of the TV and all of the tapes, not segments—if you take a segment and see him taking $50,000, if we turned off the television set and you turned off your mind like a television set, we'd go home or go somewhere else that's worse than going home. But don't turn off the volume in your head. Listen to all of it and you will see the seduction of John Stowe and when you come back, whether it's two weeks from now, 10 days—you are going to come back with a verdict of not guilty. Thank you.

THE COURT: Mr. Kotelly, counsel, would you approach the bench for a moment?

CLOSING STATEMENT BY MR. JANUS

THE COURT. Mr. Janus?

Mr. JANUS. May it please the Court, Mr. Kotelly, Mr. Weingarten, Mr. Robinson, ladies and gentlemen of the jury, my name is Murray Janus and I represent the other Defendant in this case, the other Defendant, John Stowe, sort of a forgotten man, if you will. This is the Congressman John Jenrette case. Stowe just happened to be there in the wrong place at the wrong time.

I, too, concur, of course, with Mr. Kotelly and Mr. Robinson in thanking you for your time, not just sitting as a jury but the horrible inconvenience of having to be sequestered. But it's necessary in a case like this. But on behalf of the Defendant Stowe, and I'm sure on behalf of the Defendont Jenrette, different from Mr. Robinson we don't apologize because your civic duty in this case may be one of the most important things that you do in your lives in evaluating the conduct of our Federal Bureau of Investigation law enforcement people in this entrapment situation because that's what we respectfully submit to you it is. So, no, we don't apologize.

It's going to take longer of your time. You'll be here at least tomorrow but you do what you have to do. We haven't come up with any fancy rhetoric for you, any fancy defenses on behalf of the Defendant John Stowe. The case is what it is. John Stowe took up $50,000. You saw that. What happens to the money after that, it's not really material for the Defendant John Stowe. He took some of the money. He has to live with that.

Way back five weeks ago in an opening statement I said you're going to see a television set and I think the television set was mounted up on that table at the time and I said after you see the first videotape of December 4th, 1979, don't turn it off. I urge you, don't turn it off in your minds any more than you would physically turn off a television. Don't listen to part of the tapes. If you listen to any of them at all don't listen to Mr. Kotelly's three tapes or four tapes or whatever. Don't listen to Mr. Robinson's segments of things put together. Be fair to yourself and be fair to these defendants and the Government. Because the Government is entitled to a fair trial. It may not have been fair in their inducement, in what they did to John Stowe or John Jenrette, but the Government is entitled to a fair trial. They are entitled to have you tell them what they did wasn't fair, but in your fairness listen to every one of those tapes if you have to or don't listen to any of them. Look at every one of the videos or don't look at any of them again.

As His Honor has told you, closing argument of counsel, just like opening statements, are not evidence. The evidence came from that witness chair over the four or five weeks that we have been here and it is your recollection that's best, not any counsel's, not mine, not Mr. Kotelly's. It's yours as the collective,

12-person jury and that's the duty of the jury system. But you've had a difficulty in this case and that's, of course, you haven't had note pads. Counsel does have one advantage.

I frequently will say if I say something and your recollection is different it's yours that counts. Well, it is, but we have one advantage in that we have transcripts, that everyone agrees are accurate, not only from the tapes but we have transcripts of the daily evidence that's come forth that you've seen the court reporter take down. Mr. Kotelly quoted from it, Mr. Robinson quoted from it and I will quote from it. So we do have that advantage.

Regardless of that it's still your collective recollection of what that evidence was that's important. Yes, John Stowe comes in here and he says, "I did it. I did every act that you saw on that television and I said every word you heard me utter," because John Stowe has testified through these tapes. You've heard him. You heard him not in a court of law. You heard him back in October of 1978, two years ago. You heard him in April of 1979. You heard him in December of 1979, on and on, until finally ABSCAM broke in February 2nd, 1980.

What I'm going to try and point out to you now, and you've heard Mr. Kotelly go methodically through the evidence—very effective. You heard also Mr. Robinson very passionately point out his theory of the case, his defense, his passionate showing of the weaknesses in the Government's case. Well, I promise you I'm not going to be as long as either Mr. Kotelly nor Mr. Robinson. That's not because I'm trying to get you home early. It's because my client, John Stowe, has a lesser role. He's relegated to a secondary position. That was his role in this entire matter starting in September, 1978, secondary, back seat, middleman, five percenter. Yes, you even heard him described a couple of times as a bagman. It's not a very nice term for anybody but you heard it. It's not going to go away. That's what he was, if you talk about carrying the money away.

Why then didn't John Stowe plead guilty? The answer is before every one of you raised your right hand to be sworn in to sit on this case you were asked certain questions and every one of you were asked could you accept a legal defense of entrapment if His Honor instructs you on it that that's the law that someone could be judged not guilty if they were entrapped into committing a crime. Every one of you by your silence indicated that you could do that. It's a difficult task. Because not only do you have someone saying—John Stowe saying, yes, I did it, but you see it right there and it's difficult for you not to turn off that volume control in your minds and say—and sit back and say, "I've seen enough. You can keep me here until kingdom come but I saw it on television." But every one of you, and I remind you, said that you could do that because that's exactly what's happened here.

You have heard in the five weeks we have been here just the segment of John Stowe's life and it's titled the seduction of John Stowe. It's not a romance; it's a tragedy. It could also be titled the destruction of John Stowe because it took a life. a human being, and it caught him up in a wave, a scheme of things until it destroyed him. It brought him before you charged with three felonies. No, I'm not asking for your sympathy. We are not asking for that. His Honor will instruct you you are not entitled—John Stowe is not entitled to sympathy or mercy. He can get that from his family. What he's entitled to is justice under the law.

What happened? What happened before we got to December 4th, 1979? Why did Mr. Kotelly open up his case in November of 1979? Why did he open it up within the first day or so, second day, December 4th, 1979, saying there's John Stowe talking for $50,000, being present when it's discussed—not talking about it but he just sits there. Why did he do that? Why didn't he start the story at the beginning? You can't start the story, the tale of the seduction of John Stowe after he's been deflowered, after he's been seduced. You've got to start it at the beginning.

Where does it start for John Stowe? What's the beginning? You heard it because we produced evidence. You heard it because it goes back to Nola Skyler. John Stowe had met Nola Skyler at an employment agency, an embarrassing where a grown man, who was then 48 years of age or 46, goes to an employment agency and says, "Can you get me a job?"

Then you've heard now he left Myrtle Beach. That's not important. But you've heard the circumstances about how he left. It's a down time in his life and he's asking this person to help get him a job. Well, she doesn't. She isn't able to but she becomes friendly with him. She sees him socially and you know a little bit about the man way back in 1976 because I asked her the question:

"Miss Skyler, did John Stowe ever ask you to do anything improper or illegal?"
"No, sir."

She tells you also a little bit more about the man and that he was a dreamer back in 1976. He was talking about a project. She didn't even know the name. Turned out to be Cape Eleuthera. But John Stowe was a dreamer, not a schemer. And he was dreaming in 1976 and he told her then, "If you ever hear of anybody that's got a lot of money to invest, call me." And maybe because she'd known him socially, maybe because she just remembered that, for whatever reason John Stowe would pray that that reason, that thought had never struck her mind to remember his name, believe me. But for whatever reason, she calls him, she says, September, 1978, some two years later.

Why? Because somebody she had known for a few years named Herman Weiss, Herman Weiss, who we count on the fingers of both hands and toes of our feet how many times we heard the name Herman Weiss, he calls her and says, "I'm representing some Arab people with some oil money. I can't really tell you what it is but if you know of anybody that wants financing, big money, big bucks, oil money, let me know." And Nola doesn't know there's anything illegal about it. Perhaps Herman Weiss does. But what do we know?

We know that Herman Weiss was connected with H&J Realty and we know that was Mr. Meltzer. We know that was Gunnar Askeland. We know that Gunnar Askeland knew Herman Weiss. So Herman Weiss—and the Government didn't produce Herman Weiss. You haven't heard any testimony from him. The Government has got the burden of proving the case against John Stowe beyond a reasonable doubt. John Stowe has no burden of producing anybody or anything or testifying. His Honor, we anticipate, will instruct you on that. He doesn't have to do anything. The Government has got to satisfy you beyond a reasonable doubt. If they really wanted to do that they wouldn't have started the story on December 4th, 1979. They would have gone back.

We submit that if they really wanted to put it all before you they would have gone back and given you Herman Weiss. Gunnar Askeland testified he knew and the FBI knew where Herman Weiss is or was. Herman Weiss—then the phone number is given to John Stowe and he calls him.

Let's talk about predisposition. I'm going to talk about it later because we anticipate the Court is going to tell you that entrapment is a valid defense for John Stowe and the Court is further going to tell you entrapment is made up of two things: an inducement by the Government over someone who is not predisposed, someone who is unwilling. Well, what's the first time that anyone contacts John Stowe? It's Herman Weiss. John Stowe contacts him because the feelers had gone out. What's his predisposition then? The Government has got to prove predisposition to commit that crime. What's his predisposition back then. Maybe the Government will say well, it's not—that predisposition doesn't count. We'll talk about the predisposition on November 15th or maybe even Dectmber 4th but we have got to start back at the beginning and that's where this man's predisposition is.

What do we know about that conversation? Zero. We don't know what happened. We don't know what John Stowe said. We don't know what Herman Weiss said. We do know the next witness the Government produces, master Melvin Weinberg, that he gets a call from John Stowe. He doesn't know from whence it came. John Stowe just appeared out of the blue.

Why did Mr. Weinberg say as a normal business person would say, "Who referred you to me? Why are you calling me? Who gave you my name?" Didn't know, didn't care.

John Stowe calls him. When does he call him? You've got a recording, a partial recording that starts on October 17, 1978. That's a partial recording. What about the first part of that recording? Well, they were just saying hello perhaps, if you accept Mr. Weinberg's version, and I don't think you, ladies and gentlemen, are going to accept Mr. Weinberg's version of anything, not one single thing. But I urge you and just as I have talked about listening to all the tapes and looking at all the TV's that you have looked at, look at all the exhibits, not that Mr. Kotelly or Mr. Robinson or Mr. Janus introduced but all of them because if they came into evidence they have some relevance. Look at Stowe's Exhibit Number 3, the list prepared by the Government. Weinberg acknowledges all of the phone calls involving Stowe and Weinberg, Jenrette, and look at the first day. The first date isn't October 17th, 1978 but it's 9/17/78. Stowe calls Weiss, Fort Lauderdale, $6. That wasn't one of Mr. Weinberg's dollar and ten cent specials where I'm

speaking to a hotel desk clerk. Six dollars. What did they say? What other calls are there? Don't know.

How about 10/10/78? Stowe calls Abdul. Well, Abdul was Mel Weinberg. Abdul was Agent McCarthy, FBI. 10/10/78, call from Abdul back to Stowe. Five minutes. First call was 48 cents. If you want to accept it, that was on answering call. Fine. Five minutes, no answering call on that. What did they talk about on October 10th, 1978? What was John Stowe's predisposition to commit a felony on October 10th, 1978? You don't know. We don't know. We don't know because the Government hasn't produced one scintilla of what took place on that call. What did Weinberg say to him? What did he say to Weinberg? They have the burden and they can't answer that question. For that alone their burden of proof on proving predisposition that John Stowe was predisposed to commit the crime I submit should be substantial evidence for you.

It was fatal to the Government's case 10/13/78. Stowe called Abdul $4.70. You haven't heard the first thing about that and Mel Weinberg has the audacity to tell you, ladies and gentlemen of the jury, that there were no calls about CD's before that weren't recorded. Remember when he said that? He says that at Page 1314. That's what Mel Weinberg says.

I will refresh my memory from time to time. Mr. Dohnal and I are partners.

"Did you have any other conversations around that same period of time regarding CD's that were not tape recorded?"

"Answer: Not that I remember."

That's from your witness Mr. Weinberg. But yet on the 17th they start talking about CD's and it's obvious something is taking place before that. And what does Mel Weinberg tell you about the CD's? He tells you from the witness stand where he took an oath to tell the truth, he tells you that John Stowe brought up about CD's. Do you believe that, that John Stowe, age 48, had never been involved in any illegal activity in his life—there's no evidence of it—you've heard the witnesses tell you that he had never proposed anything dishonest—John Stowe was going to bring up about CD's? It's ludicrous, ladies and gentlemen.

I'll tell you why it's ludicrous. It's ludicrous because John Stowe doesn't know CD's from third base in Yankee Stadium. He doesn't know what he's talking about before, during or afterwards. It's the same Mel Weinberg that got Jack Morris induced into the CD deal and Bill Bell, the Government's witness. What did the Government do with Mr. Bell and Mr. Morris? Their cases were dismissed. They were indicted and induced and their cases were dismissed. What did Mr. Weinberg say with respect to who brought up about the CD's? Use your own common sense. Listen to this stipulation you've heard once already. Defendant Stowe's Exhibit Number 9, Stipulation Number 3. Not by that professional con man, a person who doesn't know the truth, but by the United States Attorney, Mr. Kotelly, in stipulation with John Stowe's counsel.

It is hereby stipulated and agreed to by and between the Defendant John R. Stowe and the United States, our government, through Mr. Kotelly, that in July, 1979, the witness Mel Weinberg made a statement to the attorney for the government before his testimony in this case that he could not remember whether it was he or the Defendant Stowe who first brought up the subject of certificates of deposit, CD's in October of 1978.

I submit—and if I'm wrong, I will be wrong—but this is an error. It was July of 1980, and Mr. Kotelly and I will correct that if we have the opportunity. But July of 1980. I submit in preparing for this case—that's correct, Mr. Kotelly tells me. The stipulation was just my error. It should be 1980.

In preparing for this case he told the Assistant United States Attorney he couldn't remember who brought it up and he gets on that stand when it is convenient for him and says John Stowe brought it up. Well, you know differently. Of course you do. Every person hearing that statement that heard all of the other evidence would know what made the better common sense.

Okay. Let's talk about the scenario. What's happening at that time? Weiss has been traded from the Meltzer league over to the Weinberg league for reasons that appear to be valid to the FBI. So Weiss brings in Stowe. He brings him directly to Weinberg. Who was Weinberg? Where is he? Why is he? Mr. Weinberg by his own testimony is a professional con man. He makes his living out of telling things to people that aren't true. He called them false pretenses. For 20 years he did that starting at the time he, when he—you heard about the scams he ran. He broke windows in the neighborhood so that his father would get the glass repair business and be paid by the insurance companies. He had a scam where

he got money from the Attorney General of Libya. He had the Iraqi Indians or some such name. All of these things, and did you notice a certain amount of glow about him, a certain amount of pride as he told you about them? And he's a professional. He had it down pat.

"So isn't it true you are one of the best?"

And he gave the answer, the same answer that he gave in New York, "I got caught, didn't I?" He got the laugh that he expected. Well, he got caught but then that didn't work to his detriment because that opened the door to the biggest scam of his life. $200,000 he bilked from the people in the London Investors' scam, the one that he was indicted for in Pittsburgh. He pled guilty. He said the judge and Court gave him three years but then the FBI agent came to bat for him and he was put on probation. He talked his way out of three years in the Federal Penitentiary and not only did he talk his way out of the Federal Penitentiary but he talked it right on to the payroll of the United States of America taxpayers to the extent of $133,000 plus because that doesn't count all the fringe benefits that are coming in from the books, the movie, the insurance companies, what have you.

Why is Mel Weinberg a con man? I asked him, "What do you do for a living?" He says, "Well, I had four businesses going," some four different businesses he rattled off.

"So why then, if you had four businesses, Mr. Weinberg, did you have to be a con man?"

I don't need the quote on this because I've got it written down and memorized. It is at Page 1567 of the transcript. He says—well, I quote, "It's just one of those things." And that's probably the most truthful words that Mel Weinberg told you in the two, two and a half days that he was on the stand. Because people like Mel Weinberg have to hussle. They'd rather hussle and have a scam and steal a hundred dollars than they would a thousand dollars working by the sweat of their brow. That's what they enjoy doing and that's what he's going to do all the rest of his life, including the remaining days he's on the Federal payroll.

Incidentally, he was candid enough to tell you that even though the undercover operation broke on February 2, 1980, he's still on that payroll getting $3,000 a month just to prepare to testify and going to the courts and as he testified on September 16th and September 17th, 1980, before you he was on the Federal payroll. I ask if that was work. The work was preparing to testify before you and what have you.

Now, I'm not going to spend a whole lot of time on Mel Weinberg except to tell you that he told about being a con man, told you about false pretenses, false pretenses or untruths. You have to tell untruths to be a good con man. Who do you deal with? You deal with a victim. Except the con man doesn't call him a victim. He called him a mark because the mark makes him pay a little less if he has a conscience. I said, "Mr. Weinberg, what's a DM?" He said knowingly, "That's a desperate man," because a desperate man is the mark. That's who they play upon. They don't play upon good, solid citizens who are earning money, who are in good health, who aren't alcoholics. They play on people that have a weakness and if they don't have a weakness at first, they chip away and keep after them and they bore a hole into them until they find a weakness.

I asked him, "Isn't it true, Mr. Weinberg, as part of being a con man that you keep after the mark and you keep him on the hooks?" He says, "Yeah, that sounds familiar." And he said it sounded familiar because he was shown a quote where he said it. It sounded familiar to him because that was and is his way of life.

Let me run through very briefly 13, 14 reasons why you know Mel Weinberg not only was committed to being a con man but was committed and will remain committed not to be able to tell the truth. In someone's mind like this he doesn't know fact from fantasy. Truth from fiction. It's his way of life. Let me run through them very quickly.

CD's, who brought that up? He said John Stowe does. In July of 1980 he told John Kotelly he couldn't remember. I say what's the most—more reasonable. Of course he brought it up. John Stowe called him because of Nola Skylar's call about Cape Eleuthera. That's what John Stowe called him about. I'll show you something in a minute that's going to be very much consistent with him. Okay. Let's get to Cape Eleuthera right now.

Remember he even threw in Cape Eleuthera? "Wasn't that a legitimate business deal, Mr. Weinberg?" No, that wasn't legal either." "It wasn't?"

Perhaps you read the surprise on counsel's face when he said it wasn't. He said, "No, because they were going to lend money in the bank—from a bank in the United States and take it over to an island and I don't think that's legal." Yet what is the stipulation with respect to Cape Eleuthera? This is a stipulation, Defendant Stowe's Exhibit Number 11.

It is stipulated and agreed to by John Stowe and the United States that the General Acceptance Corporation, GAC, a corporation, perhaps many of you have heard of, forwarded certain materials concerning the Cape Eleuthera Project, including Defendant's Exhibit Number 7, to John R. Stowe by letter dated September 11, 1978. Defendant Stowe's Exhibit 7–A. They forwarded it by this letter dated September 11.

"Dear Mr. Stowe. Your call today was appreciated. We are pleased to enclose figures for operating from June, '77 through June, '78. We are sending a duplicate which is being sent to Ted Fisher, Esquire, in Miami.

"As I indicated on the phone I will submit this to our trustees."

This deal was so illegal John Stowe would have had to have bought it and financed it through a United States Federal Court, through a trustee in bankruptcy. And what is the letterhead? GAC Properties, Incorporated, a unit of GAC Corporation.

Mel Weinberg wasn't telling the truth about that. What's important about this? It's important because John Stowe gets his dream rekindled by Nola Skylar. He's had to leave Miami. He's in Richmond, Virginia, minding his own business and Nola Skylar says, "Hey, I heard of a man that's got umpteen millions of dollars for financing. Give him a ring, John." And then it rekindles this spark and he's right because he talked two years about this project and he gets all of these maps and plots and figures and what have you and he calls Herman Weiss. It was perfectly legal and he called him because of Cape Eleuthera. He didn't call him about SD's. Of course not. Because he was dreaming. Who is going to lend John Stowe $6.5 million? No one. But remember what Weinberg said, that a DM is a desperate mark, is a man that can't get legitimate financing from a bank. He's got to get it from a con man. But John Stowe doesn't know the man is a con man any more than Wayne Newton and the other victims in Pittsburg knew that Mel Weinberg playing his game then was a con man. No, of course they didn't know.

What other thing did he tell you that wasn't true? He told you, and this was—he told you that before November 27, 1979, there had been no talk about loans for John Stowe. I cross examined him. "What about Cape Eleuthera, American Gear and Pinion?" Oh, yes. I was mistaken the day before when I talked about that."

And let me tell you I'm not going to go through 14 points because I think—14 different stories. But let me tell you about a big one he told you. Mr. Robinson said he was proud he caught him because he was fair game, because he wasn't telling the truth. Counsel for Stowe is equally proud on this one. We asked Agent Amoroso the day before, "If someone gets money aren't they supposed to turn it over to the FBI, report it?" "Yes, sir." Weinberg was supposed to do that?" "Yes, sir."

And then I asked Weinberg, "Mr. Weinberg, did you ever report any money, all the monies you got, the cigars, the whiskey?" "Yeah." "What about the watch?" "I admit I wore it for a while." And then zap. "Mr. Weinberg, what is this?" It's Defendant's Exhibit Number 6. It's a cancelled check that, thank the Lord, had not been thrown away. It's dated November 25th, 1978, payable to Mel Weinberg and endorsed Mel Weinberg. Endorsed Mel Weinberg. You heard him scramble and you heard him squirm and you heard him wiggle and what did he say? Because he's adroit mentally, because Mel Weinberg could talk fast. Mel Weinberg could talk a lot faster than John Stowe could think. I'll tell you that. What did he come up with?

"We cashed that check to get aerial photographs and the man wouldn't take John Stowe's check because he was from out of town.

"Fine, Mr. Weinberg. Why didn't you give him your check?

"Well, then it was decided to give him cash.

"Oh, and I suppose, Mr. Weinberg, you are going to tell us you don't have a receipt?

"No, I don't have a receipt.

"And I suppose now you will tell the ladies and gentlemen of the jury what the pilot's name was?

"I forgot.

"What's the name of his company?

"Well, he didn't have a company.

"And where are the aerial photographs?

"They were mailed to John Stowe."

And I said that wasn't true and you know what he said? This man that makes his living talking, that makes his living being quick, that makes his living being cool, he said, "That's a goddamned lie." And you heard him. He lost his cool because he had been dumb enough for that one moment to take a check, the one thing that every good con man worth his salt knows you don't do. You don't take a check. You do it in cash. Everybody knows that, everybody that is except naive John Stowe who was so—such a dealer on these con men he says, "I'll bring a cashier's check." Weinberg says, "You don't do it that way. You bring cash." That shows how naive Stowe was.

You believe the aerial photographs? Of course you don't. Because Weinberg was operating his scam on the side just as he had done back in the early days when he had been an informant for the FBI. He said he had never done it on the side and I showed him the New York transcript and he says, "Yes, I admit I did a scam on the side back then but that was in the early days." He has t do a scam on the side. He'd rather get the $350 and get that inner satisfaction from a job well done by the true professional. He'd rather do that than get the $3.000 he was paid legitimately, if it was in fact legitimate.

What makes it even more ludricous is Mel Weinberg didn't know what we had but I will show you what we've got because it's been introduced in evidence. Defendant's Exhibit 7–A that came with the letter of September 11, 1978, from the people at GAC Aerial Photographs. Look at them, John Stowe already had them. There's one. There's one. There's one. He already had them. Of course it's an untruth and we caught him. It's difficult to catch the professional, the slick mastermind with his fingers in the cookie jar but there are his fingers right in that cookie jar and there are sticky fingerprints all over the check and what did he tell you? And this is the thing that puts the icing on the cake. He put the icing on the cake because he says—I said, "Did you report it?" He says, "I told Agent McCarthy about it." I believe at Page 1624 he says that. "I couldn't make a report to DeVito because he wasn't there in November.

"How about McCarthy?

"Answer by Weinberg: I spoke to him about it."

He's covering his tracks. And the last stipulation I'll read to you, and this is beautiful, Stipulation Number 5, Defendant Stowe's Exhibit Number 10.

It is hereby stipulated and agreed to that if John McCarthy had testified—this is an FBI agent now in charge of the operation then—had testified he would have testified November, 1978, he was a special agent with the FBI and he was Melvin Weinberg's supervisor in the ABSCAM operation. McCarthy would have further testified that in the ordinary course of business Weinberg should have reported the receipt of any money from a potential subject of the investigation and that to the best of his recollection Weinberg did not report to McCarthy either in writing or orally that Weinberg had received a check for $350 from John Stowe in November, 1978. Signed John T. Kotelly, Assistant United States Attorney.

Mr. Kotelly is an honorable man. Mr. Weinberg is not an honorable man. It's that simple.

What is the scene we have set for you? I'm going to go through some conversations back in the fall of 1978 to show exactly what happened to John Stowe, how he was being used, how he was being set up. Another little inconsistency Weinberg said, and I add, he said, "John Stowe wasn't going to get a commission from me. He gets the commission from the people that he makes the money from."

I refer you when you listen to the call of April 18, 1978, and you see the transcript or what have you—you had it in front of you three weeks ago. Mel Weinberg says on April 18 and again on September 6 when he's talking to Stowe, "I'll mark you down for commission." So he's not telling the truth about that.

You know what's a further scam that he's just perpetually committing? When he comes and testifies. He doen't wear the outfit that he was wearing at the time that he was operating. He tells you that he's wearing a three-piece suit with a distinguished-looking goatee. I submit that's part of the final scam, the scam, the final con. And I submit that this same man who is now on the Federal pay-

roll that gets probation—they didn't even make him make restitution of $200,000 or whatever it was to the victims in Pittsburg, the defrauded people. If he's going to get probation, the only thing he had to do was work for the FBI and fulfill a certain duty to them. And then they go to bat for him. They didn't even get him to make the restitution of the people.

Mr. KOTELLY. Objection, your Honor. That's for the Court to decide at the time of sentencing.

THE COURT. Sustained.

Mr. JANUS. Si Pollack, he's a con man. He gets on and tells you that. But there was a certain ring of truth to what he said, that he knew Mel Weinberg, a certain ring of truth about where he had met him, the fact that he had met him. Why would Weinberg not tell the truth about that? Because he's a pathological con man. Because he doesn't know the truth from fiction.

And you know something? It was very subtle and perhaps some of you missed it; perhaps all of you missed it but at Page 1784 Mr. Robinson was asking questions about ABSCAM with Weinberg and at 1784 Mr. Robinson is asking:

"And yet you can't remember how much money you made in ABSCAM?"

See if you can stretch your memories to remember his answer, Page 1784.

"In Amsterdam?

"ABSCAM.

"On ABSCAM?

"Yes.

"No.

"What's in Amsterdam? Did that bring up something else to your mind?"

And Weinberg said, "I thought you said Amsterdam."

Did he make any money in Amsterdam? How does that tie in, that trivial little point? Why would he have thought Amsterdam when the man is talking about ABSCAM, when the case is ABSCAM? Because Si Pollack said that Mel Weinberg had asked him to take part in a heroin deal with the heroin coming in from Amsterdam. That shows the guilty mind that he had at the time.

You heard the fantasy about Bill Bell, that he shot into a mattress and it just missed him and Mr. Robinson, you will recall, perhaps humorously asked him, "Where's the mattress? I want to take a picture of it. What's the hotel room number?" He didmn't know.

You heard Bill Bell, who was a Government witness, say there was no such incident. Who knows? Who knows? The fact remains Mr. Weinberg is what he is.

Remember Joe Meltzer? What a tragic excuse for a human being he was sitting here? Didn't tell the truth to you. He's a second-rate con man, not a first-rate one and the Government was using him to see who was going to make it. It was like tryouts: Who gets to be the best one gets to be on the higher payroll. He's on the payroll for $150 a week. Weinberg was $1,000 a month. Who was going to make it. Auditioning for the top job.

Well, Meltzer got cut. He got shipped back, not even to the minor leagues. He got shipped someplace worse than that. And you saw him and he didn't tell the truth but he was honest enough when confronted by it to say, "Yes, I lied." That doesn't make him an honest man. He was a miserable witness because he's a second-rate con man. But do you know what Mel Weinberg is? He's a dressed up Joe Meltzer. He's a Joe Meltzer that made it. Joe Meltzer made good. $5,000 a month.

No, I'm not going to dwell any more on Weinberg. I'm counsel for Stowe. I'm sure, as counsel for Jenrette has mentioned, is satisfied with what you think of Mr. Weinberg.

But why do I dwell so long on Mr. Weinberg if he's admitted he's a con man? Because as you'll be instructed by the Court tomorrow, you've got to evaluate what inducement there was on John Stowe to commit a crime, what promises of reward, what coercive tactics, and the only person that dealt with John Stowe was Mel Weinberg. He never even met Tony DeVito until December 3rd, 1979, he being John Stowe.

You have also got, in order to convict John Stowe, to be satisfied that the Government has proved beyond a reasonable doubt that John Stowe was predisposed, inclined before the inducement, at the time of the inducement to commit a crime and who is the only person that can tell you about what John Stowe was saying and doing? Mel Weinberg.

The Court is also going to charge you tomorrow that even if certain evidence is uncontradicted from one witness, such as Weinberg, if you find it inherently

improbable you don't have to accept his testimony. I submit you ought not to accept one single thing that Weinberg says until you are satisfied from the other evidence that it is corroborated, that it is substantiated. That's what we say about Mr. Weinberg.

Mr. Amoroso—and let me just digress for a second. Both of them, Amoroso and Weinberg, had the nerve to come in here and say that the reason they were going to meet on December 3rd, 1979, at the Georgetown Inn was because John Stowe had said he wanted to meet Amoroso, right? He wanted to meet him and yet both of them acknowledged in the tape of November 27th, 1979, the real reason that they said—and that's that conversation, November 27th, 1979, Mel Weinberg after John Stowe says, "9 :00 o'clock, alone, right?" "Right." "And then I'll go over everything with ya and then I'll bring Mr. DeVito with me just to introduce ya to him so when ya come Tuesday with the congresman doesn't look like ya just met him."

John Stowe says then, as he did so many times, "Right." That's the reason, to make it look good. It's a con to con that man, John Jenrette, so it goes smoothly. And yet both of them, even Amoroso who is supposed to be above and beyond the things that Weinberg is, he told you that the reason was so he could meet Amoroso, Stowe wanted to. Perhaps Amoroso wil give him the benefit of the doubt. Perhaps he's just getting that through his own informant, his own paid informant, Mr. Weinberg.

Okay. Let's talk a little bit now about these conversations that took place that started back in October, they started being recorded. October 10th, we don't know; October 13th, we don't know; we don't know what first happened with the wife matter. No, we don't know any of that.

I ask you to think back from these conversations. I ask you to remember these dates, three calls in October, three in April, 1979, a couple in May. I ask you to go back and resurrect the whole seduction of John Stowe because John Stowe wasn't predisposed in September or October. John Stowe wasn't. Ole Mel Weinberg would tell you he was talking—he brought up about CD deals.

Before I get into these let's talk about what John Stowe knew about CD deals. Ted Fisher, an attorney at law in Miami, said John Stowe didn't know what he was talking about. "I'd ask him questions and my 13-year-old son woud make more sense." Stowe didn't know what he was talking about. John Jenrette, Congressman John Jenrette said Stowe did call him. Did he know what he was talking about? Did he have the answers? No, he didn't know what he was talking about.

Agent Amoroso testified when he—remember this. This is Amoroso. When he read the conversations and reviewed the tapes of Weinberg and Stowe it was confusing and he didn't understand. And what is this man that Weinberg untruthfully tells you brought up the CD's—what does he say? He says, and this is on the tapes, "Well, I'll bring or have my people bring a cashier's check." Weinberg says, "No, you don't do it that way." Then he says, "I'd like a written contract." Is he predisposed to commit a crime when he's talking to Weinberg about a written contract? Weinberg passes that off.

Then at one point finally John Stowe says, "It takes a sledge hammer to get it into me." Well, it does and it did take a sledge hammer to get it into him and what goes down? What transpires again? Zero. Zero.

Jack Morris told you that if you really wanted to do it, it wasn't that hard. You go to a printer's and you get the CD's. Remember I ask him? It really was quite simple if you wanted to do it and he said, "Yes, sir, it really was." It might have been simple but it was too complicated for John Stowe or he wasn't inclined or he simply didn't understand it because what did he want? All he wanted was that pipe dream, that pie in the sky, the financing for Cape Eleuthera. That's what he wanted. Why then is he talking about CD's? Listen to the tapes. Weinberg tells you.

"We've got to get the money, the Arab money into the country and then we'll use the money for whatever you want."

So the $200 million is coming in and then and only then does Stowe get his money. So Stowe was listening and Stowe hasn't the slightest idea in the world what he is hearing and what he's supposed to do. And listen to the tapes on that. It's just so pathetic when Weinberg is asking him all these things—I'm referring now to the tape of October 17th, 1978, when he's being asked questions. "How is it going to come in?" "I don't know. I don't know how he does it." "How is he bringing this in." "Diplomatic pouch?" And John Stowe says, "I don't have the faintest idea. I don't have the faintest idea." And that's when Weinberg says,

"Once we get the money out we can put it anywhere you want it." And Stowe is talking about Eleuthera.

Then they go back and then Stowe was saying again, "I don't know." How many times does Stowe say, "I don't know"? Because he didn't know was the truth of the matter. Let me run through some of these calls with you and maybe this will aid you.

October 17th, 1978, the first recorded call. But even that one isn't recorded all the way because we start in—we don't know the beginning of that. The FBI has got an exhibit that will show some minutes and some seconds, what have you. The exhibit speaks for itself. But this call is Defendant's Exhibit Number 28 and what's happening on that? You hear the garble, the confusion about CD's but what's Stowe really after? Stowe is after Cape Eleuthera. And what does Weinberg say? "The congressman, the congressman." "Give me Cape Eleuthera. Give me the financing. That's why Nola Skylar said I could call Herman Weiss and he said to call you, Mr. Weinberg. If these Arabs have all this money maybe I can get a little bit of it. I've been down and out and I've been in Miami before a couple years ago without a job and now I'm in Richmond working as a salesman."

And what does Weinberg say? "The congressman." And these are just—they are not taken out of context. Listen to the whole tape and you'll see that that's what Weinberg responds. Then you've got other conversations and Amoroso or one of the agents said why would a conversation be recorded? Only if it was something illegal. Only if it was something special. When did the congressman's name or the fact there was a congressman first come up? When was it? You hear it first on October 17th, 1978. But did it really come up in the conversation with Nola Skylar—not Nola Skylar but Herman Weiss in September. Did it really come up on October 10th with Weinberg? We don't know. We don't know when Weinberg said, "Do you have a congressman." Stowe said, "I have got a friend that's a congressman." Old John Jenrette from South Carolina. We don't know and you don't know.

Remember something else. When I asked Mr. Weinberg:

"Do you have a vivid memory?

"No.

"Do you remember dates?

"No.

"How do you remember things?

"I remember what's on the tape.

"And what you remember the ladies and gentlemen of the jury remember?

"Yes, that's correct.

"And what about what's not on the tape?

"I don't know.

"And what you don't know the ladies and gentlemen"—you as the jury—"don't know either?"

Because remember, once I said, "Mr. Weinberg, tell the ladies and gentlemen of the jury about the conversation, what took place on December 14th, 1978." And he says, "I have to see the tape." I said, "Mr. Weinberg, there is no tape." "Well, I don't know."

December 14, 1978, six minutes. Mel called Stowe, Virginia Beach. What did they talk about on December 14, 1978? Why wasn't it recorded? And this exhibit between October 30, 1978, and January 31st, 1979, there are 16 consecutive—count them—consecutive calls that are unrecorded. It's not Mr. Kotelly's fault. It's not Mr. Amoroso's fault but it's Mel Weinberg's fault. Because he had the discretion to call when he wanted and record when he wanted. And if they can't show you that then you can't say beyond a reasonable doubt that John Ralph Stowe was predisposed to commit a crime. You can't do it and you are not going to do it.

Then he further says, "If I don't know it"—

I asked him, "Then the ladies and gentlemen of the jury don't know it?" "No." And what you don't know you can't convict a person of a felony upon. I submit that to you.

April 18th, 1979, Defendant's Exhibit Number 31, those 16 calls. in between that you don't have recorded. April 18th, missing 13 minutes. From the history of another famous trial our country will recall another missing 18 minutes. This one is missing 13 minutes. In the life of John Stowe that's perhaps just as significant. What took place in those 13 minutes You don't know. I don't know. Mel Weinberg doesn't know. They don't have it and you can't find there was predisposition

because it's not there. They haven't produced it for you and that would be part of their proof beyond a reasonable doubt.

Proof beyond a reasonable doubt isn't by preponderance of the evidence or a little bit more. It's a substantial burden. There are analogies, all sort of analogies about what beyond a reasonable doubt is. That degree of moral certainty you might have before you make a major decision in your life. Whether you accept it to a moral certainty. There are football field analogies about the Government having to go 95 yards, 98 yards. They don't have to score a touchdown but they've got to get right to that goal line. Something the Washington Redskins haven't been doing too well recently, but that's beside the point.

Preponderance of the evidence is crossing that goal line, not beyond a reasonable doubt, not just barely tilting the scales of justice beyond a reasonable doubt and they give you a void, a vacuum, a missing 13 minutes.

What happens on that date? This is Defendant's Exhibit 31. Stowe, the American Gear and Pinion, Weinberg, "Have Jenrette call me." Stowe later on in the conversation, "American Gear and Pinion." Weinberg, "I'd do something for him." Who is him? It's not the schnook. It's not John Stowe. It's the congressman. "I'd do something for him."

Stowe: "I'll talk to the man at American Gear and Pinion." And Weinberg ends the conversation towards the end, 'Get ahold of the congressman." That's why John Stowe was important. That's the only reason John Stowe is in ABSCAM because he dropped the name of the congressman, a congressman, and oh yes, Weinberg threw in gratuitously—Amoroso did too—"He's as big a crook as I am." And neither one of them told you, as you heard in the tape, when John Stowe said it he was laughing thereafter. People speak in the vernacular. People speak every day not knowing they are being secretly recorded by big brother FBI on the other line. People say things like I'd like to kill that son of a gun and they say it and maybe they are laughing; maybe they are mad, but what does a written transcript look like a year later: I would like to kill that son of a gun. Good Lord, that's motive for first degree murder. You take it out of context, you take the language that people are having over a telephone or in a bar or at a football game and then you play it back and say isn't it true you said he is as big a crook as you, therefore—malarkey. People are speaking. They are not weighing their words having an effect in a courtroom on a jury two years later.

April 20th, 1979, two days later, Defendant's Exhibit 32, what's happening in that conversation two days later? Stowe, "American Gear and Pinion." Weinberg, "Did you get hold of the congressman?" Stowe, "Please call Jim Neale." Weinberg, "Have the congressman call me."

Remember the questions I asked Weinberg. I went right down each one of these things. What was Stowe interested in? Isn't it perfectly obvious? Stowe was interested in American Gear and Pinion. Isn't it equally as obvious what Weinberg is interested in? The congressman. Because he gets the congressman. He gets the bounty for the congressman. You know what you get for John Stowe? That same proverbial zero because John Stowe didn't have the juice. John Stowe was a schnook and they don't pay bonuses for schnooks.

The thought of being paid a bonus and expecting it after the conclusion of these ABSCAM cases I submit to you respectfully and sincerely as I know how ought to be repugnant to you. It ought to make your skin crawl.

April 25th, 1979, Defendant's Exhibit Number 3, five days later. Stowe, what do you think John Stowe is going to be talking about, ladies and gentlemen. You guessed it: American Gear and Pinion. And what do you think Weinberg is going to answer him? "I'd like to meet with the congressman." Stowe, "I don't want to get him involved." Weinberg, "I can give the congressman any kind of deal he wants."

He doesn't even know what he wants regardless. "I can give the congressman any kind of deal he wants." John Stowe has talked about Eleuthera. He's given him these plats, these maps, he's discussed it with him. He's had it. He's talked about Cape Eleuthera. He's talked about appraisals—excuse me, American Gear and Pinion. And what is Weinberg doing about that? He says, "We weren't interested in legitimate deals. We said we would look into it. I never would, never did, but I will give the congressman any kind of deal he wants." And a deal he gave him. With deals like that the congressman prefers to be minding his own business not getting such a deal.

Then Weinberg says that famous quotation you've heard before. "I can help people with juice." If you're a poor schnook, forget it. Then what does Stowe

say? First he says, "Why didn't you tell me, Mel?" You know, we've been wasting all this time. Weinberg, if you will recall you heard this just today, he's talking about senators get 120 percent financing, a hundred percent financing. Poor schnook, forget it. Then what does Stowe say? He's chipping away at his lack of predisposition. "I'll call. Let me call John." That's what he says.

May 2nd, 1979, John Stowe, you guessed it, American Gear and Pinion. "That's a good deal, Mel." "I'll give the congressman a call." Weinberg is going to call the congressman. That's who he's interested in. The point, and I can't make it enough, is this is the seduction of John Stowe minding his business out there in Richmond, Virginia, traveling around. There it is. There's the carrot. American Gear and Pinon. "I want the congressman." Keep talking to me and I'm going to keep talking to you. You keep talking about American Gear and Pinion and I'm going to talk about the congressman. And John Stowe tells him what he wants to hear. John Stowe tells him yeah, okay.

May 13th, 1979, "I'll have Jim Neale from American Gear and Pinion call you." Weinberg, "The Congressman. We'll bring you and the congressman down to the yacht."

Mel, did you ever invite the schnook down to the yacht? Were you going to give him the royal treatment? No. I'll bring you and the congressman down. If you bring the congressman you will go to the yacht.

"Arabs like friends in high office." What is the resistence of John Stowe, the lack of predisposition? What does he say back then? He says on April 25th, 1979, I don't want to get him involved." Don't you think if he was predisposed to commit a crime then when Weinberg is saying, "I'd like to meet with the congressman," he would say, "Sure. You know, I'll work a deal with you, quid pro quo, tit for tat." "I don't want to get him involved."

The same conversation later on, "You'll want a favor and I don't want to get him on the hook." There's no predisposition, not at all, much less beyond a reasonable doubt.

May 13th is significant for one reason. I'll quickly go through that and you may recall it. That's the conversation that I read with Master Mel up on the stand. He was playing the part of Mel Weinberg. Perhaps he will do that again in Hollywood when he sells the movie rights. He was playing Mel; I was playing John Stowe. And John Stowe said there, and it's Page 3, the first thing John Stowe says is, "Good.

"I'll bring you and the congressmman down.

"All right.

"We'll send our plane. We'll fly down commercially. We'll meet on the yacht. We'll go over everything.

"All right.

"Mel Weinberg: So I didn't call him. I feel—you will directly deal with him instead of call him, correct, as far as wanting a favor, if you want something. All right.

"Right.

"Weinberg: I mean this sincerely. Yassir's got plenty of money. All right?

"Stowe: Yeah.

"Mel Weinberg: So don't worry about we want something right away, okay?

"Stowe: Right.

"Weinberg: I don't even know if—what he wants.

"Stowe: Okay."

The point is Stowe is saying in this brilliant conversation, "Okay, right, all right. okay." Why is that?

There's been some reference to the book, "The Fountain Pen Conspiracy". Weinberg said he read it. It was about con men. Si Pollack says he's in it. He's proud of it. It's about con men. And do you know what it is about con men that's significant? If you would ask a person what is a con man, what human trait does a con man prey upon, the first thing that comes to mind is greed. You can't steal from an honest man. That's not true. Do you know what a con man more importantly preys upon? The fear every person has of looking stupid. That's how the flimflams work. That's how London Investors worked. That's how ABSCAM worked. John Stowe was afraid of looking stupid. That's why when Weinberg is talking—and I'll say this for the third and last time—far faster than John Stowe was thinking about CD's. Stowe was saying, "Right, okay, yeah," and when he's talking about all these other deals Stowe was saying, "Yeah, that's right, okay," because he doesn't want to appear stupid. Because if he's stupid

he's not going to get the $3 million. And nobody wants to think they are stupid and that's how the professional, the slick con man preys upon the mark, preys upon the desperate man, because John Stowe was a desperate man at that time.

July 11th, 1979, John Stowe is telling him what he wants to hear. He's telling him a meeting is set up. I submit the better, credible evidence was probably the congressman was not only at the hospital but wasn't in his office during the time John Stowe wouldn't have been able to talk to him but Stowe knows he's got to do something to set up the congressman. He's going to do anything. He's already said he's not going to do a favor. "I don't want him on the hook." Maybe he just wants to meet people in Washington. Stowe then is talking about American Motor Inns. Weinberg acknowledges this is on a legitimate company on the New York Stock Exchange and Weinberg—Stowe wants his commission.

Mr. Kotelly said that back in April when I said that Stowe wanted to then convert it, wanted to buy American Gear and Pinion for himself. Mr. Kotelly is correct. You know, at that point he says, "I want to get in business. American Gear and Pinion is a good deal, Mel. It's a good deal. Mel, I want to get capital. I want to get back in business. I want to go back in the real estate business." John Stowe would have run a service station in Myrtle Beach if he could have gone back there and led a decent life and gotten back to respectability, to respectability he had lost. It didn't make any difference to John Stowe whether it was real estate, American Gear and Pinion or what have you. He's acting as a broker.

Do you know—and Mr. Kotelly perhaps belittles the fact he wasn't going to buy; he's going to be a broker, five percenter, is Mr. Kotelly's word. Do you know what 5 percent of $3 million would have been? $150,000. That's a lot more money than John Stowe had when he left Myrtle Beach with the tail between the legs as Mr. Robinson said. It's a lot of money. Don't belittle whether he was a broker, would have owned it. There's no question he was interested in American Gear and Pinion. That was his crime.

Jim Neal told you he wanted to buy it. Jim Neal told you he wanted a job. So did Jerry Starling. He went down there on his hands and knees and was looking in the rafters. That's how much he wanted American Gear and Pinion. Remember that in December when Stowe went down there? Things weren't moving fast enough for him to get the appraisal to package it himself. What does Weinberg say? "And the congressman's all set up?" Talking about the meeting of August 6th.

What really happened? We don't know. You've got a notation in Congressman Jenrette's book from July 12th, 1979 that Stowe had called and said was trying to set up a meeting. It wasn't confirmed yet. We don't know. If Stowe was telling Weinberg what he wanted to hear, if he was puffing, so be it. We plead guilty to that, but we are not guilty of aiding and abetting in a bribery situation or conspiracy because of the entrapment. That's what Weinberg is saying.

What happened. Why did the meeting not come to fruition? What was the predisposition of John Stowe July 21st, 1979? Not recorded. Don't have that for you. You've heard another excuse. You've heard more excuses than you can shake a stick at. Have no excuses for October 10th, 1978. You have no excuses for the 16 calls that took place in there and these other calls. None whatsoever. But you've heard excuses for November 15th, July 21st. You have heard all sorts of excuses. And every one of them are vital calls. They are calls that are right before something that's going to happen is significant.

Is that a coincidence? It's an awful funny coincidence. Mel Weinberg: "They stole four cassettes out of my luggage." Have you ever heard of a thief stealing four cassettes and leaving the tape recorder in the same side pouch, a valuable Lanier tape recorder? Remember he said the tape recorder was in there. The record speaks for itself. They left the tape recorder and took the four cassettes and some cigars. Must have been that insidious and invidious band of cassette thieves that have been preying on the airports that took the cassettes. Not interested in the tape recorder.

September 6th, 1979, getting closer. Defendant's Exhibit Number 38. This is where Stowe reaches his most pathetic. He tells them his deals aren't coming to fruition. He's spinning wheels. He hasn't set up a meeting with the congressman. That's his lack of predisposition. He says, "I'm going in the hospital, going to be there about eight days." At this point you know Stowe, from the evidence, people that have testified, he's 49 years of age. "How about a job, Mel? How about a job, Mel?" "Send me a resume. I want to meet the congressman." He's not being paid to be sympathetic to John Stowe. He could care less about John Stowe. John Stowe is a tool, a mechanism, a catalytic agent that hopefully is going to get him a congressman, going to add to the bonus. I want a job, Mel. Sure. Send me a resume.

Tony Amoroso says, "Yes, I was concerned about 350 people being unemployed at American Gear and Pinion. I'm always concerned when people aren't employed."

My last question to him on recross examination was, "Mr. Amoroso, were you concerned that John Stowe was asking you for a job? Did that bother you?" "No, it didn't." They are not being paid to be bothered by John Stowe. We understand that. But a callous indifference to this man as a human being who at this point, September 6, 1979, has had his life manipulated like a piece of putty for almost a year, since September 17th, 1978, when he first called Herman Weiss. It was a year since he had called Herman Weiss, since he had written GAC Corporation and gotten that package. So we can logically assume Nola Skylar called him sometime the day before or the day of September 11th. "I want to meet the congressman."

And how about this master crook, this bagman that's in it for himself? "I don't have to be here." Now, that hasn't been brought to your attention before but it's in the September 6th call. The man that's going to get the 10 percent, the man that's the 5 percenter or what have you, the man with this predisposition to commit a crime, hogwash. "I don't have to be there, Mel." He just wants his deal. "You give me the congressman." "Give me American Gear and Pinion." And Weinberg says, "Maybe we can do something for the congressman."

And then the most important meeting of all, most important phone call of all, November 15th, 1979. It's important because that's the date they are up at Resorts International, and Amoroso first said before Mr. Robinson catches him—because that's the exact words for it—"We had given all the recording equipment to Mr. Good. It's too tough a security situation." And you recall I asked him:

"At 8:30 in the morning, lock on the door"—well, forget that. No equipment. We get a call from Good. "Call this fellow Stowe. ABSCAM is about ready to wrap up. See if he can get the congressman." Haven't heard from him in months, since September 6th when this pathetic man who had been in the hospital was asking for a job. "Okay. Call him. See if finally, you know—tell him to do something, either do it or we will either put up or shut up." That's a better expression than the one that first came to mind. Put up or shut up, Stowe. American Gear and Pinion is there but first we have got to meet the congressman.

What did Mel Weinberg say to John Stowe on November 15th, 1979? Amoroso didn't talk to him. Good didn't talk to him. McCarthy didn't talk to him. They don't even have Joe Meltzer to talk to him. All they have got is Weinberg. What did he say and where is the recording? The recording—"It never occurred to me. I never thought of it." Amoroso says the Nagra phoe recording equipment, $3,000 piece of equipment wouldn't work and it never occurred to me to put the two little spaghetti strings like that to hear the conversation. $3,000. I asked him, Mr. Amoroso, "Isn't it a highly sensitive piece of equipment? Wouldn't it even, aside from those little gadgets, have recorded your side of the conversation? Why didn't you do it, Mr. Amoroso, before you asked a jury to convict this man of three felonies? Why didn't you do it?"

"It never occurred to me. I never thought of it."

Forget Weinberg. You can't expect him to want for you to know the truth. But Amoroso should have. He really should have. November 15th, 1979, what was the conversation that took place?

[Whereupon, Mr. Janus held up a placard with a large question mark on it.]

That's what it is. You don't know. We don't know. Weinberg can't tell you because all he knows is what's on the tapes. And if Weinberg doesn't know, by his own admission, you don't know.

His Honor, again, as I've told you, has told you, you don't have to accept testimony of someone that gives you testimony that's inherently improbable and incredible even if it's not impeached. And the Government right then at that time, because November 15th is the first date of the indictment conspiracy, the first date—not the first date of the entrapment but i is the seduction of John Stowe, the beginning of the destruction of John Stowe, and they asked you, as His Honor is going to instruct you, we anticipate, that entrapment is made up, as I told you before, number one, there must be inducement by the Government.

Well, my God. You've heard inducement from September, October, '78 up through November 15, 1979, nothing but inducement. Seduction, seduction, chipping away. "I don't want him on the hook. I don't want to get him involved." Keep going, Mel. You're the master Mel. Keep doing it, Mel. $3 million, that green poultice out there. That's the inducement. There's no question about in-

ducement. But the Defendant can't be predisposed because if he's predisposed it's not entrapment.

But the burden is on the Government to prove that John Stowe was predisposed on November 15th, 1979 and the best evidence they give you is a big, fat question mark. Well, you've got to tell Tony Amoroso, special agent Tony Amoroso you should have thought about it because we can't and we are not going to convict anybody on proof beyond a reasonable doubt about his predisposition when you sit there and you tell us you didn't think about it, forgetting about the fact that Amoroso wasn't candid with you when he had that Nagra right there. And Mr. Kotelly in rebuttal can come up and say he was talking about Lanier and he was talking about phone recordings. Ladies and gentlemen, that's not what he said. He said all the equipment. And Mr. Robinson pinned him down and Mr. Janus pinned him down. All of the equipment was given to Mr. Good and it wasn't true. And thank heavens for Mr. Robinson's—call it luck, call it hard work, call it the Good Lord looking down on him—finding from that agent Wilmore in that little green book. He found it. November 15th there was another recording Eureka!

Then they had to call Amoroso back and then he wiggled and squirmed and played Weinberg for a while on the stand. You heard that. Okay.

I promised you I wasn't going to take as long as Mr. Robinson and I'm not, nor Mr. Kotelly. Mr. Kotelly has got another series of—another rebuttal argument coming up.

November 27, 1979, Government's Exhibit 7–C, John Stowe, "What about my big loan, Mel?" Weinberg, "We'll meet with the Congressman in the Georgetown Inn. We will talk about it. Maybe DeVito will do something for you."

All throughout—I'm not going to go through all these conversations, after the meeting on December 4th and December 6th. But the gist of it is another untruth. They said one deal wasn't contingent on the other. "We didn't convey that." Yet every time, "We'll do his deal first, then yours." Remember that? January 7th? "We'll do his deal first, then we'll get to yours," because the promise is out there, the carrot. December 4th, 1979, not the meeting but the phone call, Mr. Kotelly or—they tell you one deal wasn't contingent on the other. Weinberg, "You got it." Stowe, like a child, "I got it?" Weinberg, "You got it." John Stowe finally, "I got it?" "You got it."

And you hear that throughout. How about when he goes there on December 6th? He's picking up the money. He did it. You saw it. He says, like the child in school, "Could you give me five minutes, Tony?" Remember he says that? "Could you give five minutes for me? This American Gear and Pinion is a good deal." Remember the conversations about that? Remember all of the frustrations the man has? Remember the little boy-like quality when he's talking on January 29th?

Mr. Kotelly brought that conversation up. And Weinberg says, "It's not going to close today. It's not going to be Thursday. Maybe it will be Saturday." And you know what he says? Did you hear him? "Aw, Mel." You're going to have to stay after school because you're going to be punished. Aw teacher. "Aw, Mell." That's what he says.

Mr. Kotelly talks about the one sentence that I didn't add to April 25th. He's absolutely correct. I left it out inadvertently just as whatever he would leave out is inadvertent, I'm sure. We are just both advocates doing the best job we can.

But I submit to you on the exact place that he stopped when he played that tape of January 29th, 1980, Government's Exhibit 22—Defendant's Exhibit 22–B, whatever the first conversation was, he stopped at page three and the next sentence after Mr. Kotelly gave the sign to his maestro like that, John Stowe says, "Okay. The other thing, Mel, is I was under the standing that you and I were going to put that business together this week." He's still trying. Well, it was inadvertent on Mr. Kotelly's part, I hope. That's the whole picture. That's why both Mr. Robinson and I urge you to look at the whole picture. Don't just look at the video and turn it off.

Now, let's talk very briefly as to Count three as to the defendant John Stowe, his involvement in Senator Thurmond. That's the same involvement that I have talked to you about and motioned to you four times before. Zero. We submit he's not guilty of agreeing to anything. He's not guilty of attempting or aiding and abetting the bribery of John Jenrette because of the entrapment nor is he guilty of anything, even less though, with Thurmond. And I'm quoting you Congressman Jenrette's testimony there and I don't even need to quote this. Congressman Jenrette says—and he's being candid with you—he says, I think talking about Senator Thurmond:

"That was my idea at the time." I'm quoting again. "I take full responsibility for the Senator Thurmond episode." That's at page 3850 of what Congressman Jenrette is saying.

But look at the tape. Look at John Stowe sitting there on that January 7th tape. And he sits there and he does nothing. He's like at a tennis match. He's going from Amoroso to Jenrette and he says nothing. Because he's like a little boy again at a big boy's game. The entire Thurmond matter, if you can accept Congressman Jenrette's story or not, he says he was doing it to stall. Whether it was a stall or what have you John Stowe is not involved in that. John Stowe is like a piece of trash. He has been used. He's been abused. He's been seduced but now that they have got the Congressman what do they do? Throw John Stowe aside. We don't need you anymore. You can tag along if you want. We're got the Congressman, the same Congressman that threw out all of these things. Weinberg is saying, "And the Congressman, we'll take him to the yacht. We'll do any deal he wants. We'll do the Congressman."

John Stowe, a desperate man and a mark.

It's right interesting, the $350 I submit to you Stowe got conned out of the $350 regardless. Even if by some stretch of the imagination anybody would think it was the aerial photographs, Weinberg didn't have any intent of going through with a legitimate deal. That's $350 he got conned out of. If this were another day, another Court, say Pittsburgh, 1977, Mel Weinberg was a defendant there and the John Stowe of the scenario was the victim, whether it was Wayne Newton or the other people in the scam that was there. Because Weinberg couldn't resist even though he was on the payroll for the Government, just a little bit of a victim, and a little bit of a mark and he did it again. He got him. He got him again.

That was just a small part of the picture. Mr. Weinberg, you can keep your $350 but you're not on—on your testimony, your incredible untruthful testimony, going to let this jury convict this man in this case.

If you want to find him guilty, you can find him guilty of being naive. You can find him guilty of being a poor snook. Find him guilty of pumping and say he's going to set up meetings when he really hadn't and find him guilty of everything else. But His Honor is going to instruct you the only thing you are to evaluate, the only crimes, the only anything—and there are no crimes he's done but the charges in this case.

I anticipate he will instruct you on the law on that point tomorrow morning.

John Stowe, he got you. He got you here. But John Stowe has been the victim of having his whole life manipulated as a pawn in a chess game, just to get the king, whether the king was a Senator or Congressman or what have you. And you can jump over the pawn but when you get the king, the queen, if you will, the game is over. And the game was over as soon as they got to the queen or king, the Congressman, and the pawn was out of the way and all of those pathetic conversations this man going down to South Carolina, getting the appraisals, going through the plant with Jerry Starling and Jim Neal; you heard them. And to tell you how naive John Stowe was, he went in there and talked to Jerry Starling and said, "When I take it over I want to hire you because I don't know that much about the business." And he asked Jerry Starling, "Where do I sit? Where will I sit?" That was his dream. And he was a dreamer.

An aider and abetter of conspiracies and felonies? That he was not. The bottom line, ladies and gentlemen, is entrapment as a matter of law but what entrapment really is is a fairness, is the Government, can they be allowed to induce someone that's not predisposed? You've got to evaluate that. The man sitting there, whether it's in Richmond, Myrtle Beach, Pittsburgh, Washington, D.C., can they unfairly induce him, can they put pressure on him over a long length of time?

Judge Penn is going to tell you about what makes up that inducement: Make fradulent representations to him, use persuasion, coercive tactics, even harrassment, more important, promises of reward, friendship. They can't do that if he wasn't predisposed. We have got the duty to show you inducement. We have shown it abundantly clear. But the Government has got to show you John Stowe was predisposed to commit a crime.

Let's hear them talk about predisposition when he first talked to Herman Weiss on September 17th. Let's hear them tell you about his predisposition for 16 calls between October 30th and January 31st, 1979. Let's hear them tell you about the six-minute call on December 14th, 1978, when he and Mel Weinberg talked four times on December 14th. That must have been a big deal. Why didn't they tell you

about that? Why didn't they tell you about the November 15th meeting when Weinberg meets Stowe in person? Why did Mr. Kotelly tell you about that? Because there wasn't anything wrong with it, because Cape Eleuthra was completely legitimate.

Amoroso didn't even tell you about November 25th, 1978. Weinberg didn't tell you. McCarthy didn't. Even the mysterious Mr. Good. It came up because of cross examination, because of this check when the con man lost his cool, the sting man. The sting man who is going to write a book. It's not going to be about fairness. It's not going to be about justice. It's not even going to be about the truth because if the sting man told the truth it wouldn't be much of a sting, would it. And he's gotten $15,000 so far over and above the $133,000 because of playing with this man's life like a little piece of putty, like a little animal he's got in his hands, plucking, plucking away at him. He's got him right there and he's written a book about it and it's called "The Sting Man".

"Mr. Weinberg, you haven't written the final chapter yet, have you?" "No, not yet." You know what his final chapter is? The sting was complete and "I got the schnook convicted and a few other Congressmen thrown in and they paid me a bonus." That's the final chapter. That's the final chapter he wants and you're not going to give it to him because you're charged to come back with a verdict that reflects the truth and justice and things like that, things that are the exact converse of Mel Weinberg's very existence.

Because the entrapment that the Government used in this case is not consistent with fairness and justice. No. The book may not sell as well for Mel Weinberg if somebody is found not guilty, if John Stowe, a jury of his peers comes back and says not guilty and if the book doesn't sell maybe he won't even sell it to Hollywood, which he wants. Can you imagine who is going to play Mel Weinberg in Hollywood? There's only one person that could play Mel Weinberg on Hollywood, on Broadway or in Court and that's Master Mel Weinberg himself. He's inimitable. You couldn't duplicate him. Oh, you could get a poor man's version of Weinberg, ole Joe Meltzer, but the Mel Weinberg, no. He's got to play himself. And that reflects upon his testimony when he testified before you a couple weeks ago. Still on the payroll for the FBI, still worried about the book, the movie rights, and the only person in the world that knows what happened about the inducement from his side on November 15th, 1979, the person that has a Nagra piece of recording equipment at his fingertips, a phone call away, a Lanier tape recorder with a little gadget that you can put on it, nope. An FBI agent who could have picked up the extension and at least given it the credibility of a Federal Bureau of Investigation agent hearing a conversation on an extension—a little 13-year-old girl knows enough tospy on their little sisters or big sisters by picking up the extension. A Federal Bureau of Investigation agent didn't know about that other than they know about those $1.99 cassettes you can buy three four at Sunday sales or what have you. No, it's not ABSCAM. It's AMSCAM. And the AM is America. Because Mel Weinberg is perpetuating a scam on the American public. Don't let him do it to you.

I urge you on behalf of John Stowe don't let him carry his sting to the ultimate degree and let you fall victim to his untruthful testimony, to his inducement, to his seduction, to his attempted destruction of this man. Don't do it. I urge you as I'm sitting down, if one single one of you on this jury of 12 that are finally selected to go into that jury room feels that John Stowe was entrapped, that he was induced and seduced, that he wasn't of predisposition, and the Government hasn't shown you beyond a reasonable doubt that he was, if one single one of you, you have the courage of your convictions and you vote not guilty because that's what he is, ladies and gentlemen, he's not guilty. And Mel Weinberg can't do this to him or to you or to us or any man. Thank you.

THE COURT. Ladies and gentlemen of the jury, at this point in the case we have one further argument to hear. The Government, having the burden of proof in this case, is entitled to a rebuttal argument. Before we hear Mr. Kotelly's final argument in the case I'll excuse the members of the jury for approximately ten minutes. At that time I will call you back.

EXHIBIT FF

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., December 5, 1980.

[By Hand]

KENNETH MICHAEL ROBINSON, ESQ.,
Washington, D.C.

DEAR MR. ROBINSON: This will confirm a telephone conversation I just had with your office. I have been informed that there is a substantial possibility that the House of Representatives will still be in session next Wednesday, December 10. That being the case, pursuant to the motion adopted by the Committee on Standards of Official Conduct on December 2, you and Representative Jenrette should prepare for a hearing on possible sinctions to be held that day. I will send you details as to the starting time of the hearing and the hearing room as soon as I have them.

In view of the fact that your office informs me that you are in Rockville today, I am having a copy of this letter hand-delivered to Representative Jenrette's office so that he will receive notice of the sanctions hearing at the earliest possible moment.

I would like to remind you again, as I did on the telephone several days ago, of the provision in Rule 16(f) that:

> Testimony by witnesses will not be heard at phase two except by a vote of a majority of the Committee.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.,
Special Counsel.

EXHIBIT GG

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 5, 1980.

HON. CHARLES E. BENNETT,
Committee on Standards of Official Conduct,
Washington, D.C.

DEAR MR. CHAIRMAN: Today I learned that the committee will hold sanction hearings on Wednesday, December 10, 1980. Apparently, the Congress will sit until that date.

Please be advised that I had been led to believe that Congress would adjourn today, Friday, December 5; and therefore, there would be no reason for either my wife or myself to be in Washington. I will do all that I can to be in attendance; however, Rita will be on the west coast and she is a very important witness at any sanction hearing.

Any suggestions you have that may be of assistance to me regarding this problem would be greatly appreciated.

With warm regards, I am

Sincerely yours,

JOHN W. JENRETTE, JR.,
Member of Congress.

EXHIBIT HH

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., December 8, 1980.

Hon. JOHN W. JENRETTE, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR COLLEAGUE: Thank you for your letters of December 5 and 8. As you know, when the Committee met on December 3rd it stated that sanction hearings would be held on December 10th if the House remained in session. I do not have authority to change that. I will present your letters to the Committee when it next meets on Wednesday at 9:30 a.m., in Room 2359–A Rayburn House Office Building; but you should not rely on any change in the Wednesday hearing date because I cannot unilaterally make a change and you were given a weeks notice of this hearing when we last met.

You will be allowed one hour and a half for your presentation on sanctions and can take whatever portion you desire for your own statement and allot the remainder to other witnesses you may call. Thereafter your counsel and Special Counsel to the Committee will each be given one half hour to present arguments to the Committee on what sanction, if any, should be proposed to the House.

Sincerely,

CHARLES E. BENNETT,
Chairman.

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