

96TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

{ REPORT
No. 96-856

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD

REPORT
OF THE
COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT
HOUSE OF REPRESENTATIVES



MARCH 26, 1980.—Referred to the House Calendar and ordered to be printed

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(II)

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FOREWORD

The Committee on Standards of Official Conduct has not in the past issued reports in cases which were terminated by the Committee losing jurisdiction through the resignation, retirement or electoral defeat of the Member who was charged with a violation of House Rules. However, *In the Matter of Representative Daniel J. Flood*, a number of threshold questions relating to the Committee's functions were dealt with during the course of the proceedings. Committee views on those issues have been expressed in this report.

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD

MARCH 26, 1980.—Referred to the House Calendar and ordered to be printed

Mr. BENNETT, from the Committee on Standards of Official Conduct,
submitted the following

REPORT

(1)

PART I—BACKGROUND OF THE INVESTIGATION

Serious allegations against Representative Daniel J. Flood concerning abuse of office began to appear in the press in early 1978. In essence it was alleged that on several occasions Representative Flood exercised his official influence on behalf of private parties and foreign governments in return for unlawful consideration. In response to the concerns of many Members of the House of Representatives, a study of the charges by the Committee was instituted. The Committee also retained Special Counsel to undertake an extensive inquiry into the allegations.

On April 19, 1978, the Committee established a subcommittee of Representatives Olin E. Teague and Albert H. Quie to oversee the study of the charges. In June, the Committee appointed the law firm of Powell, Goldstein, Frazer & Murphy as Special Counsel, and directed it to work with the Committee staff in its inquiry and report to the subcommittee on the validity of the charges against Representative Flood.

A federal grand jury returned an indictment against Representative Flood in Los Angeles on September 5, 1978. The indictment charged him with three counts of perjury, stemming from the trial of his former administrative assistant, Stephen B. Elko. On September 25, Representative Flood pleaded not guilty to these charges.

A second federal grand jury, in the District of Columbia, handed down an indictment against Representative Flood on October 12, 1978, charging him with ten counts of bribery and conspiracy. A "not guilty" plea was entered to these charges on October 19. Later in October, Judge Louis Oberdorfer of the United States District Court for the District of Columbia ordered the two indictments consolidated for trial.

Notwithstanding the adjournment of Congress in October 1978, the Committee's staff and Special Counsel continued its active inquiry into the charges. A report of its findings was filed with the Committee by the Special Counsel in December 1978.

Representative Flood was tried on one count of conspiracy (18 U.S.C. § 371, seven counts of bribery (18 U.S.C. § 201(c) and 18 U.S.C. § 2(b)), and three counts of false declaration (18 U.S.C. § 1623) from January 15 to February 1, 1979. Because the jury could not reach a unanimous verdict, a mistrial was declared on February 3 by United States District Court Judge Oliver Gasch. A retrial was scheduled for June 4, 1979.

On February 7, 1979, at the Committee's organizational meeting for the 96th Congress, Representatives Richardson Preyer and Robert L. Livingston were appointed to a subcommittee to continue the inquiry into the allegations of misconduct against Representative Flood. In March, the Committee retained a new Special Counsel, the law firm of McCandless & Barrett.

On May 2, 1979, the Committee approved a motion by Representative Preyer to conduct a Preliminary Inquiry, pursuant to Rule 11 of the Committee's Rules of Procedure, to determine whether a Statement of Alleged Violations should issue. The motion stated that the evidence adduced at Representative Flood's trial suggested that Representative Flood may have been involved in the "soliciting, demanding, accepting and receiving of money and other things of value in return for the agreement by Representative Flood to influence and to attempt to influence, in the performance of his official duties, agencies and departments of the Executive Branch of the Government of the United States and their officials." The motion was agreed to 11-0 with one abstention.

Through its Special Counsel, the Committee notified counsel for Representative Flood of its action and advised counsel that Representative Flood had the right to appear before the Committee and respond. On May 23, 1979, Representative Flood's attorney appeared before the Committee and requested that a Statement of Alleged Violations not issue on the grounds that (1) it would interfere with the upcoming criminal trial, and (2) Representative Flood's physical health would not permit him to respond adequately. The Committee took no action on the request on that date.

On May 31, 1979, Judge Gasch granted a continuance of the June 4 retrial due to Representative Flood's ill physical health. On June 7, 1979, upon a presentation of the evidence against Rep. Flood by the Special Counsel, the Committee unanimously adopted a 25-count Statement of Alleged Violations.

PART II—STATEMENT OF ALLEGED VIOLATIONS

The Statement of Alleged Violations adopted by the Committee contained twenty-five counts. The first twenty-four counts charged Representative Flood with having demanded or received money or other valuable consideration to influence officials of the United States Government on behalf of various private interests. The twenty-fifth count charged Representative Flood with having perjured himself in a court of law. Following is the text of the Statement of Alleged Violations:

THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF REPRESENTATIVE DANIEL J. FLOOD, RESPONDENT

STATEMENT OF ALLEGED VIOLATIONS

During all times relevant to this statement of alleged violations, the Respondent, Representative Daniel J. Flood, was a member of the United States House of Representatives.

Count One

In or about October 1974, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Robert Gennaro \$2,000 in cash in exchange for Respondent's agreement to influence or attempt to influence the United States Department of Housing and Urban Development and The Farmers Home Administration of the United States Department of Agriculture to grant financial assistance to Crestwood Hills development project. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Two

In or about October 1974, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Robert Gennaro checks totalling \$3,000 which were given to Respondent's assistant, Stephen B. Elko, by Robert Gennaro and which were delivered to Respondent's account in exchange for Respondent's agreement to influence the United States Department of Housing and Urban Development and The Farmers Home Administration of the United States Department of Agriculture to grant financial assistance to Crestwood Hills development project. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of

Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Three

In or about September or October 1974, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties caused Stephen B. Elko, his assistant, to solicit and demand from Robert Gennaro a promise to pay Respondent \$50,000 or \$100,000 in return for Respondent's agreement to influence the United States Department of Housing and Urban Development and The Farmers Home Administration of the United States Department of Agriculture to grant financial assistance to Crestwood Hills development project. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

Count Four

In or about the spring of 1972, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received \$5,000 cash from William Fred Peters which was given to Respondent's assistant, Stephen B. Elko, a portion of which was delivered to Respondent in return for Respondent's agreement to influence officials of the United States Office of Education to assist West Coast Trade Schools in securing accreditation. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Five

In or about either August 1972 or January 1973, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Deryl Fleming, \$1,000 in cash in

return for Respondent's agreement to influence officials of the United States Office of Education to assist West Coast Trade Schools in securing accreditation. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Six

In or about June or July 1972, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received \$5,000 in cash from William Fred Peters in return for Respondent's agreement to influence officials of the United States Department of Housing and Urban Development to purchase prefabricated homes from Sterling Homex Corporation. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Seven

In or about November 1972, Respondent Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from T. Newell Wood 100 shares of First Valley Bank of Bethlehem, Pennsylvania stock in exchange for Respondent's agreement to influence the Comptroller of the Currency and the Federal Deposit Insurance Corporation to grant approval to the merger of the First Valley Bank of Bethlehem, Pennsylvania and the State Bank of Eastern Pennsylvania. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Con-

duct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Eight

In 1972 the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. James Carper \$7,000 in cash which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the United States Office of Economic Opportunity (later, the Community Services Administration) to obtain a \$576,000 manpower training contract for an organization known as C.P.I. Associates Inc. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Nine

In or about December 1975, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received a check in the amount of \$1,000 from Rabbi Lieb Pinter in exchange for Respondent's agreement to influence or to attempt to influence officials of the United States Department of Labor and Community Services Administration to award contracts, grants and funds to organizations in which Rabbi Pinter was interested. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Ten

In or about April 1975, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received \$1,000 in checks from Rabbi Lieb Pinter which were given to Respondent's assistant, Stephen B. Elko and which were delivered to Respondent in exchange for Respondent's agreement to influence or to attempt to influence officials of the United States Department of Labor and Community Services Administration to award contracts, grants and funds to organizations in which Rabbi Pinter was interested. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Eleven

In or about April or May 1975, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received approximately \$1,500 in cash from Rabbi Lieb Pinter which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the United States Department of Labor and Community Services Administration to award contracts, grants and funds to organizations in which Rabbi Pinter was interested. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twelve

In or about October 1975, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received

approximately \$1,500 in cash from Rabbi Lieb Pinter which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the United States Department of Labor and Community Services Administration to award contracts, grants and funds to organizations in which Rabbi Pinter was interested. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Thirteen

In or about January 1976, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received approximately \$1,500 in cash from Rabbi Lieb Pinter which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the United States Department of Labor and Community Services Administration to award contracts, grants and funds to organizations in which Rabbi Pinter was interested. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Fourteen

In or about June 1974, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received approximately \$1,500 in cash from Gary Frink which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the National Cancer Institute to award a research grant to the Denson Corporation for the purpose of testing a cancer detection device. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Fifteen

In or about September 1974, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received approximately \$1,500 in cash from Gary Frink which was given to Respondent's assistant, Stephen B. Elko and which was delivered to Respondent in exchange for Respondent's agreement to influence or attempt to influence officials of the National Cancer Institute to award a research grant to the Denson Corporation for the purpose of testing a cancer detection device. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Sixteen

In or about April 1971, the Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$5,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Seventeen

In or about September 1971, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$1,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 1, 1958).

Count Eighteen

In or about November 1971, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$5,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Repre-

sentatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Nineteen

In or about March 1972, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$5,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct in the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty

In or about September 1972, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$1,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct in the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty-One

In or about February 1973, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$5,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct in the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty-two

In or about September 1973, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$1,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants

and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty-three

In or about December 1973, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$4,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purpose of obtaining for The Airlie Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct in the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty-four

In or about August 1974, Respondent, Daniel J. Flood, otherwise than as provided by law for the discharge of his official duties received from Dr. Murdock Head \$1,000 in cash which was paid to Respondent's assistant, Stephen B. Elko, by Dr. Murdock Head and then delivered to Respondent in return for Respondent's agreement to influence or attempt to influence officials of Departments and Agencies of the United States Government including the United States Department of Health, Education and Welfare and the United States Agency for International Development for the purposes of obtaining for The Airlie

Foundation and The George Washington University Department of Medical and Public Affairs contracts, grants and funds from the aforementioned entities of the United States Government. In so doing;

A. The Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

B. The Respondent received compensation, the receipt of which occurred by virtue of influence improperly exerted from his position in the Congress in violation of Paragraph 3 of the Code of Official Conduct of the House of Representatives, Rule XLIII, The Rules of the House of Representatives.

C. The Respondent, in receiving the money to influence the performance of official acts violated Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2 B12 (July 11, 1958).

Count Twenty-five

On October 11, 1977, the Respondent, Daniel J. Flood, after having taken an oath to testify truthfully in a trial in the United States District Court for the Central District of California, before the Honorable Albert Lee Stephens, Jr., Chief Judge, willfully and contrary to his oath made statements which he did not believe to be true. In so doing, the Respondent conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives.

PART III—SUMMARY OF EVIDENCE IN SUPPORT OF STATEMENT OF ALLEGED VIOLATIONS

Adoption of the Statement of Alleged Violations indicated that the Committee determined that there was "reason to believe" that Representative Flood had committed the violations set forth in the Statement. This determination was made on the basis of the following summary of evidence submitted by the Committee's Special Counsel:

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF)	
	)	SUMMARY OF EVIDENCE IN
	)	SUPPORT OF STATEMENT OF
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNTS ONE THROUGH THREE*

1. Stephen B. Elko testified under oath at Representative Flood's trial substantially as follows:

Mr. Elko first met Representative Flood sometime around the year 1954. (Transcript, Vol. 2 at 2) Although Mr. Elko was briefly employed by Representative Flood on a volunteer basis during the summer of 1968, his principal tenure of employment, as the Congressman's Administrative Assistant, lasted from September 1, 1970, to June 30, 1976. (Id. at 2-3) As Representative Flood's Administrative Assistant, Mr. Elko was responsible for managing the Congressman's Washington office and its thirteen to fifteen employees. He supervised the office accounts and the case load of constituent requests, and was responsible for handling communications with the Federal agencies with which the office dealt. Mr. Elko's other responsibilities included attending to Representative Flood's personal business as well as to his campaign accounts and related campaign activities. (Id. at 5) From the very start, Representative Flood authorized Mr. Elko to sign the Congressman's name to letters sent out of the office. (Id. at 5)

*Crestwood Hills Housing Development.

In the latter part of September 1970, Mr. Elko and Representative Flood met in the Congressman's private office to discuss office matters. At that meeting Representative Flood stated to Mr. Elko that they were in a business and that if Mr. Elko handled his job the way Representative Flood knew that he could, there would be rewards for both of them. (Id. at 7)

Crestwood Hills Housing Development was a housing project operated by Robert and Emil Gennaro and was located in Representative Flood's district. (Transcript, Vol. 3 at 119-120) In early 1974, the two Gennaro brothers visited Representative Flood's office, seeking the Congressman's assistance with the Department of Housing and Urban Development (HUD). (Id. at 120) HUD had claimed that there were numerous deficiencies in the Crestwood Hills project which prevented its participation in mortgage financing and rental subsidy programs. Participation in these programs was very important to the Gennaros; the loan financing program involved approximately \$5,000,000.00. Mr. Elko met alone with the Gennaros at this initial meeting. There was no discussion of kickbacks or payoffs. Either later the same day or the following day, Mr. Elko provided Representative Flood with the background of the Gennaros' problem. (Id. at 121-122)

Mr. Elko contacted Joel Westner at the Congressional Liaison Office for the Department of Housing and Urban Development in an effort to assist the Gennaros, and made several phone calls to the Gennaros suggesting ways to solve their problems with HUD. (Id. at 122) Mr. Elko also suggested that the Gennaros file a funding application with the Farmers Home Administration. Mr. Elko identified a series of letters from Gateway Housing Corporation to Congressman Flood, signed by Robert Gennaro, marked Government Exhibits 501, 503, 504, and 505. All of the letters related to Crestwood Hills. Mr. Elko also identified a letter he addressed to Frank Elliot of the Farmers Home Administration which he wrote and signed in Representative Flood's name (Government Exhibit 502). The letter recommended approval of funding for the Crestwood project. (Id. at 123-126) A copy of the letter was placed on Representative Flood's desk for him to see. At the time this letter was written, May 9, 1974, there had been no discussion of payoffs. (Id. at 126-127)

Payoffs or payments were first discussed in late September 1974. Gennaro was meeting alone with Mr. Elko, who told Gennaro that the project looked good with Farmers Home. At this point Mr. Elko suggested that it would be a good idea if Gennaro "inspired the Congressman with some contributions." (Id. at 127) Mr. Elko suggested that \$5,000.00 in cash and \$5,000.00 in campaign contributions would be a

"good idea." Mr. Gennaro agreed. Mr. Elko further suggested that if the project were to be approved, they would expect another \$20,000.00 or \$50,000.00^{*/} in cash -- if Representative Flood approved these figures. Mr. Gennaro said that he could work it out. (Id. at 128) On that same day, Mr. Elko discussed the matter with Representative Flood. Mr. Elko showed him the file and the amount of work which had been done on the project; he also related to the Congressman his discussion with Gennaro about money. (Id. at 129)

In late September or early October,^{**/} Mr. Elko told Representative Flood of a particular program administered by the Farmers Home Administration which could provide the funds Gennaro needed. (Id. at 130-131) Representative Flood suggested that they double the figure which the Gennaros ought to pay them if they succeeded in helping the Crestwood Hills project. That would mean a payment of \$50,000.00 or \$100,000.00. (Id. at 132)

About a week later, in October 1974, Mr. Elko met with Robert Gennaro in Washington. (Id. at 133) Mr. Elko explained the Farmers Home Administration program to him, and asked about the promised contribution. Mr. Gennaro assured him that that would be taken care of. However, when

*/ The figure was later put at \$25,000 or \$50,000 (Id. at 132)
 **/ Mr. Elko later fixed the date as sometime during the first two weeks of October. (Id. at 132)

Mr. Elko told Gennaro that Congressman Flood wanted double the payment if the project was approved, Gennaro balked. Mr. Elko then suggested that he could bury that expense in "final construction costs", and Gennaro agreed. Arrangements were made for the payment of the first \$10,000. (Id. at 134-135) As agreed, on the week before the November 1974 election, Mr. Elko met with Robert Gennaro in Wilkes-Barre; Tom Jones, a caseworker on Congressman Flood's staff, was with Mr. Elko. As arranged, Mr. Elko waited for the Gennaros at the parking lot of the Holiday Inn. (Id. at 135) The Gennaro brothers arrived and asked Mr. Elko to follow them to a restaurant called Jaybers in Wilkes-Barre. After the four men spoke for a few minutes, Mr. Elko left with Robert Gennaro, saying that they would be back in half an hour. Gennaro and Mr. Elko proceeded to the Congressman's house. While in the car, Mr. Elko asked Robert Gennaro if he had the money, and was shown an envelope. Gennaro also handed Mr. Elko three checks. (Id. at 136) The time was about 6:00 to 7:00 in the evening. The three checks were for \$1,000.00 each, made out to the Flood Campaign Committee. Mr. Gennaro said that the envelope contained \$2,000.00 in cash, and that the rest of the money agreed upon would be forthcoming later. Mr. Elko told Mr. Gennaro that they would go into the house, that he would introduce Mr. Gennaro to Mr. Flood and then leave the room. (Id. at 137)

When they got to the Congressman's house, they rang the doorbell and walked in. Mr. Elko introduced Mr. Gennaro to Representative Flood, saying, "This is Bob Gennaro from Hazelton. He has something for you." Mr. Elko left the room, but out of the corner of his eye saw Mr. Gennaro shake hands with the Congressman and take the envelope from his pocket. When Mr. Elko returned, Mr. Gennaro was standing and Mr. Flood was thanking him. Representative Flood said: "I have a few more things to pin down on your project and I will be back in touch with you very soon." (Id. at 138)

The next day Mr. Elko showed Congressman Flood the three checks and then turned them over to the Campaign Committee. (Id. at 138) Following the election, Mr. Elko identified a letter he drafted and to which he signed Representative Flood's name, marked as Government Exhibit 510. The letter, dated November 13, 1974, was directed to Charles Seckler, Director of the Luzerne County Housing Authority. (Id. at 139) Mr. Elko also identified Government Exhibits 507 and 508. The former was a letter he wrote and signed for the Congressman to Thomas Foley, the Chairman of the House Agriculture Committee, which has oversight jurisdiction over the Farmers Home Administration. The other letter was written to Frank Elliot at the Farmers' Home Administration, and was actually signed by Representative Flood.

(Id. at 140) As it turned out, the Inspector General of the Department of Agriculture froze the funds for the program Mr. Elko hoped to obtain because \$3,000,000.00 was missing and an investigation was being conducted. The Crestwood Hills project never received any assistance from the Federal government as a result of Representative Flood's intervention. Mr. Elko never received any money from the Gennaros personally, nor was any further payment made.

(Id. at 141)

2. Robert Gennaro testified under oath at Representative Flood's trial substantially as follows:

Mr. Gennaro has resided in Hazleton, Pennsylvania, all of his life. Since November 1970 he and his brother, Emil Gennaro, have been the principal stockholders of the Gateway Housing Corporation. Robert Gennaro is the President and Emil Gennaro is the Secretary-Treasurer of Gateway. The Gateway Housing Corporation builds and develops residential housing in the Hazleton, Weatherly, and Wilkes-Barre, Pennsylvania area. (Transcript, Vol. 10A at 1-4)

In or about January or February 1973, the Gateway Corporation began construction of Crestwood Hills in Mountaintop, Pennsylvania. Crestwood Hills was a 28 acre project consisting of 172 townhouses. Robert Gennaro and his brother had purchased the property in June 1972, in the aftermath of Hurricane Agnes, in order to build homes

for those who were left homeless by the flood. At its inception, the budgeted cost of the project was \$3.9 million. Robert and Emil Gennaro invested \$780,000.00 of their personal funds. First Valley Bank of Bethlehem, Pennsylvania, underwrote the project. When completed, the units were to be sold as condominiums. (Id. at 4-8)

In the spring of 1973, after 100 of the units had been completed, mortgage money began to dry up. The Gennaros were concerned about the adverse impact this would have on their efforts to sell their units. In an attempt to eliminate this problem, the Gennaros looked to State and Federal loan programs. The Farmers Home Administration (FmHA) was one of the agencies from which the Gennaros sought assistance. In order to qualify for the FmHA program, the development would first have to be approved. The Gennaros were not having much luck, though, with FmHA or any other agency. (Id. at 8-11)

In July 1973, Robert Gennaro telephoned his Congressman, Representative Flood, to seek his assistance in obtaining Federal aid. Mr. Gennaro spoke personally with Representative Flood. Congressman Flood was sympathetic; he suggested that Mr. Gennaro speak to Mr. Elko. (Id. at 11-15)

In mid-August 1973, within two weeks after the telephone conversation, Mr. Gennaro met with Mr. Elko in Washington, D. C. Mr. Gennaro described the problem to Mr. Elko and gave Mr. Elko various documents, including the

Crestwood Hills property plans and FmHA applications. (Id. at 15-17)

From September 1973 through 1974, Mr. Gennaro had extensive contacts with Congressman Flood's office. In September and October 1973, Mr. Gennaro contacted Mr. Elko two or three times per week to discuss the problems he was having with Gateway Corporation's FmHA application. In these conversations, Mr. Elko said that Congressman Flood's staff was contacting other Congressmen and several Federal agencies, including HUD and FmHA. In the middle of September 1973, Mr. Elko also suggested that Mr. Gennaro rent the one hundred completed units under a HUD low-rent subsidy program. At the end of February or the beginning of March 1974, Congressman Flood's office arranged an appointment for Mr. Gennaro in Washington, D. C., with Mr. Frank Elliott, Director of the Farmers Home Administration. However, Mr. Gennaro's application with FmHA was rejected because the agency could only approve housing before construction; most of the Crestwood Hills units were already built. Mr. Gennaro continued to contact Mr. Elko's office two or three times a week throughout the spring and summer of 1974. He received dozens of letters from Mr. Flood's office, including copies of letters which the Congressman had sent to various Federal agencies. In the spring or summer of 1974, Mr. Gennaro again met personally with Representative Flood in the Congressman's Washington office; Congressman Flood promised his continued cooperation. (Id. at 17-25)

Throughout this entire period, Gateway Corporation was in severe financial trouble. Although Mr. Gennaro had

managed to rent some of the units by spring 1974, he had not been able to obtain either the HUD rental subsidy or assistance from the State of Pennsylvania. In August 1974, First Valley Bank stopped fulfilling Gateway Housing Corporation's requisitions for money, and in October 1974, the bank became the mortgagee in possession. (Id. at 17-25)

Sometime in August 1974, Mr. Gennaro went to Washington, D.C., to meet again with Mr. Elliott, Director of FmHA, Department of Agriculture. In the hallway at the Department of Agriculture, Mr. Elko explained that assisting Mr. Gennaro took a great deal of work. Mr. Elko asked Mr. Gennaro how much it was worth to him. Mr. Gennaro replied that it was worth "anything feasible." The two agreed on \$50,000.00. No one else was present at this meeting. At trial, Mr. Gennaro explained that he looked at the transaction as a banking proposition. The finders fee at that time was from one to two percent on the amount borrowed. Mr. Gennaro was seeking five and one half million dollars and was willing to pay a one percent finders fee; hence, he was prepared to pay \$50,000.00. (Id. at 25-27)

On October 24, 1974, Mr. Gennaro and his architect, Mr. Marcelli, had another appointment with Mr. Elliott in Washington, D.C. The appointment had been requested in a letter (Government Exhibit 521), dated September 20, 1974, from Congressman Flood to Mr. Elliott. Mr. Elliott sent a reply letter (Government Exhibit 506) to the "Honorable Daniel J. Flood." The reply letter, dated October 7, 1974, set up an appointment for Mr. Gennaro and Mr. Marcelli on October 7,

1974. Mr. Elko told Mr. Gennaro about the appointment, which he kept. (Id. at 27-35)

Mr. Gennaro remained in Washington, D. C., on the evening of October 24th. On the following noon, he had lunch with Mr. Elko at the Democratic Club. Only Mr. Gennaro and Mr. Elko were present at the meeting. Mr. Elko asked for \$100,000.00. He stated that the money was for himself and Congressman Flood in return for their services in connection with the Gateway housing project. Mr. Gennaro was shocked that the figure had been doubled and objected to the amount. Mr. Elko told Mr. Gennaro to charge the money as a cleaning or finishing expense. Mr. Gennaro finally agreed to pay \$100,000.00, but only if Congressman Flood's office arranged the five and one half million dollar mortgage for the Gateway Corporation. Mr. Gennaro returned home that same day. (Id. at 32-36)

On October 29, 1974, Mr. Elko telephoned Mr. Gennaro at the Gennaro's Hazleton, Pennsylvania, home. Mr. Elko explained that he was soliciting funds for Congressman Flood's campaign in the upcoming election. He wanted to meet with Mr. Gennaro that evening in Mr. Gennaro's home. That evening at about 7:00 p.m., Mr. Elko arrived at the Gennaro home. He had driven with another person, who remained in the car while Mr. Elko went inside. When Mr. Gennaro met Mr. Elko at the door of the Gennaro home, Mr. Elko said he wanted to talk to Mr. Gennaro privately. The two went into Mr. Gennaro's living room. (Although Mrs. Gennaro was at home, she did not participate in the meeting). Mr. Elko asked Mr. Gennaro for a \$5,000.00

campaign contribution. He explained that a \$5,000.00 contribution would help inspire Mr. Flood to be more helpful to the Gateway Corporation. Mr. Elko asked that the \$5,000.00 be divided into \$2,000.00 cash and \$3,000.00 in \$1,000.00 checks. Mr. Elko requested that the three \$1,000.00 checks be written by Mr. Gennaro's relatives rather than by Mr. Gennaro himself. Mr. Elko wanted Mr. Gennaro to have the money the next day, October 30, 1974. Mr. Gennaro agreed to make the contribution, even though he was in dire financial straights. The meeting lasted about fifteen minutes. (Id. at 36-42)

When Mr. Elko left, Mr. Gennaro discussed the meeting with his wife. He then called his brother, Emil Gennaro, and told him of the promise to make the \$5,000.00 contribution. (Id. at 42)

The next morning, on October 30, 1974, Mr. Gennaro called Mr. William Christie, Executive Vice President of the First Valley Bank. (Since Mr. Gennaro was in such a desperate financial condition, he needed to borrow the money for the campaign contribution). Mr. Gennaro asked to borrow \$10,000.00: \$5,000.00 was to be for the payment to Mr. Elko and \$5,000.00 was for back pay for two of Mr. Gennaro's employees. Because Mr. Gennaro's personal credit was not worth much at that time, the First Valley Bank required that the money be borrowed by Mr. Gennaro's son-in-law, James Lasser, and nephew, John Canvass. (Id. at 43-54)

On October 30, 1974, Mr. Gennaro went to the Bank with Mrs. Gennaro, Emil Gennaro, James Lasser (Mr. Gennaro's son-in-law), Carol Lasser (Mr. Gennaro's daughter), John Canvass (Mr. Gennaro's nephew), and Roslyn Canvass (John Canvass' wife). Mr. Gennaro met with Mr. Christie and told Mr. Christie that Mr. Elko had asked for the contribution so that Congressman Flood would look favorably on the Gateway Corporation. Mr. Gennaro told Mr. Christie that he was going to make a \$10,000.00 contribution (rather than the \$5,000.00 contribution which he actually intended to make). (Id.)

Mr. Christie agreed to lend the money. Two promissory notes from the First Valley Bank were made on October 30, 1974: (1) \$5,000.00 to James and Carol Lasser (Government Exhibit 511); (2) \$5,000.00 to John and Roslyn Canvass (Government Exhibit 513). The notes were executed in Mr. Gennaro's presence at the First Valley Bank. The Lassers and Canvasses each received a check for \$5,000.00 from the First Valley Bank in payment for the note. (Government Exhibit 512) James Lasser and John Canvass endorsed their checks and received cash. (Id.)

On October 30, 1974, about an hour after the loan was made, Robert Gennaro, Emil Gennaro, John Canvass, and James Lasser went to Mr. Gennaro's office in Hazleton. John Canvass

and James Lasser each kept \$1,250.00, accounting for \$2,500.00 of the funds; Robert and Emil Gennaro each kept \$1,250.00, accounting for another \$2,500.00. The remaining \$5,000.00 was for the Flood contributions: for that purpose Robert Gennaro took \$3,000.00 and Emil Gennoar took \$2,000.00. Emil Gennaro gave \$1,000.00 each to his two daughters -- Lucille Pallucci and Nancy Skuba -- both of whom gave their father a \$1,000.00 check made out to the Flood Campaign Committee in exchange. Robert Gennaro put \$2,000.00 of his Flood money in an envelope for the purpose of making a cash contribution. He gave the remaining \$1,000.00 to Robin Robertson, his daughter, who gave her father a \$1,000.00 check to the Flood Campaign Committee in return. (Government Exhibit 517) (Id. at 54-60)

On October 31, 1974, Robert Gennaro received two checks for \$1,000.00 each from his brother, Emil Gennaro. One \$1,000.00 check, Government Exhibit 515, was written by Nancy Skuba (Mrs. William Skuba) to the Flood-for-Congress Campaign and was dated November 1, 1974. The other \$1,000.00 check, Government Exhibit 520, was written by Lucille Pallucci to the Flood-for-Congress Campaign and was dated October 30, 1974. (Id. at 57-61; Transcript, Vol. 11 at 4-5)

The same day, October 31, 1974, Mr. Gennaro called Mr. Elko from his Hazleton office. Mr. Gennaro explained that he had the \$5,000.00 (\$2,000.00 cash and \$3,000.00 in \$1,000.00 checks). Mr. Elko told Mr. Gennaro to meet him at 7:00 p.m. that evening in a Wilkes-Barre, Pennsylvania, bar/restaurant called the Jaybers. Mr. Gennaro had never before been to the Jaybers. (Transcript, Vol. 11 at 5-7)

At 7:00 p.m., October 31, 1974, Mr. Gennaro and his brother, Emil Gennaro, met Mr. Elko and Mr. Jones, one of Congressman Flood's aids, at the Jaybers, as previously arranged. The four went to the bar and had a drink. After they finished their first drink, Mr. Elko suggested that he and Mr. Gennaro leave. Emil Gennaro and Mr. Jones remained at the bar. (Id. at 5-8)

Mr. Elko and Mr. Gennaro drove to Congressman Flood's home. Mr. Gennaro had never been to the Flood home before. In the car, Mr. Gennaro gave Mr. Elko the three checks. Mr. Elko told Mr. Gennaro to keep the cash and give it to Congressman Flood personally. They arrived at Representative Flood's home at about 7:15 p.m. Mr. Elko knocked on the door and then let in himself and Mr. Gennaro. Mrs. Flood and another woman were there, but Congressman Flood was not. At about 9:30 or 10:00, Congressman Flood came home. When Congressman Flood arrived, Mr. Elko excused himself, and then Mr. Gennaro handed Congressman Flood an envelope containing \$2,000.00 in one-hundred

dollar bills. Mr. Gennaro explained that he was making a campaign contribution, but did not specify the amount. Congressman Flood said, "Thank you", and without looking inside the envelope, put it in his pocket. The Crestwood Hills project was not discussed. The conversation with Flood took about fifteen minutes. Mr. Elko returned two or three minutes after Mr. Gennaro had given the envelope to Congressman Flood. Mr. Elko and Mr. Gennaro then left and returned to the Jaybers. (Id. at 8-15)

Immediately after Mr. Gennaro and Mr. Elko arrived at the bar, Mr. Gennaro and Emil Gennaro left and went home. The four did not discuss the transaction that had occurred in Congressman Flood's home. (Id. at 15-16)

From October 31, 1974, into mid-1975, Mr. Gennaro continued to correspond with Congressman Flood's office concerning the Crestwood Hills project. For example, he received a copy of a letter (Government Exhibit 510), dated November 13, 1974, from Daniel J. Flood to Mr. Charles Seckler, Housing Authority of the County of Luzerne. (At this point during the trial, the government's counsel stipulated that Mr. Elko actually signed Congressman Flood's name). The first paragraph of the letter began:

"Dear Mr. Seckler: In response to your letter of September 10, 1974, regarding Crestwood Hills and your HUD application, for this development in Rice Township, Luzerne County, I will do everything possible to achieve approval of the subsidized housing for your agency..."

During this time, Mr. Gennaro also received copies of letters which had been sent from Congressman Flood to other members of Congress regarding the Crestwood project. (Id. at 16-20)

On February 15, 1978, Mr. Gennaro was interviewed by the Federal Bureau of Investigation regarding his transactions with Congressman Flood's office. When asked about how much he had contributed to Congressman Flood's campaign, he told the FBI officials that he had contributed \$1,000.00. However, \$1,000.00 was only the amount that he had personally given. Because his conscience bothered him, Mr. Gennaro told the FBI investigator on the following day that he had contributed \$5,000.00. (Id. at 19-22)

In September 1978, Mr. Gennaro testified before a Federal Grand Jury in Washington, D. C., about his dealings with Congressman Flood's office. Mr. Gennaro testified that he had given the checks to Mr. Elko and the cash to Congressman Flood on November 4, 1974. At trial, Mr. Gennaro testified that he had been mistaken; October 31, 1974, is the correct date. (Id. at 22-23)

3. General Frank B. Elliott testified under oath at Representative Flood's trial substantially as follows:

Between 1973 and 1975, Mr. Elliott served as the Administrator of the Farmers Home Administration (FmHA) in the United States

Department of Agriculture,*/ (Transcript, Vol. 11 at 56)

During this period, Mr. Elliott was contacted by Robert Gennaro, both through correspondence and a personal meeting.

(Id. at 57) Robert Gennaro was seeking to have the Farmers Home Administration approve the Crestwood Hills Development project, a development which Robert Gennaro started. (Id. at 57) If approved, recipients of loans issued by FmHA could purchase homes with their loan in Crestwood Hills. (Id. at 57)

Mr. Elliott was also contacted by Congressman Flood's office regarding Gennaro's Crestwood development. Although Mr. Elliott did not speak with Congressman Flood personally, he did have personal meetings with Mr. Elko, and received correspondence bearing Flood's signature. (Id. at 58) During a meeting with Mr. Elko, Mr. Elko told Mr. Elliott of a fund of Federal money, in the amount of \$41,000,000.00, which FmHA could use for experimental, low-cost housing financing. (Id. at 59) The money had been appropriated to the old Office of Equal Opportunity (OEO), which had delegated the authority to distribute the money to FmHA. After OEO was disbanded, the Community Service Administration was given the authority to disburse the funds, but had not delegated the spending authority to FmHA.

On or about October 24, 1974, Mr. Elliott met personally with Mr. Gennaro. That meeting had been requested by Congressman Flood's office.

*/ Mr. Elliott explained that the Farmers Home Administration is a credit and lending agency which, among other things, has the authority to lend money to individuals so that they can purchase homes. (Id. at 57-58) The homes must be approved by FmHA as having met certain minimum property standards. (Id. at 58)

4. Hugh Thomas Jones testified under oath at Representative Flood's trial substantially as follows:

At the time of the trial, Mr. Jones was the Special Assistant for Congressman Flood and had been a member of Congressman Flood's staff for the preceding eight and one half years. (Transcript, Vol. 11 at 45) He knew Stephen Elko because he and Mr. Elko had worked on Congressman Flood's staff at the same time. (Id. at 46) Mr. Jones frequently drove Mr. Elko in Mr. Elko's car. (Id. at 54)

Once, on an unspecified date, Mr. Jones rode with Mr. Elko to Mr. Gennaro's home outside of Hazleton, Pennsylvania. No one else accompanied them. They arrived some time after dark, and Mr. Elko went into Mr. Gennaro's home for about an hour while Mr. Jones waited in the car. Mr. Jones could not recall the exact date or time of the visit, or where they went after leaving Mr. Gennaro's home. Mr. Jones did remember that he accompanied Mr. Elko to the Gennaro home only once. (Id. at 46-48)

On a subsequent evening, Mr. Jones drove Mr. Elko to a cocktail lounge called the Ginky Room in Wilkes-Barre, Pennsylvania. (Id. at 48) (The Ginky Room is part of a restaurant/bar called the Jaybers). (Id. at 51) Again, Mr. Jones could not remember the specific date or time. (Id. at 53) At the Ginky Room, Mr. Jones was introduced to Robert and Emil Gennaro. (Id. at 48-49) While the four - Mr. Jones, Mr. Elko, Robert Gennaro, and Emil Gennaro were at The Ginky Room, Mr. Elko and Robert Gennaro left the lounge together and returned after a

relatively short time. (Id. at 49-50) They were gone long enough for Mr. Jones and Emil Gennaro, who remained behind, to have a "couple" of drinks; but, Mr. Jones does not remember the exact time interval. (Id. at 50, 54-55) When they returned, the four left and went to dinner. (Id. at 51) Mr. Jones was never told about what transpired between Mr. Elko and Robert Gennaro. (Id. at 50)

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF	)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
)	
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNTS FOUR AND FIVE*

1. Stephen B. Elko testified under oath at Representative Flood's trial substantially as follows:

In the latter part of 1971, Deryl Fleming, a Washington lobbyist for the Kellogg Corporation and a personal friend of Mr. Elko, introduced Mr. Elko to William Fred Peters at the Congressional Hotel in Washington. At this meeting Mr. Elko learned that Peters was President of the West Coast Trade Schools, which consisted of five or six trade schools in the Los Angeles area, primarily enrolling students from minority groups. Fleming represented the schools in Washington. (Transcript, Vol. 2 at 73-74)

In January 1972 Mr. Peters and Mr. Fleming met with Mr. Elko in Mr. Elko's office in the Cannon House Office Building. Fleming and Peters had just come from a meeting with the National Association of Trade and Technical Schools (NATTS), the Association charged with accrediting trade schools for the purpose of qualifying for certain Federal programs. The Association is a private agency, partly funded by the United States Office of Education. (Id. at 75)

*West Coast Trade Schools

Mr. Fleming was very angry. He was not having any success getting NATTS to put the West Coast Trade Schools on its agenda to consider the schools' accreditation. Although the West Coast Trade Schools at that time was eligible for Federal programs, it would lose its eligibility if it could not succeed in getting the accreditation question on the NATTS agenda for its July 1972 meeting. Mr. Elko suggested that Fleming and Peters put their papers together, and he would see what could be done to help them. At this meeting there was no discussion about kickbacks, bribes, or payoffs. (Id. at 76)

Following the meeting, on the same day, Mr. Elko had a conversation with Representative Flood about the West Coast Trade Schools. At this meeting with Representative Flood there was no discussion of payoffs or kickbacks. (Id. at 76-77)

In the early months of 1972, Mr. Peters supplied Mr. Elko with a number of documents pertaining to accreditation of the schools. Mr. Peters also showed him Office of Education regulations which indicated that it had power to directly accredit, thus bypassing NATTS. Also in this period, Mr. Elko discussed the possibility of the West Coast Trade Schools merging with Intech Corporation, which was owned by Pat Brislin, then a friend of Mr. Elko's, presently his wife. (Id. at 78-79)

In early April 1972, Mr. Peters called Mr. Elko from Los Angeles. He was very anxious to push the accreditation. Mr. Peters said he would be in Washington in a few days. Mr. Elko inquired of Mr. Peters if he were going to bring something

"to keep the Congressman warm", referring to long underwear. Mr. Elko explained that a pair of long underwear is \$1000.00 in cash. (Id. at 80)

In mid-April, Mr. Peters came to Washington. A meeting between Mr. Peters, Mr. Fleming, and Mr. Elko took place in the latter's apartment at the Congressional Hotel. (Id. at 80-81) At that meeting Mr. Peters took out an envelope, which Mr. Elko believed contained \$10,000.00 in one-hundred dollar bills. Mr. Peters placed the cash on the table and gave \$5,000.00 to Mr. Elko, which he said was for Representative Flood. (Id. at 82) He also gave \$1,000.00 to Mr. Fleming for walking-around money. Mr. Peters put the remainder of the money back in his pocket.

Shortly after this meeting, on the Friday before the Pennsylvania primary election in April 1972, Mr. Elko met with Representative Flood in the kitchen of the Congressman's Wilkes-Barre home. Mr. Elko gave the \$5,000.00 to Representative Flood, explaining that it was from Fred Peters. (Id. 83-87) Representative Flood made a remark about how the money could be used for "the boys down below" (referring to the Southern part of the district). Mr. Elko asked for \$2000.00 to take care of some bills in Washington. Representative Flood was reluctant for him to take the \$2000.00 at first, but Mr. Elko prevailed. (Id. at 87) Mr. Elko took the \$2000.00 back with him to Washington and paid off miscellaneous bills, approximately two-thirds his and one-third Mr. Flood's, including debts due at the Rotunda Restaurant, National Democratic Club, and Capitol Hill Liquor Store. (Id. at 88)

In mid-May 1972 Mr. Elko introduced Mr. Peters to Mr. Flood. This meeting took place in Representative Flood's office in the House of Representatives; Deryl Fleming was also present. Mr. Peters explained his problems to Representative Flood. The Congressman said that he knew all about the problem; that it was very complex; and that Peters should work with Mr. Elko. (Id. at 89)

Mr. Elko identified a letter to Sidney P. Marland, Commissioner of the Office of Education, which he had written and to which he had signed Representative Flood's name. (Government Exhibit 304) Mr. Elko does not recall ever discussing the letter with the Congressman, but he did place a copy of it on Representative Flood's desk for him to see. (Id. at 89-90) The purpose of the letter was to get the question of the West Coast Trade Schools' accreditation on the NATTS July agenda. Mr. Elko also identified the letter sent by Mr. Marland in response to his letter, addressed to Representative Flood. (Government Exhibit 307) Mr. Elko's letter was dated May 12, 1972; the responding letter was dated June 23, 1972. (Id. at 91-92) The response came at the same time Hurricane Agnes struck, so Mr. Elko did not see the letter at the time of its arrival. (Id. at 92)

Mr. Elko first saw the letter from Mr. Marland at the very end of June. (Id. at 98) In about the third week of July, Mr. Fleming and perhaps Mr. Peters visited Mr. Elko in Representative Flood's office. Mr. Fleming was very "exercised"

by the failure of NATTS to put the West Coast Trade Schools' accreditation matter on the July agenda. (Id. at 99-100) Earlier, in the spring and early summer of 1972, Mr. Elko had made many phone calls to officials in the United States Office of Education. Most of those calls were to John Fuller, Special Assistant to Commissioner Marland. (Id. at 101)

As a consequence of the July meeting, Mr. Elko, along with Mr. Fleming, prepared another letter to Commissioner Marland, which was identified by Mr. Elko and marked Government Exhibit 311. (Id. at 101) The letter, dated August 1, 1972, bore Representative Flood's signature, but was actually signed by Mr. Elko. (Id. at 102) Mr. Elko never discussed this letter with the Congressman; he did, however, later attach it to the file and place it on Representative Flood's desk for him to see. (Id. at 103) The letter began: "This is a shocking case of misfeasance and possibly malfeasance, which is simply beyond my understanding." (Id. at 104)

Commissioner of Education Marland responded in a letter, identified by Mr. Elko and marked Government Exhibit 312, dated August 14, 1972. Mr. Elko sent a copy of the letter to Deryl Fleming and put another copy with the file so that Representative Flood could see it. (Id. at 105) On August 19, 1972 Mr. Elko and Mr. Fleming drafted a strong, stinging response to Commissioner Marland's letter of August 14. Again, Representative Flood's name was signed to it. Mr. Elko identified

this letter, marked Government Exhibit 313. This letter was not discussed with Representative Flood. (Id. at 106-108) Early in January 1973, several days after Representative Flood was sworn in for another term in the House of Representatives, the Congressman spoke to Mr. Elko about the harsh tone he had been using in the letters to "long hairs" -- educators and scientists in the Administration. (Id. at 109-110)

Later that same afternoon, Mr. Elko ran into Mr. Fleming and told him of the Congressman's displeasure about the harsh letters he had been sending out. (Id. at 111) Mr. Elko suggested that Mr. Fleming get together some money for Representative Flood. A short time later, within a week, Elko met Fleming, who said that he had some money for Representative Flood, showing Elko an envelope in the vest pocket of his suit. (Id. at 112) They were at the Democratic Club; Representative Flood's apartment was located upstairs. Mr. Elko and Mr. Fleming went to Mr. Elko's apartment on the eighth floor. Mr. Elko then went down the hall to get Representative Flood. Mr. Elko said to Representative Flood: "Come on down to my apartment, Corn Flakes wants to see you." Representative Flood was in his pajamas and bathrobe. He walked to Mr. Elko's apartment and went inside to see Mr. Fleming; Mr. Elko waited outside. Mr. Flood left the apartment about a minute later, walked back to his apartment, and, when asked by Mr. Elko if everything was all right, patted his bathrobe pocket and said, "There is an envelope in here. D is a real nice fellow." "D" is how

Representative Flood referred to Deryl Fleming. Mr. Elko did not personally observe any transaction between Mr. Fleming and Congressman Flood. Mr. Fleming and Mr. Elko went back downstairs to the Club to have a drink; Mr. Fleming said that he had given Representative Flood \$1,000.00. (Id. at 112-115)

Mr. Elko received a telephone call in January 1973 from Commissioner Marland's assistant, John Fuller. This was the last involvement on Mr. Elko's part with the West Coast Trade Schools. The schools never received accreditation, and later in 1973 went out of business. (Id. at 115-116)

In May 1976, Mr. Elko resigned from the staff of Congressman Flood because of investigations by the Senate of the United States and a Grand Jury in Los Angeles concerning the West Coast Trade Schools. The Senate had forwarded the matter to the House Committee on Standards of Official Conduct for consideration, and Mr. Elko had hoped that by resigning, the House Ethics Committee would not pursue an investigation. Mr. Elko also hoped that his resignation "would cool off" the Los Angeles investigation. (Transcript, Vol. 3 at 162)

Mr. Elko was indicted on June 9, 1977, charged with bribery, obstruction of justice, and conspiracy and perjury arising out of the West Coast Trade Schools matter. (Id. at 165) He was tried in Los Angeles in September and October 1977. Mr. Elko was found guilty on all counts, he was later sentenced to three years in jail. Subsequent to his conviction, Mr. Elko was called to appear before Grand Juries in Washington, D.C., and

Philadelphia. Mr. Elko initially pleaded the Fifth Amendment, but, after being granted immunity, cooperated. Mr. Elko testified at the trial under that grant of immunity; however, he understood that his immunity did not extend to prosecution for the commission of perjury. (Id. at 166) On June 28, 1978, the sentencing court reduced Mr. Elko's sentence to two years over the opposition of the Government. (Id. at 170-171)

2. William Fred Peters testified under oath at Representative Flood's trial substantially as follows:

Mr. Peters moved to Los Angeles in April 1969. Before that he lived in Louisiana, working seventy miles away in Beaumont, Texas. In Louisiana, Mr. Peters lived with his foster parents and went by the name Fred Braneff. William Fred Peters is Mr. Peters' legal name today. (Transcript, Vol. 10 at 2-3).

Upon arriving in Los Angeles, Mr. Peters first went to work with an employment agency, and later, in 1970, went to work for a corporation known as Automation Institute. Automation Institute then consisted of one trade school, enrolling approximately 300 students. (Id. at 4-5) In the autumn of 1970, Mr. Peters was promoted to Assistant Vice President, responsible primarily for aiding students with their financing and placement. (Id. at 7)

In approximately October 1971, five new schools were acquired by Automation Institute. These five schools were

known as the West Coast Trade Schools. Federal financial aid programs were important to all six schools. The students enrolled at Automation Institute -- the original school -- were eligible to participate in the Federal Insured Student Loan Program (FISL) and the National Direct Student Loan Program (NDSL). However, the students at the West Coast Trade Schools -- the five schools acquired in 1971 -- could only participate in FISL. This was because the five schools were not federally accredited by the National Association for Trade and Technical Schools (NATTS). Further, unless those five schools could secure accreditation by October 1972, the students' eligibility to obtain FISL assistance would lapse. (Id. at 7-9)

In the latter part of 1971, Mr. Peters travelled to the District of Columbia with Mark Green, the attorney for Automation Institute. The purpose of the trip was to find people to buy the schools' FISL promissory notes. (Id. at 9) On that trip or the next one, Mark Green introduced Mr. Peters to Deryl Fleming. At approximately the same time, Mr. Peters was introduced to Stephen Elko; Mr. Fleming made the introduction. Mr. Peters met with Mr. Fleming on each of the two to four trips he made to Washington in the last four months of 1971. (Id. at 10)

Mr. Peters spoke in general terms to Mr. Fleming about the West Coast Trade Schools accreditation problem. When Mr. Peters explained the difficult process of securing accreditation from NATTS, Mr. Fleming suggested that a political

solution might exist. Although in the initial meetings there was no talk of payoffs or payments to specific individuals, it was suggested that there might be expenses attendant to a political solution. (Id. at 11-12)

Mr. Peters made another trip to Washington in approximately January 1972. There were two purposes to that trip: (1) to discuss a student aid problem with Mr. Bill Simmons at HEW, and (2) to discuss the accreditation process with Mr. Goddard at NATTS. Mr. Fleming accompanied Mr. Peters to the NATTS meeting. Mr. Goddard told Mr. Peters that it would take two years for the West Coast Trade Schools to get accreditation. At first, Mr. Goddard would not even take the initiation fee to get the accreditation process moving. Although he did accept the fee upon Mr. Peters' urging, Mr. Peters was cautioned that it was unlikely that accreditation could be made by the time they needed it. (Id. at 12-13)

After the meeting Mr. Peters and Mr. Fleming drove to the Congressional Hotel. Both were angry at Mr. Goddard, and they discussed ways of circumventing NATTS. Mr. Fleming suggested that Stephen Elko be contacted; Mr. Peters knew that Mr. Elko was Representative Flood's assistant. Again, although no mention was made of payoffs or payments, Mr. Fleming mentioned that there would be expenses. Mr. Peters decided that he would work for accreditation through both routes: he would continue working to get NATTS to grant accreditation and he would speak to Mr. Elko about the political solution. (Id. at 13-14)

Later, Mr. Peters, Mr. Fleming, and Mr. Elko met at the Democratic Club in the Congressional Hotel. Mr. Peters got the impression from Mr. Elko that there were things that Mr. Elko could do to help him. Once again, no talk of payments or payoffs ensued, but there was discussion of the involvement of expenses. (Id. at 14-15)

In 1972 Mr. Peters became President of Automation Institute. He owned approximately 20% of the stock of the corporation at this time. Mr. Peters was very busy in the first quarter of 1972 getting the schools in shape for the NATTS inspection: physical renovation, improving faculty, amending curriculum, etc. (Id. at 15-16)

Sometime in March or April 1972, Mr. Peters arranged for Automation Institute to advance Mr. Fleming \$10,000 to help him purchase a home, in return for which Automation Institute received a promissory note. Mr. Peters identified the note dated April 19, 1972, marked as Government Exhibit 303. He also identified the check, made out for \$10,000 by Deryl Fleming, marked Government Exhibit 302. Mr. Peters never asked for repayment on this loan; he never expected that he would. (Id. at 17-19)

The West Coast Trade Schools were inspected by NATTS in April 1972. (Id. at 18) Mr. Peters expected the report from NATTS about twenty days after the inspection. (Id. at 19) About a week after the report was due, he had still not received it, and learned that the report would not be quickly

forthcoming. (Id. at 20) This indicated to him that the report would not be ready in time for the West Coast Trade Schools to be considered by the Accrediting Commission at the July meeting. Mr. Peters was not happy with this since it would then be impossible for NATTS to rule on accreditation prior to the October 1972 cut-off date. Mr. Peters and Mr. Fleming contacted Mr. Elko, who agreed to get things started on the political front by contacting Commissioner Marland of the Office of Education. The objective was to get HEW to push NATTS into filing its report and putting the West Coast Trade Schools accreditation matter on its July agenda. (Id. at 21) At this time, Mr. Elko told Mr. Peters that there would be expenses to pay the politicians and other people who would be pushing this matter. (Id. at 22) Mr. Peters never directly paid cash to Congressman Flood with respect to the West Coast Trade Schools matter. (Id. at 23)

In May 1972 Mr. Elko and Mr. Fleming picked up Mr. Peters at National Airport. Mr. Elko was driving, Mr. Peters was in the front seat, and Mr. Fleming sat in the back. Mr. Peters had an envelope containing \$5,000.00 in cash. Mr. Fleming reached across the seat and got the envelope from Mr. Peters; a little while later he handed it to Mr. Elko, who put it in his pocket. (Id. at 23)

Mr. Peters identified a letter dated May 12, 1972, from Congressman Flood. The letter, marked Government Exhibit 304, was

addressed to the Commissioner of Education, Sydney P. Marland. Mr. Fleming and Mr. Elko drafted the letter in the presence of Mr. Peters. (Id. at 24)

Just before the letter was prepared, Mr. Peters met Representative Flood. During a meeting between Mr. Fleming, Mr. Elko, and Mr. Peters at the Congressional Hotel, Mr. Elko suggested they go across the street to meet with "the Chairman." (Id. at 24-25) Mr. Elko went into Representative Flood's office alone, but a short time later he came back and motioned for Mr. Peters to come in. Mr. Elko introduced Mr. Peters to Representative Flood saying, "This is Mr. Peters from the West Coast Schools." The Congressman and Mr. Peters shook hands. There was no discussion of payoffs or payments at this meeting. They discussed the situation in general and Representative Flood said some kind words about the West Coast Trade Schools. (Id. at 26)

In May and June 1972, Mr. Elko and Mr. Peters had discussions about Intech Corp. (Id. at 27) Mr. Elko described Intech as a corporation in which Mr. Flood was interested. Mr. Peters was also told that it was in the education field (computer programming), that Pat Brislin operated it, and that it had some financial problems. It was suggested to Mr. Peters that Intech be merged into the West Coast Trade Schools. Although Mr. Peters did not openly react negatively, he had no interest in the proposal. (Id. at 28)

In Mid-June 1972 Mr. Peters made another trip to Washington. He brought with him a check, dated June 16, 1972, for \$10,000.00, issued by Automation Institute to Deryl Fleming. The check was identified by Mr. Peters and marked Government Exhibit 305. Mr. Fleming had the check cashed. After cashing the check, Mr. Peters and Mr. Fleming went to Mr. Elko's apartment in the Congressional Hotel. (Id. at 29-30) Mr. Peters gave Mr. Elko \$4,000.00 or \$5,000.00 and Mr. Fleming \$2,000.00; he kept the remainder of the money for himself. (Id. at 32)

Also in mid-June 1972, Mr. Elko told Mr. Peters that Intech Corporation urgently needed \$15,000.00. Mr. Peters delivered a check to Mr. Elko for Intech Corporation in the latter part of June. (Id. at 33-34)

In late June, Commissioner Marland sent a favorable response to Representative Flood's letter. Mr. Peters identified that letter from Commissioner Marland, marked Government Exhibit 307, dated June 23, 1972. That letter promised that the West Coast Trade Schools accreditation matter would be on the NATTS July agenda. Nonetheless, the West Coast Trade Schools did not in fact get on the NATTS July agenda. (Id. at 55-56) Although the accreditation was considered by NATTS in October 1972, the schools were denied accreditation. A request was made for reconsideration, but in January 1973 the schools again were denied accreditation. (Id. at 57-58) This decision was appealed and a hearing was held in April 1973.

The result of that hearing was not favorable. In May 1973, the schools were forced to close. Mr. Peters and the schools were in debt for millions of dollars. (Id. at 58) Mr. Peters left Los Angeles and took up residency in Arizona under the name Fred Bran. He was running from creditors.

In October 1976, Mr. Peters was indicted by a Grand Jury for bribery and fraud in connection with the operation of the West Coast Trade Schools. (Id. at 59) The bribery charge was unrelated to the payments and transactions involving Congressman Flood or Mr. Elko. (Id. at 60) Mr. Peters was convicted and sentenced to five years in jail and fined \$40,000.00. In May 1977 Mr. Peters entered a guilty plea to one count of a tax indictment which also had been filed. Beginning after that plea, Mr. Peters began to provide information concerning his dealings with Mr. Fleming, Mr. Elko, and Representative Flood. (Id. at 51) Mr. Peters was granted immunity from any further Federal prosecution, except perjury if he failed to tell the truth. In addition, the prosecutor wrote letters to Mr. Peters' parole board advising them that he was cooperating. After serving two years, Mr. Peters was released from jail. (Id. at 62-63)

3. Deryl E. Fleming testified under oath at Representative Flood's trial substantially as follows:

From 1970 until the end of 1973, Mr. Fleming was Director of Government Relations -- commonly known as a lobbyist -- for

Kellogg Corporation, a manufacturer and marketer of ready-to-eat cereals. From 1970 to February 1972, he maintained an office in the Congressional Hotel in Washington, D.C. (Transcript, Vol. 6A at 1-5)

Mr. Fleming and know Stephen Elko since the early or mid-1960's. They would meet each other in the National Democratic Club, a bar and restaurant in the Congressional Hotel, both for business purposes and as personal friends. (Id. at 4-5)

Mr. Fleming also knew Mr. Flood, and had known him since the early 1960's. During the 1960's, they were casual personal friends and saw each other mainly at the National Democratic Club. Between September 1970, when Mr. Elko became Mr. Flood's Administrative Assistant, and the end of 1972, Mr. Fleming saw Mr. Flood occasionally at the Democratic Club and more frequently in Mr. Flood's office. (Id. at 5-6)

Mr. Fleming was introduced to William Fred Peters in November 1971. Mark Green -- Mr. Fleming's friend and Mr. Peters' attorney -- made the introduction at Mr. Fleming's office in the Congressional Hotel. Mr. Peters was in the process of buying five vocational schools in California, called the West Coast Trade Schools. The schools were not accredited and thus could not participate in the federally insured student loan program after approximately November 1972 (until then, the schools' participation was protected by a grandfather clause). The purpose of Mr. Peters' meeting with Mr. Fleming was to seek Mr. Fleming's assistance in securing accreditation for the schools. (Id. at 7-9)

Mr. Fleming and Mr. Peters met three more times during 1971 to discuss the schools' accreditation. During one of those meetings, Mr. Fleming introduced Mr. Peters to Mr. Elko at the Democratic Club. It was hoped that Mr. Elko could help Mr. Peters because Mr. Elko was the Administrative Assistant to Congressman Flood, the Chairman of the HEW Appropriations Subcommittee. Mr. Fleming explained at trial that as the man with the purse strings, Representative Flood had very strong influence with HEW. (Id. at 9-12)

In February 1972, Mr. Fleming accompanied Mr. Peters to the office of Mr. William Goddard, Chief Staff Officer of the National Association of Trade and Technical Schools (NATTS). NATTS had been delegated authority by HEW's Office of Education to examine and approve vocational schools for participation in Federal programs. Mr. Peters wanted to have the five West Coast Trade Schools put on the agenda of NATTS's July 1972 meeting so that the schools could be accredited before the grandfather clause expired. Mr. Peters and Mr. Fleming met briefly with Mr. Goddard and for a longer time with Mr. Goddard's assistant, but the meetings were not very encouraging. (Id. at 12-14)

Therefore, in the car on the way back from Mr. Goddard's office, Mr. Fleming suggested that political intervention was necessary and recommended that Mr. Peters talk again to Mr. Elko. That same day, they met with Mr. Elko on Capitol Hill. There was no mention of payoffs or payments of money at this meeting. (Id. at 14-17)

Between the February 1972 meeting with Mr. Goodard and April 1972, Mr. Fleming had a number of telephone conversations with Mr. Peters about accreditation of the trade schools. Generally, Mr. Peters was optimistic about the progress of the accreditation process. During this time, Mr. Fleming familiarized himself with the accreditation process and the background of the schools. Mr. Fleming also had a number of conversations with Mr. Elko in which they discussed the accreditation for the West Coast Trade Schools. (Id. at 17-19)

In the middle of April 1972, Mr. Fleming spoke with Mr. Peters over the telephone. Mr. Peters' prior optimism had dimmed because he had not yet received the inspection report he had been expecting and it appeared that NATTS would not be placing the West Coast Trade Schools' accreditation matter on their July agenda. (Id. at 24)

After this conversation with Peters, Mr. Fleming spoke with Mr. Elko about the problem Peters had run into. Mr. Elko inquired of Mr. Fleming why he was so concerned about Mr. Peters' problems. Mr. Fleming explained that Mr. Peters had agreed to loan him \$10,000.00 to enable him to purchase a home. (Id. at 18, 27) Mr. Elko suggested to Mr. Fleming that Peters ought to make a demonstration of good faith and start spreading money around. (Id. at 28)

On about April 19, 1972, Mr. Peters came to Washington, and in Mr. Fleming's office in L'Enfant Plaza handed over a check to Mr. Fleming for \$10,000. In return for the money, Mr. Fleming executed a promissory note for that amount. The note was made out to Automation Institute, which was one of four or five companies Mr. Peters used in conducting his business transactions. Mr. Fleming

identified both the check and promissory note at trial, marked Government Exhibits 302 and 303. Mr. Fleming never repaid or offered to repay this loan. (Id., at 19-24)

At the same meeting at which Mr. Peters loaned Mr. Fleming the \$10,000.00, Mr. Fleming advised Peters that it was time for him to start spreading some of the money around which they had earlier talked about. Mr. Fleming relayed to Mr. Peters, Mr. Elko's comments about a showing of good faith. (Id., at 25-28)

Later in April, Mr. Peters made another trip to Washington. Mr. Elko and Mr. Fleming drove to National Airport to pick him up. Mr. Peters sat in front next to Mr. Elko who drove; Mr. Fleming sat in the back seat. As they pulled out of the traffic circle at National Airport, Mr. Peters reached over the back of the seat and handed Mr. Fleming an envelope which Mr. Fleming put in his pocket. Mr. Elko asked, "Is that for me?"; Mr. Fleming replied, "I'll talk to you later, Steve." Mr. Fleming did not want to give Mr. Elko the envelope at the time because he suspected that it contained money and did not want Mr. Peters to witness the exchange of cash. Mr. Elko asked the same question three more times, and finally Mr. Fleming handed over the envelope. Mr. Elko looked at the contents of the envelope and then put it in his pocket. That was the last time Mr. Fleming saw the envelope, and he does not know what was done with the contents. (Id., at 28-30)

In late April or early May, Mr. Elko suggested that Peters and Fleming put in writing what needed to be done to help the West Coast Trade Schools. In response to this suggestion Mr. Fleming -- with the assistance of Mr. Peters -- drafted a letter to Sidney P. Marland, Commissioner of the Office of Education. On May 12, 1972, Mr. Fleming and Mr. Peters went to Congressman Flood's office and gave the letter to Mr. Elko. Mr. Elko left the office for about

10 minutes; when he returned, Mr. Elko said "the letter was being done." The letter (Government Exhibit 304), was sent out to the Commissioner, exactly as drafted by Mr. Fleming, except that a final sentence was added which read: "Please let me hear from you on this." The letter bore the signature of Daniel J. Flood, although Mr. Fleming does not know whether the Congressman signed it himself. (Id. at 30-32)

At about the same time, Mr. Fleming, Mr. Peters, and Mr. Elko met with Congressman Flood in the Congressman's private office. Mr. Elko introduced Mr. Peters, who summarized the program at the vocational schools in inner-city Los Angeles, and described the accreditation problem. Mr. Flood responded that he thought the trade school program was a very worthwhile project. (Id. at 32-33) Payoffs or bribes were not discussed. (Id. at 35)

In June and July Mr. Fleming met two or three times with Mr. Elko and Congressman Flood in the Congressman's office to talk about the West Coast Trade Schools. During these meetings Mr. Elko merely gave Congressman Flood an extremely short synopsis of what he was doing for the trade schools. No mention was made of payoffs. (Id. at 33-35)

On June 16, 1972, during one of Mr. Peters' trips to Washington -- which he made three or four times a month -- Mr. Fleming cashed a \$10,000.00 check for Mr. Peters. The check (Government Exhibit 305) was written on the Automation Institute account and was made out to Mr. Fleming. Mr. Fleming cashed the check at his bank and gave the money to Mr. Peters (Mr. Fleming had cashed checks at his bank on four or five prior occasions when Mr. Peters needed cash in Washington. The checks had ranged in amount from about \$400.00

to \$1,400.00). Mr. Peters put the cash in his pocket. (Id. at 35-38)

Later that same day, Mr. Fleming and Mr. Peters met Mr. Elko in Mr. Elko's room at the Congressional Hotel. The three sat down at a table, and, after a few minutes, Mr. Elko and Mr. Peters began to discuss a \$4,000.00 loan from Mr. Peters to Mr. Elko. It was the first time Mr. Fleming had heard of the loan. When Mr. Peters started taking money out of his pocket, Mr. Fleming went into the bathroom because he did not like to witness payoffs. While in the bathroom, Mr. Fleming overheard the following: Mr. Elko explained that he needed the \$4,000.00 very badly; Mr. Peters agreed to check about how to use tax losses for the Intech Company; Mr. Elko agreed to assist in the accreditation of the trade schools. When Mr. Fleming returned from the bathroom, a cocktail napkin was laying on the table. On the napkin, Mr. Elko had written an IOU for \$4,000.00 and had signed "Intech" on the bottom. Mr. Elko offered the napkin to Mr. Peters, but Mr. Peters refused it. At that time, the phone rang, and Mr. Fleming picked up the napkin. (Later that afternoon, Mr. Fleming offered the napkin to Mr. Peters, but Mr. Peters again refused to take it and told Mr. Fleming to hold on to it. Several years later, Mr. Fleming threw away the napkin). While Mr. Elko was on the telephone, Mr. Peters gave Mr. Fleming \$1,000.00 in one hundred dollar bills. Mr. Peters explained that it was to pay for dinner checks and bar tabs which Mr. Fleming had paid while helping Mr. Peters. Mr. Fleming put the money in his pocket. (Id. at 39-42)

In July 1972 Mr. Fleming learned from Mr. Peters that the West Coast Trade Schools application for accreditation had not

been placed on the July 1972 agenda for consideration by NATTS. In July, August, and September 1972, Mr. Peters and Mr. Fleming had a number of conversations in which "Mr. Peters was just madder than hell about the fact he hadn't gotten what he paid for." (Id. at 42-43)

In July, August, and September 1972, Mr. Fleming also spoke a number of times to Mr. Elko about the fact that the trade schools were not on the NATTS's July agenda. Mr. Elko merely said that he had a lot of things to do other than getting the schools accredited. (Id. at 42-43)

In response to the trade school problem, a letter addressed to the Honorable Sidney P. Marland, dated August 1, 1972, was written on Congressman Flood's official stationery. The letter (Government Exhibit 311), which explained the problems of West Coast Trade Schools, was primarily drafted by Mr. Fleming. The first paragraph, which Mr. Fleming did not draft, read: "This is a shocking case of misfeasance, nonfeasance and possible malfeasance, which is simply beyond my understanding." (Id. at 43-45)

A second letter (Government Exhibit 315) dated August 19, 1972, was also sent from Congressman Flood's office to Commissioner Marland. Mr. Fleming did not write that letter, but was shown a copy of it by Mr. Elko in late August or early September 1972. (Id. at 45-46)

In August 1972, after both the August 1 and August 19 letters had been sent, Mr. Fleming had several conversations with Mr. Elko in Mr. Elko suite at the Congressional Hotel. Mr. Elko told Mr. Fleming that Congressman Flood was angry about the August 1 letter; he thought the letter went beyond the bounds of propriety. Mr. Elko suggested that Mr. Fleming personally give Congressman Flood \$1,000.00 to calm him down. Mr. Fleming agreed to do so because he needed to maintain good relations with both Mr. Elko and Mr. Peters. (Id. at 47-52)

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF	)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
)	
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNT SIX*

1. Stephen B. Elko testified under oath at Representative Flood's trial substantially as follows:

Hurricane Agnes struck the Wilkes-Barre area on June 23, 1972, causing great destruction. One hundred thousand people were driven from their homes; industry came to a near standstill. Representative Flood returned to his district and played a central role in the disaster relief efforts. (Transcript, Vol. 2 at 3) In late June Mr. Elko met with Mr. Fleming, Mr. Peters, Representative Flood, and several other people. At the meeting Mr. Elko learned of Mr. Peters' interest in a company called Sterling Homex, which was engaged in the precut and prefabricated housing business, and had a large inventory. (Id. at 94) Mr. Elko suggested they get together with a man named Jim Post who was in a similar business in the Wilkes-Barre area.

*Sterling Homex

On July 1 Mr. Elko drove Mr. Peters to Harrisburg, Pennsylvania, to meet with government housing officials. Mr. Elko did not accompany Mr. Peters at these meetings; he drove on to Wilkes-Barre. In the middle or latter part of July 1972, Mr. Elko met with Representative Flood, in the latter's private office, to discuss Sterling Homex. (Id. at 97) Mr. Elko told Representative Flood that he had seen Peters, and asked the Congressman if anything had happened with Peters and Sterling Homex regarding the Wilkes-Barre situation. Representative Flood indicated that he did not believe that anything would come of it, and that he had not received anything from Peters. In fact nothing else did come of the Sterling Homex matter. After the meeting in Representative Flood's office, Mr. Elko remembers no further involvement by either himself or Representative Flood. (Id. at 98)

2. William Fred Peters testified under oath at Representative Flood's trial substantially as follows:

After Hurricane Agnes struck Representative Flood's district in late June 1972, Mr. Peters and Mr. Fleming had a discussion with John Willingham, a friend of Mr. Peters. Mr. Willingham was a major stockholder in Sterling Homex Corporation, which produced modular housing. (Transcript, Vol. 10 at 35) The corporation was in severe financial trouble, but had a substantial inventory. (Id. at 36-37) It was hoped that

Sterling Homex's modular housing could be sold to the Federal Government to replace housing in the Wilkes-Barre area, where the hurricane had caused extensive destruction. (Id. at 37, 39-40).

Mr. Peters drove to Harrisburg, Pennsylvania, with Mr. Elko and Mr. Fleming in Mr. Elko's car. They took the trip on the same day or the day after Mr. Peters came to Washington with the \$15,000 Intech check.^{*/} On the same day or possibly the day after the trip, Mr. Peters had another meeting in Mr. Willingham's apartment in Washington. Also present at this meeting were Mr. Fleming, Mr. Elko, Mr. Judge, who worked for the Department of Health, Education and Welfare, and Miss Sonya Landau, a neighbor of Mr. Willingham. Later Mr. Rossfeld and Mr. Wiesshiemer, senior officials of Sterling Homex, joined the meeting. Mr. Peters was authorized to represent Sterling Homex in attempting to sell their housing to the Federal Government for hurricane disaster relief. He was to receive 2 percent of the gross sale price; this commission was to be split with Mr. Fleming and Mr. Elko. Mr. Elko was to contact Congressman Flood and inform him of the availability of the housing, so that Congressman Flood could influence those officials responsible for purchasing temporary relief housing. (Id. at 37-40).

At about 3:00 a.m. the next morning, Mr. Peters received a telephone call from Mr. Elko or Mr. Judge and learned that

^{*/} This was in mid June. See Tab 2, page 14.

a meeting had been set up in Wilkes-Barre with Representative Flood the next morning. Arrangements had been made to take a charter plane from Page Terminal at National Airport to Wilkes-Barre. Representative Flood's priority number would be used in order to land at Wilkes-Barre. When Mr. Peters took the flight, he had in his briefcase \$5,000.00 in cash which he had brought from Los Angeles. Mr. Peters carried a substantial amount of money with him a good deal of the time to use for the West Coast Trade Schools. It was not Mr. Peters' intention in bringing the \$5,000.00 with him from Los Angeles to use it for the Sterling Homex transaction. (Id. at 42-45)

Mr. Peters was met at the airport at Wilkes-Barre by an individual, whose name he could not recall, and driven to the command post from which Representative Flood was directing disaster relief. This was approximately 9:00 or 10:00 in the morning. When they arrived at the building where Representative Flood was located, they went inside, waited several minutes, and then were taken into the Representative's office by a man Mr. Peters remembers as being very fat. The man who had brought Mr. Peters from the airport explained to the fat man that Mr. Peters had come to see the Congressman. Mr. Peters was taken inside and given a chair at a long conference table.

The fat man did not go into the office with him. At that time, two other people were meeting with Mr. Flood. Mr. Peters waited until these two gentlemen left. Then Representative Flood and Mr. Peters talked about the availability and quality of Sterling Homex modular houses. Mr. Peters learned that there were some other important people in the housing business who also were interested in selling temporary housing to the government. Representative Flood got up from the end of the table where he was sitting and walked around to where Mr. Peters was sitting. Mr. Peters had in his hand an open envelope containing \$5,000.00 in one-hundred dollar bills. He either put it on the table or handed it directly to Representative Flood. Representative Flood put the money in his pocket. They talked for a few more minutes about what was going to happen with regard to Sterling Homex, and then Representative Flood left. There was no discussion about what was in the envelope. This was the only time Mr. Peters paid money directly to Congressman Flood. (Id. at 55) That same day, Mr. Peters returned to Washington. (Id. at 47-48)

The next day, Mr. Peters traveled to Harrisburg with Mr. Elko and Mr. Fleming to meet with officials there concerning the need for housing. In Harrisburg, Mr. Peters spoke to a government official about Sterling-Homex modular housing. Mr. Peters then drove back to Washington with Mr. Fleming. (Id. at 48-49)

A day or two later, he made another trip to Wilkes-Barre by private plane. On this occasion, he was accompanied by Mr. Wiesshiemer from Sterling Homex Corporation. Mr. Peters wanted to indicate to Mr. Wiesshiemer that this project was very real and could in fact be accomplished. He also wanted to show Mr. Wiesshiemer that he had a good connection with Representative Flood. The two went to the command post where Representative Flood was located. They talked briefly to Representative Flood about the availability of Sterling Homex's product and then left. Mr. Peters estimated that five to seven days elapsed between the time of his first trip to Harrisburg and his final trip to Wilkes-Barre. (Id. at 49-51)

During this period of time Mr. Peters purchased approximately \$50,000.00 worth of stock in the Sterling Homex Corporation on the basis of his belief that if the government made a substantial commitment to the company, the stock's price would go up. (Id. at 53) A few days after the second meeting between Mr. Peters and Representative Flood in Wilkes-Barre, Sterling Homex Corporation went into bankruptcy, and the possibility of Sterling Homex making a business arrangement with the government became hopeless. (Id. at 55)

3. Deryl Fleming testified under oath at Representative Flood's trial substantially as follows:

In late June 1972, shortly after Hurricane Agnes struck Congressman Flood's district in Pennsylvania, Mr. Fleming met Mr. Peters in John Willingham's Washington apartment. Mr. Willingham was the head of Operation Breakthrough for the Department of Housing and Urban Development; he had also founded the Wham-T Corporation in Tennessee. Some people who worked for the Sterling-Homex Corporation had an apartment across the hall from Mr. Willingham's suite. The people from Sterling-Homex came into Mr. Willingham's apartment and began to talk about \$25 million worth of surplus modular housing inventory which they had in New York. They were anxious to sell the inventory.

Mr. Fleming called Mr. Peters into another room and explained the significance of the Pennsylvania disaster: the flood victims needed shelter; during such disasters, the Corps of Engineers usually had the authority to make on-the-spot purchases of housing for victims; the \$25 million of modular homes could be sold to the Corps of Engineers. Mr. Fleming suggested a business deal: if Mr. Peters could arrange with Sterling Homex to get a sales commission, Mr. Fleming would talk to his contacts in Washington about getting the government to purchase the homes. Mr. Fleming and Mr. Peters would then split the commission. Mr. Peters agreed. (Transcript, Vol. 6A, at 55-57)

A few days later, Mr. Fleming met with Mr. Elko in Washington, D.C., and explained the situation. Because transportation and communication systems were disrupted in the disaster area, Mr. Fleming asked Mr. Elko to arrange meetings in Pennsylvania with the people who had on-the-spot buying authority, so that Mr. Peters could go to the disaster area and make the sales very quickly. (Id. at 57-59)

In late July or early August 1972, Mr. Peters made two trips to the Pennsylvania disaster area. On one of these trips, Mr. Fleming and Mr. Elko took Mr. Peters to Washington National Airport, but did not accompany him to Pennsylvania. (Id. 59-60)

The Sterling-Homex transaction did not work out as planned. Approximately ten days after the Fleming-Elko meeting, a New Jersey creditor of Sterling Homex collected its note and froze the inventory, thus preventing the sale. (Id. at 60-61)

Mr. Fleming testified at the trial under a grant of immunity, pursuant to an agreement, dated April 25, 1977, with the United States Government. (Government Exhibit 320 61-65)

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF	)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNT SEVEN*

1. Stephen B. Elko testified under oath at Representative Flood's trial substantially as follows:

In mid-1971, Congressman Flood and Mr. Elko had a discussion in the Congressman's private office concerning a proposed merger between the United Penn Bank and the State Bank of Eastern Pennsylvania.^{*/} (Transcript, Vol. 2 at 54) No one else was present at the meeting. Representative Flood, contrary to custom, asked Mr. Elko to close the office door. Mr. Flood indicated that while in Wilkes-Barre over the past weekend he had met with Mr. John Horrigan, a principal of the United Penn Bank, and Senator Wood, a principal of the State Bank of Eastern Pennsylvania. Representative Flood handed Mr. Elko a legal-sized document relating to the proposed merger, and told Mr. Elko that the project was very important to the community. Further, Representative Flood said that if they could help the two banks, the merged bank would probably elect Elko to its executive committee. (Id. at 55)

^{*/} At various times, Mr. Elko referred to this bank as the Eastern Bank of Pennsylvania and Eastern State Bank of Pennsylvania, here it will always be referred to as the State Bank of Eastern Pennsylvania.

*Bank Mergers

The Congressman instructed Mr. Elko to set up a meeting with Jim Smith, Deputy Secretary of the Treasury for Congressional Liaison, and representatives from the banks. Mr. Elko did so. He later learned from Mr. Flood, however, that the proposed merger fell through because the president of one of the banks revealed to the Comptroller of the Currency and the Federal Deposit Insurance Corporation that the merger was the first of a series planned across the state of Pennsylvania. (Id. at 56-57)

In late autumn 1971, Mr. Elko and Representative Flood had another private discussion in the Congressman's private office concerning the bank mergers. Mr. Elko was handed a one or two-page document describing the proposal to merge the State Bank of Eastern Pennsylvania with the First Valley Bank. Representative Flood told Mr. Elko: "This one is going to work." Mr. Elko was instructed to contact Jim Smith again. Mr. Elko also suggested that Bob Finch, Special Assistant and Counsel to the President, be contacted. (Id. at 58) Mr. Elko later spoke to Mr. Finch's special assistant. (Id. at 59)

In the spring of 1972, Mr. Elko learned that the proposed merger between the State Bank of Eastern Pennsylvania and the First Valley Bank had been approved. (Id. at 67) The merged bank, called the First Valley Bank, named Newell Jones as Chairman of the Board. Yet another merger proposal

arose in the spring of 1972. Again in Representative Flood's private office, the Congressman told Mr. Elko about a plan to merge the First Valley Bank with the Liberty Bank of Pittston. (Id. at 68) Representative Flood indicated that it was important to expedite that merger, particularly because of the involvement of Judge Pennola, a recently retired Luzerne County Judge. Mr. Elko asked Congressman Flood what was in it for them. The Congressman told Mr. Elko to contact Pete Wood the next time that he visited Wilkes-Barre. (Id. at 69) Mr. Elko called Jim Smith and gave him the names of the people involved in the merger: Mr. Jones and Judge Pennola. Mr. Elko also suggested to Mr. Smith that he contact various officials to get things moving. (Id. at 70)

Mr. Elko met with Mr. Wood at a restaurant in Wilkes-Barre in March 1972. Mr. Wood stressed to Mr. Elko that because of certain option agreements held by Judge Pennola, it was absolutely essential to keep the pressure on the people in Washington to expedite approval. Mr. Elko inquired what was going to be done to take care of Congressman Flood and him. Mr. Wood responded: "Well, don't you worry about anything. You just tell Dan to keep after those people in Washington. I have some stock lying around, some trust funds, and possibly other stock lying around in the closet

somewhere and I will get it worked out." (Id. at 70-71) Following this meeting, Mr. Elko continued his attempt to obtain expedited approval for the merger. In Washington, he met with the President of the First Valley Bank, Mr. Dick Ehst. While they were in Washington, Mr. Elko again contacted Jim Smith. (Id. at 72)

Mr. Elko never obtained anything of value from his efforts on behalf of these bank mergers. He did not know from first-hand knowledge whether Congressman Flood ever received anything. (Id. at 73)

2. T. Newell Wood testified under oath at Representative Flood's trial substantially as follows:

T. Newell Wood is presently retired, but formerly served as a member of the Pennsylvania State Senate for 20 years. He has known Representative Flood for approximately 50 years; over this period they have enjoyed a very close political and personal relationship. (Transcript, Vol. 8 at 1-2)

Until a year or two ago, Mr. Wood served as a director of the First Valley Bank and its predecessors, and had done so since he was about thirty years old. (Id. at 2) Prior to the merger of the State Bank of Eastern Pennsylvania into the First Valley Bank, Representative Flood also served as a director of the State Bank. (Id. at 3) Mr. Wood is one of the three trustees of the Mary E. Newell Trust, which owned a controlling interest in the State Bank of Eastern Pennsylvania. (Id. at 4)

The State Bank of Eastern Pennsylvania was growing very rapidly in the 1960's and 1970's. Because of an under-capitalization problem, an attempt was made in 1971 to merge it with the United Penn Bank. When this plan fell through, a merger with the First Valley Bank was planned. At this time Mr. Wood was acting President of the State Bank of Eastern Pennsylvania, a member of its Board of Directors, and a major shareholder. (Id. at 5)

Mr. Wood identified a document titled "Agreement for Merger with the First Valley Bank with the State Bank of Eastern Pennsylvania." That document, dated September 1971, was marked Government Exhibit 201. (Id. at 6) At that point in time, Representative Flood was both a shareholder and director of the State Bank of Eastern Pennsylvania. (Id. at 7)

Mr. Wood denied that he ever sought the assistance of Representative Flood with regard to a merger between the State Bank of Eastern Pennsylvania and the First Valley Bank. However, he does remember a conversation with Representative Flood during this period in which he said: "You know, Daniel, we have been friends for years and I hope we will continue to be friends." (Id. at 8) Representative Flood replied: "Of course, I will." (Id. at 10)

In the summer of 1972, the First Valley Bank and the State Bank of Eastern Pennsylvania merged. (Id. at 10) Sometime during or before the 1972 primary campaign, or

shortly thereafter, Mr. Wood told Representative Flood that he appreciated his friendship over the years and that he wanted to make a political contribution. He also said that he believed his fellow trustees would have the same interest. He asked Representative Flood: "How about money?" In response Representative Flood said, "No, I have my campaign and I think I am in good shape for my campaign." Mr. Wood said that Representative Flood suggested: "How about some bank stock? I would like that better than money; wouldn't you?" Mr. Wood agreed. (Id. at 11)

To accomplish the transfer of the stock, Mr. Wood talked to his fellow trustees and got their authorization to transfer shares of stock to Mr. Flood. One hundred shares of stock were transferred from the portfolio of the Newell Trust. The figure 100 was chosen because it was a nice round figure. (Id. at 12)

The other two Trustees were Mrs. Baird and Mrs. Martin -- Mr. Wood's aunt and sister. Mr. Wood said that he explained to them that Representative Flood had made tremendous accomplishments; that it would help the bank to have him as a director; that Representative Flood had been a friend of the bank during the merger; and that he thought that Representative Flood could be a big help to the Trust when Wood was gone. The stock was in fact transferred, the transfer

taking place sometime in November after the general election. (Id. at 15)

Mr. Wood identified a document entitled, "Report of Guardians' Trustees Ad Litem," marked Government Exhibit 206. (Id. at 17) The document reflected a transfer of 100 shares to Congressman Flood on November 3, 1972. (Id. at 18)

At the time the transfer was made, a merger was contemplated between the First Valley Bank and the Liberty Bank of Pittston. (Id. at 18) A merger was effected between the two banks sometime in 1973. (Id. at 18-19) Mr. Wood denied that he asked for Representative Flood's assistance to facilitate this merger. (Id. at 22)

Mr. Wood had talked to Stephen Elko about the bank mergers in 1971. (Id. at 23-24) He knew that Mr. Elko was Representative Flood's Administrative Assistant. (Id. at 22) Mr. Wood had a conversation with Mr. Elko over the telephone or perhaps at a semi-public luncheon in Wilkes-Barre (Id. at 23), at which time Mr. Elko requested that Mr. Wood give something in exchange for the work which Mr. Elko was doing to help him. This request made Mr. Wood very upset, and he contacted Representative Flood to express his displeasure with Mr. Elko. (Id. at 24-25)

On redirect examination, Mr. Wood recalled being questioned by FBI agents prior to the trial. He admitted having told them that he told the other two trustees of the Mary E. Newell Trust Fund -- Mary Baird and Esther Martin -- that the gift of the 100 shares to Congressman Flood was for facilitating or expediting the merger process. (Id. at 53)

3. Mr. James E. Smith testified under oath at Representative Flood's trial substantially as follows:

From January 1969 until January 1972, Mr. Smith had the position of Special Assistant to the Secretary of the Treasury for Congressional Relations. The principal duty of that office was to communicate the Treasury Department's views to Members of Congress, and to relate the concerns of Members of Congress, often involving problems of the constituents, to the officials in the Department of Treasury. Mr. Smith would frequently receive inquiries from Members of Congress or from their staffs. Mr. Elko was one of the staff persons who placed a number of calls to him. (Transcript, Vol. 6 at 45-47) Mr. Smith did not recall ever having personally met Mr. Elko, but he did remember the telephone calls. He was aware that Mr. Elko was the Administrative Assistant to Representative Flood. (Id. at 47)

It was Mr. Smith's recollection that he was contacted by Mr. Elko some time in the latter part of 1971 regarding a merger proposal involving Pennsylvania banks. Mr. Smith had the impression that Mr. Elko called more than once about the same bank, and that one of the calls took place before late 1971. (Id. at 47-48)

Typically, when he would receive telephone calls like those he received from Mr. Elko, Mr. Smith would go to the office of the Comptroller of the Currency to find out the status of the proposed merger. The Comptroller of the Currency is one of three Federal banking agencies which would be involved in merger applications under the Bank Merger Act -- the other two being the Federal Reserve and the Federal Deposit Insurance Corporation. (Id. at 48) The Anti-Trust Division of the Department of Justice must also be consulted. Mr. Smith's role after being called by a Congressional office was primarily to convey information. (Id. at 49)

Mr. Smith was shown a letter from Representative Flood addressed to him in his official capacity as Deputy Undersecretary of the Treasury, relating to a proposed bank merger. The letter, dated June 18, 1973, was marked Government's Exhibit 211. Mr. Smith had no recollection of the proposed bank merger it discussed. (Id. at 49-51)

4. Joel Harpel testified under oath at Representative Flood's trial substantially as follows:

Mr. Harpel is presently employed by the First Valley Bank as an Assistant Vice President in the Trust Department. As the principal trust officer of the bank, he is familiar with its stockholder records. (Transcript, Vol. 6 at 92) Mr. Harpel identified Representative Daniel Flood's stockholder ledger with regard to Mr. Flood's holdings in the State Bank of Eastern Pennsylvania. The ledger was marked Government Exhibit 205A. (Id. at 93) From the records, Mr. Harpel testified that Representative Flood owned 500 shares of stock in the State Bank of Eastern Pennsylvania as of December 1971. (Id. at 94)

Mr. Harpel next identified the stockholders' exchange journal, which reflected the merger of the State Bank of Eastern Pennsylvania into the First Valley Bank. The journal was marked Government Exhibit 205B. (Id. at 95) It showed that 1.8 shares of First Valley Corporation were exchanged for each share of State Bank stock. After the transfer, the records indicate that Representative Flood owned 900 shares of First Valley Corporation, then valued at \$32,850.00. (Id. at 96)

Mr. Harpel identified the First Valley Corporation stockholder record for the account of the Trustees of the Mary E. Newell Trust Fund, marked Government Exhibit 207. (Id. at 98) That record indicated that on November 3, 1972, 100 shares were transferred from the Mary E. Newell Trust Fund to the stockholder's account of Representative Flood. (Id. at 99) Mr. Harpel identified the First Valley Corporation's shareholders' record for Daniel Flood, marked Government Exhibit 208. (Id. at 100) This record reflects the transfer of 100 shares to Representative Flood's account. The market value of the shares transferred to Representative Flood's account was approximately \$4,000.00. (Id. at 101)

On cross examination, Mr. Harpel placed the month of the merger as April 1972. (Id. at 105) He also identified Mr. T. Newell Wood as one of the Trustees of the Mary E. Newell Trust. (Id. at 108) The transfer of 100 shares to Representative Flood from the Mary E. Newell Trust Fund occurred on November 3, 1972. (Id. at 109)

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF	)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
)	
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNTS NINE THROUGH THIRTEEN*

1. Stephen B. Elko testified under oath at Representative Flood's trial substantially as follows:

Rabbi Lieb Pinter was the head of an association of Yeshivas in New York, which conducted summer youth programs, nutrition programs, and manpower training programs for the poor and disadvantaged. (Id. at 142) In the spring of 1974, Rabbi Pinter was introduced to Mr. Elko by Mr. Art Perlroth, head of a manpower training company in the Congressman's district. Rabbi Pinter wanted help from Representative Flood's office in getting support for his projects. He knew that Representative Flood was the Chairman of the Labor HEW Appropriations Subcommittee. (Id. at 143)

Over the next several months, Rabbi Pinter would visit the office every couple of weeks. As the summer approached, he began to drop by weekly. In the summer of 1974, Rabbi Pinter was away at his youth summer camp, but still called Mr. Elko several times on the telephone. Representative Flood's office received frequent correspondence

*Rabbi Lieb Pinter

from Rabbi Pinter; many of these letters were forwarded to the pertinent government agencies. Mr. Elko also made phone calls on Rabbi Pinter's behalf concerning a Manpower Training Program for immigrant Soviet Jews. (Id. at 144) Mr. Elko's principal contact was Mr. Ben Burdetsky, Associate Deputy Secretary at the Department of Labor, in charge of the Manpower Training Section. (Id. at 145-147)

Mr. Elko met with Rabbi Pinter in mid-October 1974 to discuss Rabbi Pinter's various projects. At that time, Mr. Elko had been assisting the Rabbi on approximately four funding applications which were pending. At the meeting, Rabbi Pinter said: "I am happy and I want to do business with you." Upon saying this, the Rabbi opened his briefcase and handed Mr. Elko \$2,000.00 in one-hundred dollar bills, which he indicated was for Congressman Flood. On the same day Mr. Elko gave the \$2,000.00 to Congressman Flood, after giving him a brief rundown on the assistance that had been given to Rabbi Pinter's projects. Representative Flood expressed some disappointment in the amount of money, and told Mr. Elko that he should get all the money he could while he could. Mr. Elko was also told to follow the Rabbi's projects very closely. (Id. at 146-147) Mr. Elko would call for a weekly status report from Mr. Burdetsky. The status of these programs would be relayed to Representative Flood and Rabbi Pinter. The project of principal concern was the training of immigrant Soviet Jews; the status reports were generally pessimistic.

Mr. Elko identified a letter dated January 15, 1975, from Congressman Flood to Secretary of Labor Peter Brennan, marked Government Exhibit 601. The letter was drafted by Rabbi Pinter, but Representative Flood changed the beginning of the letter by adding the line: "This is near and dear to my heart". He also crossed through the salutation of "Dear Mr. Secretary," and wrote in "Pete." (Id. at 148-150)

During this period Mr. Elko continued to assist the Rabbi with this project, talking to Mr. Burdetsky and his assistant, Bob McConney. (Id. at 151) By April 1975, the prospects for the Manpower applications were getting brighter. In the second week of April, Mr. Elko met with Rabbi Pinter in the Congressman's office. (Id. at 151) Mr. Elko gave Rabbi Pinter a status report, and told him that they were going to have some campaign expenses. He asked for \$1,000.00 in checks, stating that he did not want just one check for \$1,000.00, but wanted a series of checks -- five or six -- broken down in various amounts. (Id. at 152) The reason, he explained, was that a number of checks would look better on campaign reporting forms. There was no campaign being conducted at this time; the campaign expenses alluded to by Mr. Elko consisted primarily of the Congressman's gas bills. The following week, on about April 15, Rabbi Pinter brought in five to six checks totalling \$1,000.00. Acknowledgments and thank you notes were sent out on the Congressman's stationery. (Id. at 152-153)

In May 1975 Mr. Elko told Rabbi Pinter that things were developing very well at the Department of Labor. A week later, Rabbi Pinter delivered to Mr. Elko \$1,500 in one-hundred dollar bills. (Id. at 154) Mr. Elko turned over this money to Representative Flood the same day. Representative Flood inquired about the project -- Mr. Elko assured him it was coming along fine. Representative Flood instructed him to follow it closely. The proposal was approved in June 1975, (Id. at 155) and a six or nine-month contract was awarded. No sooner had Mr. Elko told the Rabbi of the approval, than Rabbi Pinter prepared to renew it and expand it. (Id. at 155-156)

Mr. Elko discussed money with Rabbi Pinter again in October 1975. Rabbi Pinter was reminded that Representative Flood's office was working on four projects for him and putting in a lot of time. A figure of \$5,000.00 was agreed upon. (Id. at 156) Rabbi Pinter mentioned a dinner which was going to be held in New York, and suggested that the \$5,000.00 could be paid to Representative Flood as an honorarium. Later that month, Rabbi Pinter came to the office and gave Mr. Elko \$1,500.00 in one-hundred dollar bills. (Id. at 157) This money was given to Representative Flood. Mr. Elko also told Representative Flood about Rabbi Pinter's dinner in New York, at which the Congressman would be an honored guest and would receive a substantial honorarium. The dinner took place on December 7, 1975, at the Commodore Hotel. (Id. at 159) At a small gathering in Congressman

Flood's suite, prior to the function, Rabbi Pinter gave Mr. Elko a check for \$4,000.00 made out to the Congressman. Mr. Elko showed the check to the Congressman and later turned it in for deposit in Washington. (Id. at 160)

Just before Christmas 1975, Rabbi Pinter gave \$1,000.00 in one-hundred dollar bills to Mr. Elko. Mr. Elko kept this money for himself.^{*/} At this period of time, Rabbi Pinter's projects were all doing very well, including the training program for immigrant Soviet Jews, which was about to be renewed. Again in mid-January 1976, Rabbi Pinter visited Mr. Elko in the Congressman's private office and gave him \$1,500.00 in one-hundred dollar bills. Mr. Elko turned this money over to Representative Flood at the end of the day, telling him it was from Rabbi Pinter. Representative Flood told Mr. Elko that he liked Rabbi Pinter and that he should follow his project very closely. In February 1976, the Manpower Training contract was extended. Mr. Elko continued to see Rabbi Pinter almost weekly through June 1976. (Id. at 161-162) In May 1976, as Mr. Elko was preparing to leave Representative Flood's staff, Rabbi Pinter expressed concern over whom he could do business with in the future. Mr. Elko suggested that he deal directly with Representative Flood. (Id. at 164)

^{*/} On cross examination, Mr. Elko reiterated that he kept the money for himself. Mr. Flood's defense attorney then referred Mr. Elko to his statements before the House Committee on Standards of Official Conduct. Mr. Elko had stated to the House Committee that he had given the money to Congressman Flood. Mr. Elko stated that he had made a mistake during the congressional hearings and that he was certain that he kept the money for himself. (Transcript, Vol. 5 at 326-329)

2. Lieb Pinter testified under oath at Representative Flood's trial substantially as follows:

At the time of the trial, Lieb Pinter, an ordained rabbi, was incarcerated in the Metropolitan Correctional Center in Manhattan. (Transcript, Vol. 11 at 95) In the spring of 1974, Rabbi Pinter was associated with B'nai Torah, which was headquartered in New York City. B'nai Torah was an educational and social services organization which sponsored a religious rabbinical seminary, a summer feeding program, a youth summer camp, and manpower programs. (Id. at 95-97, 101) Rabbi Pinter had also founded the Conference of Associated Yeshivas, a group of Hebrew schools in the New York metropolitan area which was sponsored by B'nai Torah. (Id. at 96)

In April 1974, Rabbi Pinter personally met with Congressman Flood in Mr. Flood's Washington office to discuss the Manpower Programs.*/ (Id. at 95, 97-98) Mr. Martin Nemitz, a lobbyist in Washington, introduced Rabbi Pinter to the Congressman. (Id. at 97) Rabbi Pinter chose to meet with Congressman Flood because he was the Chairman of the House Appropriations Subcommittee for HEW and Labor, and thus could be extremely influential with the Manpower Programs. (Id. at 98)

*/ During the spring of 1974, Rabbi Pinter also spoke with several other Members of Congress, including Congressmen Ford, Badillo, and Scheuer; and Senators Mondale and Bayh. (Id. at 98)

When Mr. Nemitz and Rabbi Pinter left Congressman Flood's office, Stephen Elko was waiting outside. Mr. Flood returned to his office, and Mr. Nemitz and Rabbi Pinter discussed with Mr. Elko the general nature of Rabbi Pinter's organization. (Id. at 99)

A few weeks later -- sometime in April 1974 -- Rabbi Pinter again met with Mr. Elko in Congressman Flood's office. Manpower projects were discussed, but no specific reference was made to any particular Manpower Program at that time. (Id. at 100)

Between April and October or November 1974, Rabbi Pinter and Mr. Elko continued to meet to discuss the various programs in which Rabbi Pinter was involved. (Id. at 102) They would discuss the best approach to follow to get the programs organized and funded, although no mention was made of a specific program being promoted by the Rabbi until October or November 1974.

During one of these meetings, Rabbi Pinter sought Mr. Elko's assistance for Mr. Puraroth, a friend of the Rabbi. Mr. Puraroth was interested in obtaining Manpower contracts for programs in the Wilkes-Barre area. As neither Mr. Puraroth nor Rabbi Pinter were from Congressman Flood's district, Mr. Elko suggested that it would be better if the request for assistance for Mr. Puraroth came from a Rabbi in Mr. Flood's Congressional district. Rabbi Pinter therefore gave Mr. Elko the name of a rabbi in the Wilkes-Barre, Pennsylvania area. (Id. at 102-104)

In October or November 1974, Rabbi Pinter and Mr. Elko discussed for the first time a specific program which the Rabbi was proposing. The program, called the Advancement for New Americans, proposed to teach English and job skills to immigrant Soviet Jews. (Id. at 100, 105-106) The Rabbi wanted to have the program funded with Federal money as a Manpower Program.

During the fall of 1974, Rabbi Pinter also discussed his proposal with Mr. Ben Burdestky of the Employment and Training Administration in the Department of Labor. (Id. at 104-6) The Rabbi had known Mr. Burdetsky since 1972. The Rabbi would keep Mr. Elko informed of his discussions with Mr. Burdetsky. (Id. at 107) However, the Rabbi was not very successful in his efforts with Mr. Burdetsky to have the project for immigrant Soviet Jews funded as a Manpower Program. Mr. Burdetsky explained that since July 1, 1974, Manpower Programs which previously had been funded directly through the Federal government were to be funded through local "CETA" organizations. The project could be funded as a national program only if local financing could not be secured.

Rabbi Pinter tried unsuccessfully to have his proposal funded through the New York City Department of Employment and the Regional Department of Labor. (Id. at 102-3) Mr. Burdetsky told Rabbi Pinter that federal funds were very limited and that it took political clout to make sure proposed programs are funded. Hence, the Rabbi contacted various Members of Congress seeking their support. (Id. at 106)

In December 1974, during a meeting between Mr. Elko and Rabbi Pinter, it was suggested that Mr. Flood be asked to write a letter to Peter Brennan, the Secretary of Labor, regarding the proposed program for immigrant Soviet Jews. Rabbi Pinter wrote a summary of the proposal and left it with Mr. Elko. A letter, Government Exhibit 601, was sent to Mr. Brennan by Mr. Flood. Almost the entire body of the letter was taken directly from Rabbi Pinter's summary; only the first line had been added by Congressman Flood's office. (Id. at 107-108)

In March or April 1975, Rabbi Pinter received informal notice that the program had been approved as a Manpower Training Program. He received official notification on June 16, 1975. (Id. at 108-109) On June 16, 1975, he signed a contract with the Department of Labor. (Government Exhibit 603) (Id. at 119)

Between January and June 1975, Rabbi Pinter was also seeking Federal money for two projects which were sponsored by the Community Services Administration. Mr. Elko was kept informed about the projects, and requested that the Rabbi tell the various Federal agencies involved to send him a synopsis of the action taken on any of the Rabbi's proposals. (Id. at 109-110)

Between April 1 and April 15, 1975 -- after Rabbi Pinter received informal notice that the Manpower Program for immigrant Soviet Jews had been approved -- Mr. Elko and Rabbi Pinter met alone in Congressman Flood's private office. Mr. Elko asked Rabbi Pinter for a \$1000.00 "contribution to the Congressman's campaign." Rabbi Pinter was not certain about the exact date because he had several meetings with Mr. Elko during that time. On or about April 15, 1975, the Rabbi delivered six personal checks to Mr. Elko in Mr. Flood's Washington, D.C., office. The checks, which were made out to the Flood For Congress Committee, were in various amounts which together totaled \$1000.00. One check was from the Rabbi himself, and the five others were from the Rabbi's friends and co-workers, most of whom had received money from the Rabbi in exchange for the checks. The money was from a cash fund at the B'nai Torah. (Id. at 110-115)

About four to six weeks after the first payment, in May 1975, Mr. Elko asked for another \$1000.00 contribution. This time, he asked that the contribution be in cash because investigators, specifically Jack Anderson, were looking into Congressional campaign contributions and it would look suspicious if Congressman Flood from Wilkes-Barre received checks from people in Brooklyn. Rabbi Pinter did not express any reluctance regarding Mr. Elko's request. One or two weeks later, in the latter part of May 1975, Rabbi Pinter

delivered between \$1,000.00 and \$1,500.00 cash in an envelope to Mr. Elko in Mr. Flood's private office in Washington. The cash was taken from a safe, to which Rabbi Pinter had exclusive access, at B'nai Torah. The cash had been raised at various fundraisers and benefit bazaars. No record was kept of the deposits and withdrawals from the safe. (Id. at 115-119)

During the summer of 1975, Mr. Pinter continued to meet with Mr. Elko. However, these meetings were not as frequent because the Rabbi spent much of his time working at the summer youth camp sponsored by B'nai Torah. (Id. at 120)

In the fall of 1975, Rabbi Pinter had several meetings with Congressman Flood's office. At that time, the Rabbi had many different proposals pending before several different agencies, including proposals before the Community Services Administration for a multi-service center and for an economic assistance program; a proposal for AID funds to train Soviet immigrants in Israel; and a proposal for additional Manpower funds to extend the program for immigrant Soviet Jews. Most of the meetings concerning these projects were with Mr. Elko. However, on several occasions, Rabbi Pinter went with Mr. Elko to see Congressman Flood himself. Usually, Mr. Flood was called off the House floor and the three (Rabbi Pinter, Mr. Elko, and Mr. Flood) met in the Roosevelt Room of the House Chamber. (Id. at 123-125)

In October 1975, Mr. Elko and Rabbi Pinter again discussed money in Mr. Flood's office. Whenever Rabbi Pinter would discuss money or have money exchange hands, he would meet Mr. Elko in Representative Flood's inner office; they would meet at Mr. Elko's desk on every other occasion. Mr. Elko felt it was important that a certain sum of money be delivered each year; he wanted to work out the specific amount of the annual payments. Mr. Elko referred to the arrangement as a "nut." The amount requested by Mr. Elko was \$5,000.00 per year. The Rabbi did not object to the amount of money, but requested that he pay the money in monthly installements, rather than in a lump sum. Mr. Elko said that although the first few payments had been for Congressman Flood's campaign, the later payments were to be for Congressman Flood or his office in exchange for the Congressman's influence regarding the Rabbi's projects. Mr. Elko did not ask for money for himself, either at this meeting or at any others. (Id. at 120-123)

In the later part of October 1975, approximately one or two weeks after the discussion with Mr. Elko about the "nut," Rabbi Pinter made a further payment to Mr. Elko in Mr. Flood's private office. This payment -- between \$1,000.00 and \$1,500.00 in cash -- was in an envelope when delivered to Mr. Elko, and had been taken by the Rabbi from the safe at B'nai Torah. Mr. Flood was not present during the making of the payment. (Id. at 122, 125-126)

Shortly after the October 1975 payment, Rabbi Pinter ran into Congressman Flood in the halls of one of the Congressional buildings. (Mr. Pinter would frequent the halls and lobbies of Congress to elicit support for his programs). Mr. Flood stopped him, patted him on the back, and said, "Keep up the good work, Murphy." Rabbi Pinter did not know why Congressman Flood called him "Murphy," but the Congressman had previously referred to him as "Murphy." (Id. at 125-127)

During the October meeting with Mr. Elko (when the October installment for the "nut" was made), Rabbi Pinter told Mr. Elko that he was having trouble raising funds for the cash payments. The Rabbi suggested that Congressman Flood come to the annual December fundraising dinner for the Conference of Associated Yeshivas, and that Mr. Flood be an honored guest and given an honorarium of \$1,000.00. Although most other honored guests had not been given an honorarium, Senator Bayh had been paid an honorarium of about \$2,000.00 for speaking at the 1974 dinner, and Senator Inouye was paid an honorarium of \$1,000.00 for speaking at the 1975 dinner. In November 1975, Rabbi Pinter had a meeting with Congressman Flood in the Congressman's private office, and formally extended to him an invitation to the dinner.

The dinner was held on December 7, 1975, at the Cosmодore Hotel in New York. Before the dinner ended, Rabbi Pinter went to Mr. Flood's suite and handed Mr. Flood an envelope containing

a \$1,000.00 check. Mr. Pinter gave the envelope directly to Congressman Flood and said, "This is for the Chairman" or language to that effect. The check, which was introduced into evidence as Government Exhibit 604, was written by Rabbi Pinter and dated "12/5/75." On the reverse side, the check was signed "Daniel J. Flood." The check was given as partial payment of the "nut." (Id. at 127-137)

In late January or early February 1976, Rabbi Pinter made another cash payment of between \$1,000.00 and \$1,500.00 to Mr. Elko in Mr. Flood's private Congressional office as partial payment of the "nut." Mr. Flood was not present. (Id. at 137-138) At the time of the payment, Rabbi Pinter was, among other things, seeking an extension of the Manpower Program for immigrant Soviet Jews. Between December 1975 and February 1976, Mr. Elko had conversations with Mr. Burdetsky and Mr. McConney on behalf of the Rabbi's proposal to extend the program. On March 30, 1976, after the 1976 payment on the "nut," the program was extended. (Id. at 137-139)

No further payments were made to Mr. Elko, Mr. Flood, or any member of Congressman Flood's staff. (Id. at 139) In April 1976, Mr. Elko spoke to Rabbi Pinter about a \$5000.00 payment for the following year, but in May, Mr. Elko told Mr. Pinter that he was having problems and would be leaving the office by the end of June 1976. No mention was made about future payments. (Id. at 139-141)

In June and December 1977, Rabbi Pinter testified before the Grand Jury in the Southern District of New York, pursuant to a subpoena from the Department of Agriculture regarding an investigation of B'nai Torah's summer lunch program. Rabbi Pinter pleaded the Fifth Amendment in both June and December 1977. In January 1978, the Rabbi read a summary of Mr. Elko's Grand Jury testimony and concluded that he had been seriously implicated by Mr. Elko's testimony. In May 1978, Rabbi Pinter pleaded guilty to one count of bribery and two counts of aiding and abetting in filing a false tax return. He was sentenced to two years in prison and a \$17,000.00 fine. Some of Rabbi Pinter's co-workers at B'nai Torah were also imprisoned for other crimes. After he was sentenced, Rabbi Pinter began cooperating with the Government, although no promises were made by the Government in connection with his testimony in Mr. Flood's trial. (Id. at 141-145)

3. Benjamin Burdetsky testified under oath at Representative Flood's trial substantially as follows:

Mr. Burdetsky, who is currently a Professor of Personnel and Labor Relations at George Washington University, was Deputy Assistant Secretary of Labor for Employment and Training, Department of Labor, between 1974 and 1976. (Transcript, Vol. 11 at 63-64) In that capacity, he was

responsible for directing the Employment and Training Administration which developed/funded various national and regional programs, including manpower programs. Among other things, he approved applications for manpower training contracts. (Id. at 64)

Sometime early in 1974, then Congressman Gerald Ford asked Mr. Burdetsky's boss - Bill Colbur, Assistant Secretary for Employment and Training to contact Rabbi Lieb Pinter. (Id. at 65) Rabbi Pinter was seeking funds for a Manpower Training Program for immigrant Soviet Jews in Brooklyn, New York, to teach them English and job skills. (Id. at 66, 72)

Mr. Burdetsky contacted Rabbi Pinter for Mr. Colbur in early 1974; later, in the fall of 1974, Mr. Burdetsky twice met Rabbi Pinter personally in Mr. Burdetsky's office. (Id. at 66-68)

Mr. Burdetsky's staff initially turned down Rabbi Pinter's request and advised Rabbi Pinter to seek funds through New York State and local officials under the Comprehensive Employment and Training Act (CETA). (Id. at 64-5, 67, 81)

In fall 1974, Mr. Burdetsky also received a letter from Congressman Flood's office regarding Rabbi Pinter's project. (Government Exhibit 601) The letter, dated January 15, 1975, was addressed to Mr. Brennan, the Secretary

of Labor, and had been passed down to Mr. Burdetsky's office. It began "Dear Pete," and was signed "Dan", with a signature block below the signature reading "Daniel J. Flood, M.C." The first paragraph said with reference to Rabbi Pinter's project: "This is near and dear to my heart." (Id. at 69-70) At that time, Congressman Flood was Chairman of the House of Representatives HEW-Labor Appropriations Subcommittee. (Id. at 78)

A reply letter was sent from Mr. Brennan to Mr. Flood. (Id. at 84) The letter (Defendant Exhibit 49, remarked as Government Exhibit 605), dated March 13, 1975, and redated March 17, 1975, began "Dear Dan" and was signed "Pete, Secretary of Labor." (Id. at 92-93) It said that the Department of Labor was "sympathetic to the employment problems of this group" represented by Rabbi Pinter's project, but that the costs of the program were excessive. (Id. at 83-85, 92) According to the letter, final approval could not be given until Rabbi Pinter presented a new proposal which redefined his project to an acceptable level. (Id. at 83, 92-93) The funds, if finally approved, were to be given to support the programs as a demonstration project, only until local funding for the project could be obtained by Rabbi Pinter. (Id. at 85, 92-93)

Subsequently, on June 16, 1975, the application of Rabbi Pinter for the Manpower Training Program was finally approved. A contract for \$480,000.00 was granted for a fifteen month program. (Id. at 70-73, 85; Government Exhibit 603)

In 1976, Rabbi Pinter sought to have the training program for the Soviet Jews renewed. Rabbi Pinter met several times with Mr. Burdetsky regarding his request for renewal. (Id. 73-74) During these discussions, Mr. Burdetsky stressed -- as he had initially -- that Rabbi Pinter should try to get his project funded through New York state and local authorities under CETA. (Id. at 74)

Between spring 1975 (when the program was initially approved) and March 1976, Stephen Elko from Congressman Flood's office made several telephone calls to Mr. Burdetsky, Mr. Colber, and members of Burdetsky's staff regarding the renewal of Rabbi Pinter's project. (Id. at 75, 86) Mr. Burdetsky himself received eight or ten calls from Mr. Elko. (Id. at 75)^{*/} The telephone calls eventually became quite harsh, with Mr. Elko saying such things as: "The old man wants this funded;" "Lets get moving on it;" and "Why are you dragging your feet. I'm going to have to go over your head." (Id. at 76) The project was eventually renewed on March 16, 1976. (Id. 73-75)

^{*/} In November 1975, Mr. Burdetsky sent a memorandum to Mr. Elko evaluating Rabbi Pinter's Project, the B'nai Torah Contract, and the Applied Urban Systems Contract. (Id. at 87-88; Defendant Exhibit 50) Mr. Burdetsky indicated that the program was fairly successful. (Id. at 89) Apparently, the memorandum was sent in response to a telephone call from Mr. Elko in which Mr. Elko stated that Congressman Flood needed the information for a speech. (Id. at 87-88)

himself received eight or ten calls from Mr. Elko. (Id. at 75)^{*/} The telephone calls eventually took a hard line, with Mr. Elko saying such things as: "The old man wants this funded. Lets get moving on it;" or "Why are you dragging your feet. I'm going to have to go over your head." (Id. at 76) At the time of the phone calls, Congressman Flood was still Chairman of the House Appropriation Subcommittee for Health, Education and Labor. (Id. at 78) The project was eventually renewed on March 16, 1976, (Id. 73-5)

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THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

COUNTS SIXTEEN THROUGH TWENTY-FOUR*

1. Mr. Stephen Elko testified under oath at Representative Flood's trial substantially as follows:

In November 1970 Mr. Elko accompanied Representative Flood to an affair, known as the "Statesman in Medicine Awards Dinner,"*/ at the Airlie Foundation. At that dinner Mr. Elko met Dr. Murdock Head, Director of the Airlie Foundation, which is located near Warrenton, Virginia. (Transcript, Vol 2 at 8)

Airlie Foundation has over the years been the recipient of substantial grants from the Federal Government and has been the site of numerous conferences, seminars, and training programs. It also produces scientific-institutional films which are made at its Ravens Hollow Studios. The Airlie Foundation is somehow affiliated with the Department of Medicine of George Washington University. (Id. at 11)

During the months following the Awards Dinner, Mr. Elko made a number of trips to the Airlie Foundation at the invitation of Dr. Head. On these visits, Mr. Elko and Dr. Head discussed

*/ On cross examination, Mr. Elko corrected himself; the Statesman in Medicine Awards Dinner where he met Dr. Head was in September -- rather than November -- 1970. Mr. Elko was certain that September was the correct date because the Awards Dinners are traditionally given in September. (Transcript, Vol. 4 at 208-210)

*Airlie Foundation

the governmental agencies with which Dr. Head was doing business or with which he hoped to do business in the future. (Id. at 10) Dr. Head indicated that the Department of Health, Education, and Welfare and the Agency for International Development were the agencies with which Airlie Foundation had the most frequent contact. (Id. at 11) Most of the contracts that Airlie Foundation had with those agencies were sole-source: that is, the contracts were of the sort that do not require any bidding. Controls over sole-source contracts are less than those for which competitive bidding is required. (Id. at 12)

In April 1971 Mr. Elko was invited to the Airlie Foundation for a visit with Dr. Head.*/ In a meeting in the International House (the building at Airlie Foundation which houses Dr. Head's office), Dr. Head told Mr. Elko that he was pleased to be able to talk to him about government and stated that he would like to be "acknowledged" by him or Mr. Flood if anyone from a Federal agency contacted them. At the conclusion of the conversation, Dr. Head took some facial tissues and picked up an envelope from his desk, handing it to Mr. Elko. Dr. Head told Mr. Elko: "Give this to Congressman Flood." The envelope was not sealed, and Mr. Elko could see that it contained a large amount of money. Mr. Elko put the envelope in his pocket. Once in his car, before he left for Washington, he counted the

*/ On cross examination, Mr. Elko reaffirmed April 1971 as the correct date. When he was interviewed by the House Committee on Standards of Official Conduct on September 26, 1978, Mr. Elko had stated that the correct date was January 1971. Mr. Elko stated that April was the correct month and indicated that he misspoke before the House Committee.

money in the envelope: it contained \$5,000.00 in one-hundred dollar bills. (Id. at 12-14)

Later that day, after Mr. Elko returned to Washington, he met with Representative Flood in the Congressman's private office and gave him the money. He told Representative Flood that there was \$5,000.00 from Dr. Head, to which Representative Flood replied: "Who is Dr. Head?" Mr. Elko reminded the Congressman that Dr. Head was the man who accompanied them to the Statesman in Medicine Awards Dinner at the Airlie Foundation. Representative Flood asked Mr. Elko what the money was for; Mr. Elko answered that Dr. Head merely wanted to be "acknowledged" by them if anyone from a government agency or anyone else were to ask about him. Representative Flood put the money in his pocket. (Id. at 14)

Between April and September 1971, Mr. Elko continued to meet with Dr. Head. He had Dr. Head's private, unlisted telephone number at the Airlie Foundation. He was instructed to refer to Dr. Head as Dr. Malik; and he did so. The meetings during this period of time were held either at the International House or at Dr. Head's private home, which was located on the grounds at the Airlie Foundation. During these meetings there were discussions concerning the various governmental agencies with which Dr. Head and the Airlie Foundation dealt. (Id. at 14-15)

In or just before September 1971, Dr. Head inquired of Mr. Elko whether Representative Flood would be attending that year's upcoming Statesman in Medicine Awards Dinner. Mr. Elko

responded that both he and Representative Flood expected to attend. Dr. Head then gave Mr. Elko an envelope, which he again picked up with facial tissue, informing Mr. Elko that it contained \$1,000.00 in cash for Representative Flood. When Mr. Elko inquired as to the purpose of the money, Dr. Head said: "That is for taxi fare to make sure Flood is at the dinner." (Id. at 17) Upon returning to Washington, Mr. Elko met Representative Flood as he was coming off the floor of the House, and gave him the money -- ten one-hundred dollar bills -- explaining that it was from Dr. Head for taxi fare to the Statesman in Medicine Awards Dinner. Mr. Elko showed the Congressman the invitation to the affair. Representative Flood and Mr. Elko did, in fact, attend the Statesman in Medicine Awards Dinner in September 1971. (Id. at 18)

In November 1971 Mr. Elko received a call from Dr. Head; shortly thereafter, Mr. Elko visited Airlie Foundation for a meeting with him. (Id. at 19) Dr. Head discussed two projects in which he had an interest. The first involved an application he had filed to sponsor large conferences at Airlie House having to do with handicapped children. The second project had to do with an Airlie Foundation proposal to produce scientific institutional-educational films. Both projects were being considered by the Bureau of the Handicapped, in the Office of Education, Department of Health, Education, and Welfare. Dr. Head asked Mr. Elko if he would have Representative Flood speak to Ted Martin, Associate Commissioner of the Bureau of the Handicapped. Suggesting that he might handle it himself, Mr. Elko promised

Dr. Head that he would bring the matter to Representative Flood's attention. At this meeting, Dr. Head handed Mr. Elko an envelope which contained a large amount of currency. Mr. Elko counted the money when he arrived at his car, before beginning his trip back to Washington: in the envelope was \$5,000.00 in one-hundred dollar bills. (Id. at 20)

Upon Mr. Elko's return to Washington, later that day, he handed the \$5,000.00 to Congressman Flood in the latter's private office, telling him it was from Dr. Head. Mr. Elko explained to Representative Flood that Dr. Head wanted a little push from them for a project with Ted Martin at the Bureau of the Handicapped. After Mr. Elko briefed Representative Flood on the project, Representative Flood instructed him to call Martin right then. Mr. Elko placed a call to Dr. Martin in Representative Flood's presence. He asked for a status report on Dr. Head's project. Dr. Martin indicated that he was very familiar with it, but that there was a problem which needed to be worked out. Mr. Elko said to Dr. Martin: "Well, I just want you to know, Ted, that Congressman Flood is very interested in this." Dr. Martin promised to keep Mr. Elko apprised as to all developments. (Id. at 20)

In December 1971 Dr. Head again called Mr. Elko and invited him to Airlie. When Mr. Elko arrived, he had a meeting with Dr. Head in Dr. Head's private office. Dr. Head told Mr. Elko that he had gotten approval "in Ed Martin's shop" for the project. (Id. at 21)

At the same meeting Dr. Head also discussed with Mr. Elko an Airlie Foundation proposal to conduct a population planning

project for the Agency for International Development (AID). Dr. Head wanted to know how the project with AID should be handled, and asked for assistance. They discussed how Representative Flood could be of assistance. Mr. Elko promised to bring the situation to Representative Flood's attention, and did in fact discuss it with him. (Id. at 22-23)

In mid or late April 1972, Dr. Head showed Mr. Elko a copy of a letter he had written to Dr. John A. Hannah, the Administrator of AID, regarding an Airlie Foundation project proposal involving the Inter-American Dialogue Center. The letter, marked Government Exhibit 101, was identified by Mr. Elko at the trial. (Id. at 29) Dr. Head discussed the proposal with Mr. Elko, saying that he preferred to receive a grant for the project rather than putting it up for competitive bidding. Dr. Head asked Mr. Elko to discuss the project with Representative Flood, and to ask the Congressman to intercede with Representative Passman, who was at that time the Chairman of the Foreign Aid Appropriations Subcommittee. (Id. at 30) Dr. Head explained that he thought Representative Passman would have the most clout with AID.

Mr. Elko agreed to talk to Representative Flood. Later that day, in Congressman Flood's office, Mr. Elko met with him to discuss the matter. Mr. Elko showed Representative Flood the letter from Dr. Head to Dr. Hannah and filled him in on some of the particulars. Representative Flood told Mr. Elko to contact Representative Passman and give him the details of the project. He also said that he would acknowledge to Repre-

sentative Passman that he was behind the Airlie project.
Mr. Elko contacted Representative Passman as directed. (Id. at 31)

Mr. Elko identified Government Exhibit 106, which was a letter dated June 25, 1972, sent by Dr. Hannah to Representative Passman. Mr. Elko also identified Government Exhibit 102, which was a letter dated June 14, 1972, sent by Maurice J. Williams, Deputy Administrator of AID, to Representative Passman. Mr. Elko first saw the June 14, 1972, letter when Representative Passman called him to his office, and gave him a copy. Mr. Elko took the copy of the letter and showed it to Representative Flood. The letter indicated approval of the Airlie Foundation proposal for the Inter-American Dialogue Center, to be funded at \$1,600,000. (Id. at 33-34)

In September 1972, Dr. Head called Mr. Elko and invited him to Airlie House. While there, Mr. Elko and Dr. Head discussed the Inter-American Dialogue Center proposal. (Id. at 34) Dr. Head was aware that the project had been approved, because in June Mr. Elko had given him a copy of the June 14 letter to Representative Passman. During the meeting, Dr. Head told Mr. Elko of his desire to have the project "forward funded." Ordinarily, projects like the one Airlie Foundation was about to undertake would be funded for only two years. Dr. Head indicated, however, that he would like forward funding for five years. Although such funding was very rare, Dr. Head told Mr. Elko that there was precedent for five-year forward funding and that Congressman Flood could be helpful in obtaining it. (Id. at 35-36)

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They also discussed the upcoming Annual Statesman in Medicine Awards Dinner. Dr. Head gave Mr. Elko two envelopes.

One contained \$2,000.00 in one-hundred dollar bills, \$1,000.00 of which was paperclipped and was for Representative Passman, while the other \$1,000.00 was for Representative Flood, again for "taxi fare." The other envelope contained \$5,000.00. Dr. Head told Mr. Elko that he could do whatever he wanted with it. Mr. Elko kept the \$5,000.00 for himself. (Id. at 36)

Mr. Elko identified a letter, dated February 15, 1973, from Maurice Williams, Deputy Administrator of AID, to Representative Passman, confirming that AID would consider the Airlie Foundation's Inter-American Dialogue Center project for funding on a five-year basis. Mr. Elko received a copy of this letter from Representative Passman. After Mr. Elko received the letter, he showed it to Representative Flood and then called Dr. Head. When speaking to Dr. Head, he would refer to him as "Dr. Malik;" to Representative Flood as "Mandrake" or "the moustache;" and to Congressman Passman as "priest" or "parish priest." (Id. at 37-38)

On the same day that Mr. Elko received the February letter he went to Airlie House, and, over lunch, discussed with Dr. Head the AID project and the accomplishment of the five-year forward funding. (Id. at 39) While at Airlie Foundation on this visit, Dr. Head picked up an envelope off his desk, again with facial tissue, and handed it to Mr. Elko. When Mr. Elko kidded Dr. Head about the use of the facial tissue, Dr. Head said he did not want any fingerprints on the envelope. Dr. Head told Mr. Elko the envelope was for Congressman Flood. Mr. Elko put the envelope in his pocket. Later, he counted the money: the envelope contained \$5,000.00 in one-hundred dollar bills.

At the end of the day he gave the \$5,000.00 to Representative Flood, telling him that they had almost succeeded in getting the five-year forward funding. Representative Flood responded: "Good." (Id. at 40)

Over the period of time in which Mr. Elko dealt with Representative Passman with regard to the Airlie Foundation AID project, three payments were made by Mr. Elko to him. The first, in June 1972, was for \$5,000.00; another, in September 1972, was for \$1,000.00; and a third was made in May or June 1973, when the five-year forward funding was finally confirmed. (Id. at 41)

During the period March-June 1973, Mr. Elko met approximately once a month with Dr. Head. (Id. at 41-42) At these meetings Dr. Head discussed a problem he was having with a Dr. Keefer, an official at the Agency for International Development. Dr. Head requested that Representatives Flood and Passman be informed about him to see what could be done to "cool off" Dr. Keefer. Mr. Elko first broached the subject with Representative Flood; Flood told him to "take care of it with Mr. Passman." (Id. at 42)

At approximately this time Representative Passman received a letter from John A. Hannah, the Administrator of AID. The letter indicated that the forward funding of the Airlie House project had been approved. (Id. at 42-44)

Mr. Elko identified a letter dated September 26, 1973, sent by Representative Passman to Representative Flood. (Id. at 61-66) The letter stated that so long as the "Airlie people" continue to do a good job, there will be no problem with financing

in the future. The letter ended: "I can assure you that you will have my cooperation in seeing that Airlie contracts are continued." It was signed: "Otto." (Id. at 66-67)

In December 1973 Mr. Elko again met with Dr. Head in his private office in the International House at the Airlie Foundation. From there they went across the hall into the "screening room," which served as a private theater. In the screening room was a large flip chart on an easle. Dr. Head began to write on it, whispering to Mr. Elko that he was concerned about electronic surveillance. He wrote: "We have to be careful. Long knives are out." Mr. Elko believed that this was in reference to the fact that the Watergate investigations were progressing at that time. The substance of the next group of Dr. Head's written remarks was that both of them needed to be cautious due to the Watergate environment. Mr. Elko printed on the flip chart: "What about the \$." Dr. Head wrote: "How much." Elko wrote the figure \$15,000. After a brief period of haggling, they agreed on \$8,000. The written conversation required three pages of the flip chart. These pieces of paper were crumpled up, thrown into a fireplace, and burned. They then agreed to meet again in a week or ten days. (Id. at 49-51)

At that meeting, Dr. Head handed an envelope to Mr. Elko, again handling it with facial tissue. The envelope contained \$8,000.00 in bills of various denominations, mostly smaller than \$100. Dr. Head explained that he had used the smaller bills because of his concern about the hundred dollar bills which were appearing in the Watergate investigation. The parties

had agreed that this would be the last payment Dr. Head would make. Mr. Elko put the envelope in his briefcase and left for Washington; however, before returning to his office, he stopped at a home in McLean, Virginia ^{*}/, and divided the \$8,000.00 into two piles of \$4,000.00 each. He kept one for himself, and continued to the office with the other. Upon his arrival Mr. Elko went into Representative Flood's private office and gave him his \$4,000. Mr. Elko explained that Dr. Head was concerned about the atmosphere created by the Watergate investigation and was going to withdraw from his activities with them. (Id. at 52) Congressman Flood agreed that that was wise, and put the \$4,000.00 in his pocket.

Mr. Elko last met with Dr. Head in late August or early September 1974. At Dr. Head's invitation Mr. Elko went to Airlie House and met with him in his private office. Dr. Head explained that he wasn't sure whether the Statesman in Medicine Awards Dinner was going to be held that year due to the Watergate events. Nevertheless, he gave Mr. Elko \$1,000.00 in cash for what he again termed "taxi fare" for Representative Flood. Upon returning to Washington, Mr. Elko gave the \$1,000.00 to Representative Flood. (Id. at 53) The Statesman in Medicine Awards Dinner was held that year; Mr. Elko did not attend, but Representative Flood did. (Id. at 54)

^{*}/ The house in McLean was the home of Pat Brislen, then Mr. Elko's girlfriend, now his wife. (Transcript, Vol. 4 at 280)

2. Dr. Edwin Martin testified under oath at Representative Flood's trial substantially as follows:

Dr. Martin is the Director of the Bureau of Education for the Handicapped in the Office of Education, Department of Health, Education, and Welfare. He has been employed there since 1967, first as Deputy Director, and since 1970 as the Director. (Transcript, Vol. 6 at 63) The function of Director of the Bureau is to manage all the Federal programs for the benefit of handicapped children. During the period 1970 to 1973, the Bureau of the Handicapped received a number of proposals from the Airlie Foundation. Two were film-making proposals; two others involved the development of a national center for the collection and handling of media material for the handicapped.*/ (Id. at 64) Dr. Martin knew Dr. Murdock Head, and knew that he was the top man at the Airlie Foundation. (Id. at 65)

Normally, when proposals are submitted to the Bureau for the Handicapped they are reviewed by technical experts and then proceed up an administrative chain for final decision. Dr. Martin had final authority to approve or disapprove a contract or grant proposal. (Id. at 65)

Dr. Martin knew both Stephen Elko and Representative Flood. He was aware that Mr. Elko was Representative Flood's Administrative Assistant and that Representative Flood was Chairman of the HEW Appropriations Subcommittee in the House of Representatives. (Id. at 66) In 1971 and 1972, Dr. Martin

*/ Both of the latter proposals were for the same contract. The Bureau was dissatisfied with the first round of proposals it had received, and therefore asked Airlie and other interested organizations for a second round of proposals.

received several phone calls from Mr. Elko expressing Representative Flood's interest in the various Airlie Foundation proposals. (Id. at 67) One of the proposals submitted in the spring of 1971 was to produce a film on emotional disturbances which would be used to train teachers of the emotionally disturbed. When that proposal came to Dr. Martin's desk it had already been marked for approval by those below him. Still, Dr. Martin had questions about the film's cost. (Id. at 67) Dr. Martin therefore ordered that the proposal be further investigated.

In October or November 1971, Dr. Martin received a telephone call from Mr. Elko, who expressed concern that the film-making proposal was being held up. (Id. at 68, 88) He asked Dr. Martin to look into the matter. Dr. Martin told Mr. Elko of the cost problem and that an audit was being conducted. In December 1971 or January 1972 the project was approved. (Id. at 69)

Mr. Elko also contacted Dr. Martin in the 1971-1972 period about the Airlie Foundation proposals for a media center for the handicapped. In the first round of submissions, the Bureau of the Handicapped rejected all the proposals, including the one from the Airlie Foundation. In the second round of submissions, Mr. Elko intensified his communications with Dr. Martin. This concerned Dr. Martin because he was inclined to reject the Airlie proposal -- and that would constitute his third rejection of Airlie proposals in which Mr. Elko had expressed an interest. When Mr. Elko made his calls, he would say such things as: "The boss is interested in this" or "I'm sitting here in the Chairman's office. . ." Dr. Martin rejected the Airlie Foundation media center proposal anyhow. (Id. at 70-71)

3. Maurice J. Williams testified under oath at Representative Flood's trial substantially as follows:

Mr. Williams, who is currently associated with the World Food Council in Rome, served as Deputy Administrator to the Agency for International Development (AID) between 1971 and 1973. The position is the second highest at AID. (Transcript, Vol. 9 at 3) AID is a semi-autonomous agency which reports on its activities to the Secretary of State. It is engaged in the economic aspects of the United States foreign aid program, humanitarian assistance and economic development overseas, and security assistance support of United States foreign policy. Mr. Williams' responsibility was to assist the Administrator oversee AID's entire program, including operations in eighty foreign nations. The Administrator of the Agency at the time was Dr. John Hannah. (Id. at 4)

During Mr. Williams' tenure as Deputy Administrator of AID, Congressman Otto Passman was Chairman of the House Appropriations Subcommittee which funded foreign aid programs. Mr. Williams frequently dealt with Representative Passman. (Id. at 5)

The Airlie Foundation was well known to Mr. Williams. AID had used it as the site for its senior officials to brainstorm when the Agency's structure was being reorganized. AID also received a proposal from Airlie Foundation concerning population matters in Latin America, calling for the foundation of a "Dialogue Center." Mr. Williams became personally involved in this proposal. Three letters concerning the Dialogue Center proposal sent by Mr. Williams to Representative Passman (Govern-

ment Exhibit 102, 104, and 105) were identified by Mr. Williams. The dates of the letters were June 14, 1972, October 17, 1972, and February 13, 1973, respectively. (Id. at 6-7) Mr. Williams initially approved the project, which was communicated to Representative Passman in the June 14 letter. (Id. at 8)

Congressman Passman had contacted Mr. Williams on an almost daily basis over a period of several weeks, before Mr. Williams gave his initial approval. (Id. at 8) The intensity of Representative Passman's interest struck Mr. Williams as unusual. Representative Passman urged speedy, affirmative action on the proposal. It was also abnormal for Representative Passman to show interest in a population project because his interest usually was limited to Southeast Asia, American schools and hospitals, or projects involving rice, particularly Louisiana rice. (Id. at 9) Representative Passman also mentioned that Representative Flood was very interested in the Airlie Foundation proposal. As a result of Congressman Passman's interest, the proposal was considered a high priority matter; his interest was instrumental in AID's decision to fund it. The project was technically sound, but without the interest shown by Representative Passman it would have not been given high priority. (Id. at 10)

4. Mrs. Charlotte Fowler testified under oath at Representative Flood's trial substantially as follows:

Mrs. Fowler was employed at the Airlie Foundation from 1964 to 1974 as the executive secretary to Dr. Murdock Head.

The Airlie Foundation is located in Warrenton, Virginia, and is principally involved with the holding of conferences and the production of documentary films. (Transcript, Vol. 5 at 484-5) Dr. Head was the Director of the Airlie Foundation, and as his executive secretary, Mrs. Fowler's duties included assisting in carrying out the various grants and contracts, as well as performing general office and secretarial functions. (Id. at 486)

Mrs. Fowler's office was located directly outside Dr. Head's office during most of the time she was under his employ. (Id. at 486-487) During the period 1970 to 1974, Mrs. Fowler estimated that she would see Mr. Elko visiting Dr. Head at his office in the International House building approximately six times a year. Generally, Mrs. Fowler had nothing to do with making the arrangements for these meetings. (Id. at 488)

Although Mrs. Fowler did not always know the subject of the discussions between Mr. Elko and Dr. Head, she did know that they would generally discuss grants or contracts of interest to the Foundation. One of the contracts which the Airlie Foundation had with the Federal government dealt with an entity known as the Inter-American Dialogue Center. (Id. at 489)

Mrs. Fowler was familiar with the reserve fund which was maintained for Dr. Head's use. This cash was kept in a locked drawer in her desk as per Dr. Head's direction. During the period 1970 to 1974, the source of the money for the reserve fund was reimbursements from falsified expense vouchers. These falsified vouchers were drawn up by Mrs. Fowler. The vouchers would reflect actual expenditures, but they would be inflated. (Id. at 490-491)

In the period from 1970 to 1974, there was usually \$1,000.00 to \$1,500.00 in the drawer, but there were times when as much as \$5,000.00 in cash would be there. (Id. at 492-493) Dr. Head would periodically ask for some of this money and Mrs. Fowler would give it to him. On eight or nine occasions, Mrs. Fowler was directed to clean the money. This she would do by wiping the money on both sides. She would then put the money in a plain white envelope and place it either on Dr. Head's desk or someplace in his office where he could readily find it. (Id. at 494)

At the time Mrs. Fowler was employed as Dr. Head's executive secretary, Diane Kidwell was employed as a secretary in the office. (Id. at 495) Mrs. Kidwell's office was the only other one in close proximity to Dr. Head's. (Id. at 487) Mrs. Kidwell's functions were to type letters, answer the telephone, and to keep Dr. Head's personal checkbook. (Id. at 495)

5. Diane Kidwell testified under oath at Representative Flood's trial substantially as follows:

Between 1969 and 1975, Dianne Kidwell was employed at the Airlie Foundation as a secretary to Dr. Murdock Head and later as his administrative assistant. Dr. Head was the Director of the Foundation during this period of time. (Transcript, Vol. 6 at 4) For a short time in the early 1970's, Mrs. Kidwell did not work for Dr. Head, but from August 1972 until her termination in 1975 she did. As Dr. Head's secretary, Mrs. Kidwell's

duties included making appointments, handling telephone calls, meeting and acting as hostess for VIPs, preparing government contract reports, taking care of Dr. Head's personal checking account, and preparing Dr. Head's expense reports. She also assisted Charlotte Fowler, Dr. Head's administrative assistant. While working for Dr. Head, Mrs. Kidwell's office was located in close proximity to Dr. Head's office. (Id. at 5-6)

Mrs. Kidwell was responsible for taking care of Dr. Head's personal bank account. For a short time she also handled the Airlie Farm account and the Airlie Foundation special account. Although Mrs. Kidwell was never sure of the purpose of the special account, she knew that it would be used when Dr. Head was unable to get money from ordinary channels. (Id. at 6)

Mrs. Kidwell assisted in preparing inflated expense vouchers which would be submitted on Dr. Head's behalf. (Id. at 7) The excess cash was kept in the right-hand drawer of Mrs. Fowler's desk during the period she worked for Dr. Head. After Mrs. Fowler left, Dr. Head kept this cash himself. At first Dr. Head would keep the money in a dresser drawer in a bedroom he had right off his office. Later he kept the money in a safe he had installed in the upstairs part of his office. Mrs. Kidwell knew all this because when the expense reimbursement checks arrived, she would cash them and give the money to him. He would put the money away in her presence. (Id. at 8)

Mrs. Kidwell first met Mr. Stephen Elko in the early 1970's. (Id. at 11) Between 1970 and 1974, she recalls seeing Mr. Elko in Dr. Head's office approximately six or eight times.

Mrs. Kidwell knew when Mr. Elko was visiting Dr. Head in his office because of her responsibility to screen Dr. Head's calls and visitors. When Dr. Head had a visitor, the guest would be received downstairs at a reception desk, and the receptionist would call up Mrs. Kidwell and announce the guest. Mrs. Kidwell would also escort all visitors to Dr. Head's office from her desk. (Id. at 12)

Mr. Elko used Dr. Head's private telephone line when he called. It was Mrs. Kidwell's responsibility to answer that telephone, even if Dr. Head was in his office. Mr. Elko would use a fictitious name when he called. She would know that it was him, though, either from the conversation or because Dr. Head would tell her that he had called. (Id. at 13)

When Mr. Elko would arrive at the Airlie Foundation to meet with Dr. Head, Mrs. Kidwell would accompany him in to Dr. Head's office. No one could enter Dr. Head's office unaccompanied or unannounced. (Id. at 14) Every time that Stephen Elko came to the Airlie House, she would go into the office with him, offer him something to drink, and stay until Dr. Head excused her. (Id. at 15) She recalled specific conversations relating to government contracts between Dr. Head and Mr. Elko. Usually, Mr. Elko would visit Dr. Head when Airlie House was having problems with a government agency. (Id. at 17) One problem in particular had to do with the Agency for International Development (AID). (Id. at 18) The AID problem involved the release of money for the Inter-American Dialogue Center. She was aware that a Dr. Keefer was the source of this problem. Dr. Head wanted Mr. Elko to have Congressman Flood intercede

with Congressman Passman in order to have Mr. Passman secure the release of funds for the Inter-American Dialogue Center. (Id. at 19)

Mrs. Kidwell knew that Congressman Flood was on the HEW Appropriations Subcommittee. At the time Mr. Elko first started visiting Dr. Head, the Airlie Foundation had contracts with HEW. Mr. Elko, as Congressman Flood's Administrative Assistant, would be Dr. Head's go-between to reach Congressman Flood. (Id. at 20) Dr. Head told Mrs. Kidwell on several occasions that Congressman Flood was very powerful and influential and would be of great help to the Airlie Foundation. He also said that Congressman Flood would be able to influence Congressman Passman, who could influence AID to the benefit of the Foundation. (Id. at 23) Mrs. Kidwell remembers Dr. Head telling Mr. Elko that there would be "something" in it for him, too. (Id. at 24-25)

During the years 1970 to 1974, Mrs. Kidwell maintained a supply of white business envelopes in her desk at the Airlie Foundation. On three or four occasions, she was asked to provide those envelopes to Dr. Head while Mr. Elko was present in Dr. Head's office. (Id. at 25) After giving an envelope to Dr. Head, she would see an envelope of similar color and size in Mr. Elko's possession shortly afterward. On several occasions she saw Mr. Elko put the envelope into his inside pocket. To her knowledge, Dr. Head did not maintain such white business envelopes in his office; she believed that the envelopes she saw Mr. Elko putting into his pocket on those occasions were

the same envelopes that she gave to Dr. Head. The envelopes would be thicker when in Mr. Elko's possession. Although Mrs. Kidwell saw this happen on several occasions, the only specific instance she could identify occurred in early to mid 1974. (Id. at 26-28)

Sometime during the period 1970 to 1974, Mrs. Kidwell saw a considerable sum of money on Charlotte Fowler's desk. Mrs. Kidwell had knocked on Mrs. Fowler's office door and walked in. Mrs. Fowler had money over her entire desk. Mrs. Fowler screamed at her and told her to get out and never to do that again. (Id. at 29)

6. Mr. Charles Francis testified under oath at Representative Flood's trial substantially as follows:

In the period 1969 to 1974, Mr. Francis was the President of the private film company called Ravens Hollow operating at the Airlie Foundation. This company did the film work for Airlie Productions. (Transcript, Vol. 6 at 30-31) Airlie Productions is a department of the Airlie Foundation.

Mr. Francis would oversee film crews in the making of motion pictures for Airlie Productions. Airlie Productions would advance the expenses for the film crew in advance of a trip. (Id. at 32) The payments made for these expenses did not accurately reflect actual expenses. Dr. Head was responsible for the procedures which were followed; they were instituted in 1969. (Id. at 33) The purpose of the procedure was to generate extra funds by adding additional per diem expenses. (Id. at 34)

The system worked as follows. Mr. Francis would prepare a voucher for per diem payments for each man on a film crew. He would do this despite the fact that the film crew had already been paid. The voucher would be submitted to Norvel E. James, the Comptroller of Ravens Hollow. (Id. at 35) Mr. Francis would receive cash in return for his vouchers. He would turn that cash over to Dr. Head. In the period between 1970-1974, approximately \$60,000.00 was turned over to Dr. Head through this procedure. (Id. at 36)

Mr. Francis, after turning the cash over to Dr. Head, would watch him put it in his pocket, desk, dresser, or safe. (Id. at 37) Mr. Francis identified one of the vouchers he submitted, marked Government Exhibit 108A. The voucher was a claim for \$15.00 per man for a three-man film crew. (Id. at 39) The trip was actually taken, but the voucher did not reflect a true and accurate statement of actual expenses. Mr. Francis received payment of \$72.00 from Norvel James as a result of the submission of that voucher. That money was delivered to Dr. Head. (Id. at 40)

Government Exhibits 108B-108PP were identified by Mr. Francis, all of which represent vouchers of checks resulting from the above described procedures. All of them reflect actual trips made by film crews, but they do not reflect genuine expenses. (Id. at 41) All of the money was turned over to Dr. Head for a fund he kept; none was kept by Mr. Francis. (Id. at 42)

7. Mr. Norvel James testified under oath at Representative Flood's trial substantially as follows:

Mr. James served as Comptroller of Ravens Hollow during the period 1969-1974. Ravens Hollow performed services for the Airlie Foundation. In his capacity as Comptroller, it was Mr. James' responsibility to approve all checks made or cashed on the Ravens Hollow account. (Transcript, Vol. 6 at 89-90) Mr. James identified a group of checks issued for fictitious per diem and travel expenses (Government Exhibit 108A-108PP). Mr. James was able to identify them because each was attached to a voucher which had been presented to him for approval. After the vouchers were submitted, Mr. James would personally deliver a check to the chief of the film crew, who would endorse it back over, and it would then be taken to the bank and cashed by Mr. James or someone who worked for him. (Id. at 90-91)

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF	)	SUMMARY OF EVIDENCE IN
)	
	)	SUPPORT OF STATEMENT OF
)	
REPRESENTATIVE DANIEL J. FLOOD	)	ALLEGED VIOLATIONS

REFERENCES TO THE RECORD

Vol. 1 refers to the record of proceedings of January 15, 1979; Vol. 2 refers to the record of proceedings of January 16, 1979; Vol. 3 refers to the record of proceedings of the morning session of January 17, 1979; Vol. 4 refers to the record of proceedings of the afternoon session of January 17, 1979; Vol. 5 refers to the record of proceedings of January 18, 1979; Vol. 6 refers to the record of proceedings of the morning session of January 19, 1979; Vol. 6A refers to the record of proceedings of the afternoon session of January 19, 1979; Vol. 7 refers to the record of proceedings of the morning session of January 22, 1979; Vol. 8 refers to the testimony of Theodore Newell Wood on January 22, 1979; Vol. 9 refers to the testimony of Maurice V. Williams on January 22, 1979; Vol. 10 refers to the record of proceedings of January 23, 1979; Vol. 10A refers to the testimony of Robert Gennaro on January 23, 1979; Vol. 11 refers to the record of proceedings of January 24, 1979; Vol. 12 refers to the record of proceedings of January 25, 1979; Vol. 13 refers to the record of proceedings of January 26, 1979; Vol. 14 refers to the record of proceedings of January 30, 1979; Vol. 15 refers to the record of proceedings of January 31, 1979; Vol. 16 refers to the record of proceedings of February 1, 1979.

PART IV—RESPONDENT'S MOTIONS AND ANSWER TO STATEMENT OF ALLEGED VIOLATIONS

Representative Flood's counsel for the criminal trial advised the Committee that he would not represent Representative Flood before the Committee, and that Representative Flood requested that service of the Statement be made on his Congressional office staff. Accordingly, the Statement of Alleged Violations was served on Representative Flood's staff on June 7, 1979.

Under the Committee's Rules of Procedure, a response to a Statement of Alleged Violations, by answer or motion, must be made within 21 days unless the Chairman extends the time. Representative Flood immediately requested, on the basis of his poor health, that his time to respond be extended by 90 days. Representative Flood's personal physician visited the Chairman on June 11 to substantiate Representative Flood's claim of failing health. At that time, the Chairman agreed to grant an extension, but not for the full 90 days.

After receiving medical reports from Representative Flood's physicians, the Chairman set July 31 as the date Representative Flood's response to the Statement of Alleged Violations would be due. That date was further extended to September 4 by the Chairman upon the receipt of new medical reports from both Representative Flood's physicians and physicians appointed by the United States District Court in connection with the criminal trials. Representative Flood's health problems necessitated two additional extensions, but on September 28 counsel for Representative Flood timely responded to the Statement by filing four motions.

The first motion sought leave for Representative Flood's counsel to enter a limited and restricted appearance. (See Appendices A and B). The second motion asked that the proceedings be dismissed on the basis of Representative Flood's poor physical health. (See Appendices C and D). The third sought the appointment of counsel for the respondent. (See Appendices E, F, and G). The fourth motion requested that the Committee defer further action pending completion of the judicial proceedings (See Appendices H and I). The first motion, being on which counsel had no obligation to make, was granted. The other three were unanimously denied. An answer generally denying all of the charges of the Statement of Alleged Violations was filed on November 19, 1979.

A. The Physical Health Problem and the Motion to Dismiss

Representative Flood, through counsel, moved the Committee to dismiss the Statement of Alleged Violations on the grounds that his health was too impaired to defend himself adequately and competently against the charges. On October 24, 1979, the Committee voted to deny this motion by a vote of 7 to 0.

B. The Motion to Appoint Counsel

Representative Flood's counsel, whose appearance was for the limited purpose of making a response to the Statement of Alleged Violations, made clear to the Committee that he could not represent Representative Flood in a disciplinary hearing. Accordingly, counsel

filed a motion on Representative Flood's behalf asking that the Committee appoint counsel for him. It was alleged in the motion, and supported with documentation, that Representative Flood was without sufficient funds to retain appropriate counsel.

The issue of appointment of counsel in congressional disciplinary proceedings is exceedingly difficult, and one which the Committee may well face again. In its October 24 session, the Committee voted to defer disposition of the motion for two weeks. The Committee intended to verify Representative Flood's financial condition during the intervening period, and to investigate possible ways to provide Representative Flood with an attorney, if it were found that he did not in fact have sufficient funds to hire one.

Various ways to provide counsel were considered: volunteers from the legal community; hiring counsel at Committee expense; or permitting a member of the respondent's personal staff to represent him. The Committee concluded that as presently organized it did not have the authority or the means to provide counsel to a respondent, unless it could find someone to serve without compensation. The Committee was unable to find a suitable attorney to represent Representative Flood under those circumstances. Therefore, at its meeting of November 7, 1979, the Committee was left with no alternative but to deny the motion by a vote of 8 to 0.

However, it was the sense of the Committee that a mechanism ought to be developed for the appointment of counsel when it is determined that a respondent's financial condition makes it impossible for him to afford a suitable attorney. The Committee recognizes that the interests of the Committee, as well as those of the respondent, would be better protected through the appointment of counsel in appropriate situations. Without counsel representing a respondent, the Committee finds it very difficult to proceed. Further, the Committee's interest in doing justice and in preserving the integrity of the House of Representatives is best served if a respondent is represented by Counsel.

Accordingly, the Committee recommends that the appropriate Committee of the House of Representatives consider legislation which would provide for the appointment of counsel in those cases where a Member of Congress is financially unable to retain adequate representation in Congressional disciplinary proceedings. Such provisions already exist with respect to defendants in criminal cases in the federal courts.

C. The Motion to defer Committee action pending completion of the judicial proceedings

Representative Flood, through counsel, requested that the Committee defer further action pending completion of his criminal trial. In support of this motion, the respondent cited a Committee precedent in which the Committee decided not to recommend expulsion of a Member because of the pendency of an appeal of the Member's criminal conviction. In the cited case, the Committee recommended that no action be taken against the respondent pending completion of the judicial proceedings. *In the Matter of Representative Andrew J. Hinshaw*, H.R. Rept. No. 94-1477, 94th Congress, 2d sess. (1976).

Representative Flood's motion to defer was denied by a Committee vote of 7 to 0 on October 24, 1979. Just as the Committee had decided *In the Matter of Charles C. Diggs, Jr.*, H.R. Rept. No. 96-351, 96th Congress, 1st sess. (1979), in its judgment the interests of the House of Representatives were best served by moving forward with its proceedings with the least delay possible.

The courts and Congress both have important interests to protect when a Member is alleged to have violated the criminal laws and thereby reflects discredit on Congress. The courts must protect society against wrongdoers; Congress must protect its institutional integrity and the integrity of the legislative process. When this Committee defers its disciplinary activities pending completion of judicial proceedings, Congress's interests may suffer. The Committee is committed to maintaining and improving public confidence in the integrity of Congress, and believes that its proceedings ought not to be delayed except for compelling reasons.

It is the strong sense of the Committee that to achieve this objective the Committee must move expeditiously to investigate and take action against any Member who is charged with improper acts. This is particularly so when—as here—the charges raised suggest an abuse which goes to the very heart of a Member's public responsibilities.

However, it is recognized that in certain instances some deferral of Committee action might be required because of the pendency of judicial proceedings. For instance, a criminal trial and a disciplinary hearing should not be conducted simultaneously because of the impossibility of a Member defending himself in two forums at the same time.

But this Committee will require a strong showing by a respondent to support a motion to defer Committee action on the ground that judicial proceedings are pending. Furthermore, such motions will need to be narrowly drawn. The motion made by Representative Flood in the present matter did not satisfy these requirements; therefore, the motion to defer was unanimously rejected.

D. The Prospective Resignation of a Respondent

At the Committee's meeting of November 7, 1979, counsel for Representative Flood announced that the respondent had tendered his resignation from Congress, effective January 31, 1980. It was the strong sense of the Committee that this announcement ought to have no bearing on its proceedings. So long as a respondent remains a Member of the House of Representatives, the Committee will actively and fully pursue its mandate to investigate, adjudicate, and make disciplinary recommendations to the House of Representatives. Neither a prospective resignation, nor an announcement that the respondent will not seek reelection, will affect the Committee's resolve to go forward with these functions.

PART V. DISCIPLINARY HEARING

On November 19, 1979, Representative Flood, through counsel, answered the charges of the Statement of Alleged Violations in the following fashion:

THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF) ANSWER TO
REPRESENTATIVE DANIEL J. FLOOD) STATEMENT OF
Respondent) ALLEGED VIOLATIONS

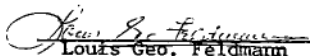
In answer to the Statement of Alleged Violations, Representative Daniel J. Flood, M.C., the Respondent, by his Attorney, Louis Geo. Feldmann, Esq. replies as follows:

To each and every charge and the inferences therefrom contained in Counts One to Twenty-Five inclusive, the Respondent states:

He is not guilty of any of the alleged violations, or of any insinuations, or of any inferences that may be drawn therefrom.

The Respondent, therefore, requests the House Standards Committee to dismiss all of the alleged violations that have been made against him.

Daniel J. Flood, M.C.
By his Personal Counsel


Louis Geo. Feldmann

Dated: November 19, 1979

At the Committee's next meeting, on November 28, 1979, the Committee unanimously voted to begin disciplinary hearings on December 12, 1979. The Committee also voted to define the scope and purpose of the hearing, as required by the Committee's Rules of Procedure, as follows:

Committee Rule 16(c) requires that the Committee, prior to setting a date for a disciplinary hearing and issuing subpoenas for witnesses, resolve the scope and purpose of the hearing. A copy of the statement shall be furnished to all witnesses.

Motion by Mr. Hollenbeck.

SCOPE AND PURPOSE OF THE INVESTIGATION

On June 7, 1979, the Committee adopted a Statement of Alleged Violations, a copy of which is attached. The allegations made in that Statement can be summarized as follows:

On various occasions in the period 1971 through 1976, Representative Flood received payments, either directly or through an assistant, from individuals in exchange for Rep. Flood's agreement to influence or to attempt to influence government agencies. The conduct of Rep. Flood with respect to the payments received reflected discredit on the House of Representatives, and violated paragraphs 3 and 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt2 B12 (July 11, 1958).

Additionally, in testimony given on October 11, 1977, in a trial in the United States District Court for the Central District of California, Rep. Flood willfully and contrary to his oath, made statements which he did not believe to be true. The conduct of Rep. Flood with respect to the giving of that testimony reflected discredit on the House of Representatives.

The hearing shall be conducted in accordance with Subpart B (Disciplinary Hearings) of the Committee's Rules of Procedure. The first phase of the disciplinary hearing shall be limited to a determination of whether or not the counts in the Statement have been proved, in accordance with Rule 16(a). The burden of proof rests on the Committee's staff with respect to each count to establish the facts alleged therein clearly and convincingly by the evidence that it introduces. Evidence will be limited to that which is relevant to the charges raised in the Statement of Alleged Violations. Pursuant to Rule 20 of the Committee's Rules, the Chairman or presiding Member shall rule on admissibility of evidence.

Should the Committee find that any or all of the charges against Rep. Flood have been proved, the second phase of the hearing will be conducted to determine what disciplinary action should be recommended to the House. Conducted in accordance with Rules 16(f) and 17 of the Committee's rules, this second phase shall consist of oral and/or written submission by Counsel for the Committee and counsel for Rep. Flood as to the sanction the Committee should

recommend. Pursuant to Rule 16(f) testimony by witnesses will not be heard during the second phase except by a vote of a majority of the Committee.

On December 5, 1979, the Committee voted to hear arguments, at the commencement of the disciplinary hearing, on a motion filed by counsel for Representative Flood to delay the proceedings pending determination of Representative Flood's competence to participate in the hearings and assist in his own defense.

The matter of competency

On December 12, 1979, the Chairman convened the Committee's disciplinary hearings *In the Matter of Representative Daniel J. Flood*, with a Statement of the authority for the hearings, and their scope and purpose. The Chairman recognized counsel for Representative Flood for the purpose of raising the issue of Representative Flood's mental competency to participate in the disciplinary proceeding. Two psychiatrists testified in support of the contention that the respondent was not mentally competent; the Committee's Special Counsel, through a witness, introduced evidence that Representative Flood was mentally competent.

It is the position of the Committee that a disciplinary proceeding cannot go forward if the respondent is unable to understand the nature of the proceeding or cannot effectively participate in his defense. Thus the Committee may find itself in the position, at times, of determining a Member's mental competency. In the present case, the Committee found that the evidence submitted regarding Representative Flood's mental incompetency was insufficient to sustain the motion to defer. However, because Representative Flood's hospitalization for physical illness rendered him unable to attend a disciplinary hearing, the Committee voted to defer the proceedings until such time as Representative Flood would be able to participate. Moreover, the judicial determination of his ability to stand trial was under active consideration in the United States District Court for the District of Columbia pursuant to a court ordered competency hearing. That court ruled on February 8, 1980 that Representative Flood was competent to stand trial.

PART VI. CONCLUSION

The Committee did not reconvene its disciplinary hearings prior to the District Court competency determination (February 8, 1980) and the January 31, 1980 effective date of Representative Flood's resignation from the House of Representatives.

STATEMENT PURSUANT TO RULE XI, CLAUSE 2(1)(3)(A)

The Committee makes no special oversight findings in this report.

This report was approved by the Committee on Standards of Official Conduct on March 12, 1980, by vote of 7 to 0.

APPENDIX A

BEFORE THE COMMITTEE OF STANDARDS OF
OFFICIAL CONDUCT OF THE HOUSE OF REPRESENTATIVES

IN THE MATTER OF

REPRESENTATIVE DANIEL J. FLOOD,

Respondent

MOTION OF LOUIS GEO. FELDMANN FOR ENTRY
OF HIS LIMITED AND RESTRICTED APPEARANCE
ON BEHALF OF RESPONDENT, DANIEL J. FLOOD

The Undersigned, Louis Geo. Feldmann, respectfully moves the Committee to enter his limited and restricted appearance in behalf of the Respondent and in support thereof avers as follows:

1. He has been and is personally serving as personal counsel for the Respondent, without compensation and without fee.
- 2, In connection with undersigned counsel's limited and restricted appearance, he will continue to so personally represent the Respondent without compensation and without fee for the Respondent who does not have the financial means to afford and to pay for counsel.
3. Committee is hereby requested to enter on the record of these proceedings the appearance of the undersigned as counsel for the Respondent limited and restricted to the matters involved in the following three (3) Motions

which are filed concurrently herewith:

- (a) Motion to Dismiss Statement of Alleged Violation.
- (b) Motion for the Committee to provide Respondent with counsel, without cost or expense to the Respondent, to represent and defend him in these proceedings.
- (c) Motion to Defer Committee Action pending Completion of Judicial Proceedings.

Respondent respectfully requests the opportunity to be heard in support of this Motion.


Louis Geo. Feldmann

APPENDIX B

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF SPECIAL COUNSEL
IN RESPONSE TO MOTION OF LOUIS GEO. FELDMANN
FOR ENTRY OF HIS LIMITED AND RESTRICTED
APPEARANCE ON BEHALF OF RESPONDENT, DANIEL J. FLOOD

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BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL
IN RESPONSE TO MOTION OF LOUIS GEO. FELDMANN
FOR ENTRY OF HIS LIMITED AND RESTRICTED
APPEARANCE ON BEHALF OF RESPONDENT, DANIEL J. FLOOD

Respondent's counsel, Louis Geo. Feldmann, has filed a Motion for Entry of His Limited and Restricted Appearance on Behalf of Respondent, Daniel J. Flood. This motion, which was filed on Friday, September 28, 1979, along with three other motions, is unlike the others in that it is not made on behalf of Rep. Flood; rather it is made on behalf of his counsel. This motion does not constitute a response to the Statement of Alleged Violations under the terms of Rule 12(a) of this Committee's Rules of Procedure. It is simply a request by attorney Feldmann to appear before this Committee on behalf of Rep. Flood to argue the merits of the three motions which were filed under Rule 12(a).

STATEMENT OF FACTS

On June 7, 1979, this Committee unanimously adopted a 25-count Statement of Alleged Violations, under the provisions of Rule 11(b) of this Committee's Rules of Procedure. The Statement charged the Respondent with accepting over \$60,000 in bribes and with perjury before a Federal District Court. Rep. Flood was required to respond to the Statement by way of answer or motion within 21 days.

Service of the Statement was attempted on attorney Axel Kleiboemer, the only attorney known to this Committee as counsel for Rep. Flood. Mr. Kleiboemer refused to accept service. After communicating with Rep. Flood, Mr. Kleiboemer advised this Committee's Staff Director that he would only be representing Rep. Flood in the criminal proceedings; he would not be serving as the Respondent's counsel in the matter before this Committee. After consulting with the Respondent, Mr. Kleiboemer instructed the Committee that service ought to be made on Ms. Helen Tomascik, Rep. Flood's Administrative Assistant.

In a letter from this Committee's Chairman to Rep. Flood, dated June 11, 1979, in which the Chairman indicated he would extend the 21-day response period, the Chairman cautioned:

In the meantime I hope your efforts to retain counsel to represent you in these procedures will have an early resolution.

On June 19, 1979, in a letter to Rep. Flood from this Committee's Chairman, in which the Respondent was informed that he had until July 31 to respond to the Statement of Alleged Violations, the Chairman again cautioned:

Meanwhile, I hope you are making all efforts, consistent with physical limitations to retain counsel to represent you in the procedures before this Committee.

Due to continuing health problems, Rep. Flood was given yet another extension of time to respond to the Statement. In the July 17, 1979, letter from this Committee's Chairman to attorney Kleiboemer, informing him that an extension had been granted until September 4, the Chairman reiterated:

I would call to your attention that in my previous letters of June 11 and June 19, I urged Rep. Flood to proceed with retaining counsel for the forthcoming procedures before this Committee. As yet, we have only been informally advised that efforts are under way to do this, nowever, I must advise you that any continuing failure to secure counsel cannot serve as the basis for further delay beyond the date dictated by the state of Rep. Flood's health.

For the fourth time, in the August 23, 1979, letter from the Chairman, which informed Rep. Flood that the deadline for filing motions would be extended further to September 17, he was told:

I am also mindful of the difficulties you are experiencing in retaining counsel. If that condition continues to obtain, you should advise me promptly so that I may take steps to seek to assist in that respect.

This Committee granted a final extension of time to September 28 for the filing of Rule 12(a) motions. As this Committee is aware, attorney Louis Geo. Feldmann timely filed motions on behalf of Rep. Flood.

POSITION OF SPECIAL COUNSEL

The Rules of this Committee require no motion by counsel to enter an appearance. Thus the present motion is superfluous, and your Special Counsel offers no objection to it. However, as the Statement of Facts clearly reveals, the Respondent has been amply warned that this Committee expects him to retain counsel for his defense, and no delay will be countenanced for his failure to do so.

Under Rule 12(b) of this Committee's Rules of Procedure, the Respondent must answer the Statement of Alleged Violations within 14 days after the disposal of all the Rule 12(a) motions. It is the position of your Special Counsel that none of the 12(a) motions filed by the Respondent have merit; support for this position is set out in the memoranda filed in opposition to each. If this Committee rejects these motions--as your Special Counsel urges--then your Special Counsel further urges that no additional delay be permitted on the ground that the Respondent must secure new counsel. The record is clear that this Committee has properly discharged its duty to advise Rep. Flood of his need to retain counsel, and has afforded him more than ample time to obtain legal representation. This Committee has no further obligation to delay its proceedings because the Respondent has failed to heed this Committee's many warnings.

CONCLUSION

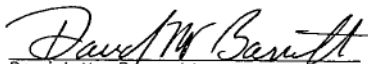
Your Special Counsel has no objection to this Committee entering the limited and restricted appearance of attorney Louis Geo. Feldmann to argue the three motions

made by the Respondent in response to the Statement of Alleged Violations. It is the right of the Respondent to choose any counsel he wishes to make his defense. However, if Mr. Feldmann's representation will be limited--as he suggests--it is incumbent upon the Respondent to make arrangements to find new counsel for the other matters before this Committee. Finally, this Committee ought not delay its proceedings any further if the Respondent is slow in securing alternative representation.

Respectfully submitted,

McCANDLESS & BARRETT

By:



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APPENDIX C

BEFORE THE COMMITTEE OF STANDARDS OF
OFFICIAL CONDUCT OF THE HOUSE OF REPRESENTATIVES

IN THE MATTER OF

REPRESENTATIVE DANIEL J. FLOOD,

Respondent

MOTION TO DISMISSSTATEMENT OF ALLEGED VIOLATION

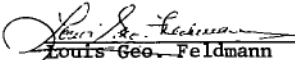
Respondent, Daniel J. Flood, through his counsel, Louis Geo. Feldmann, respectfully moves to dismiss each and all of the Counts of the Statement of Alleged Violation.

As grounds therefor, Respondent submits:

1. Respondent's health, at this time seems to be impaired to such a degree that he is unable to perform the arduous task to prepare to adequately and competently defend himself against the charges brought against him in these proceedings.

Respondent respectfully refers the Committee to the Memorandum of Points and Authorities filed in support of this Motion.

Respondent respectfully requests the opportunity to be heard in support of this Motion.


Louis Geo. Feldmann

BEFORE THE COMMITTEE OF STANDARDS OF
OFFICIAL CONDUCT OF THE HOUSE OF REPRESENTATIVES

IN THE MATTER OF

REPRESENTATIVE DANIEL J. FLOOD,

Respondent

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS STATEMENT OF
ALLEGED VIOLATION

The due process clause of the Fourteenth Amendment to the United States Constitution provides that no person may be deprived of his life, liberty and property without due process of law. In the event the Committee finds that the Respondent is guilty of the charges brought against him, its disciplinary action would necessarily adversely effect his life, liberty and property.

In addition it could lead to expulsion from office proceedings in the House of Representatives pursuant to Article I Section 5 of the Federal Constitution. Without citation of authorities, it is clear a person who is incompetent to defend himself by reason of health and other infirmities cannot be tried by the Committee for disciplinary action. Where Respondent's impairment by reason of health or other reasons can be remedied, then the Committee's action must be deferred until there is restoration of competency. Where the impairment is permanent, the statement of violations must be dismissed.

It is the duty of the courts to insure that the specific guaranties of liberty are preserved for witnesses before a

legislative body just as they are guarded for the benefit of
defendants in a criminal court trial. (From separate opinion by
Warren, Ch. J., and Douglas, J.) *Hutcheson v. United States*,
369 US 599, '82 S. Ct. 1005, 8 L. Ed. 2d, 137.


~~Louis Geo. Feldmann~~
Louis Geo. Feldmann

APPENDIX D

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO DISMISS
STATEMENT OF ALLEGED VIOLATIONS

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BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO DISMISS
STATEMENT OF ALLEGED VIOLATIONS

Respondent, through counsel, has moved this Committee to dismiss the Statement of Alleged Violations which this Committee adopted on June 7 of this year. As sole ground in support thereof, it is urged that "Respondent's health, at this time seems to be impaired to such a degree that he is unable to perform the arduous task to prepare to adequately and competently defend himself against charges brought against him in these proceedings."

Your Special Counsel strongly recommenos against the granting of this motion as it is totally devoid of merit: it is improperly raised; without foundation under the Constitution or laws of the United States, or uncer Committee prececent; and it is unjustified by the facts.

STATEMENT OF FACTS

From January 15 through February 3, 1979, Rep. Flood was tried on 11 counts of bribery, conspiracy, and perjury. Because a unanimous verdict could not be reached, a mistrial was declared on February 3 by United States District Court Judge Oliver Gasch. A retrial was set for June 4.

On May 2, 1979, this Committee unanimously passed a motion to commence an inquiry into the possibility of violations of House Rules by Rep. Flood. After this action, the Committee was advised of the Respondent's health problems.

The trial scheduled for June 4 did not take place as scheduled because of Rep. Flood's ill health. This Committee was formally notified of this delay by Mr. Kleiboemer, Rep. Flood's attorney for the criminal proceedings. This Committee was also sent a medical opinion from Dr. Melvin D. Small, the Congressman's personal physician, which had been presented to Federal District Court Judge Oliver Gasch. That medical opinion told of bilateral cataracts, one of which had fully opacified and required surgery, and the symptoms of tinnitus (ringing in the ear) and vertigo (dizziness).

On June 7, 1979, this Committee unanimously adopted a 25-count Statement of Alleged Violations, charging Rep. Flood with accepting over \$60,000 in bribes and with perjury before a Federal District Court. Four days later, Dr. Small visited the Chairman of this Committee requesting that the Respondent be given an extension of time to respond to the Statement. The basis of the request was that Rep. Flood's health prevented him from

meeting the normal 21-day deadline established by Rule 12(a) of this Committee's Rules of Procedure. The Chairman, solicitous of the Respondent's health problems, agreed to grant an extension, but set no new date at that time.

At a status call held on June 15, in the United States District Court for the District of Columbia before Judge Gasch, Mr. Kleiboemer read into the record a letter from Dr. Small concerning the Congressman's medical condition. Dr. Small indicated that the convalescent period following the cataract procedures would be approximately six weeks; he did not make it clear how long the recovery time would be for an abdominal condition which had since developed. The Chairman of this Committee, upon receiving this medical report, set July 31 as the date on which the Respondent's response to the Statement of Alleged Violations would be due.

Pursuant to an order by Judge Gasch, the Government's physicians examined Rep. Flood in early July. Dr. Raymono Scalettar prepared a report to the court, which was also transmitted to the Chairman by attorney Kleiboemer on July 16, 1979. Because that report indicated the necessity of continued hospitalization for the Congressman, the Chairman further extended the deadline until September 4, 1979.

On August 9, 1979, Rep. Flood was released from Georgetown University Hospital and was permitted to return to his home in Wilkes-Barre, Pennsylvania. However, according to Dr. Scalettar and Dr. Iovine, the Government's physicians, this was ill-advised. In the opinion of these two physicians a gall bladder operation

was then indicated for the biliary disease from which the Congressman suffers. They believe that it was medically unsound to delay that operation. Nonetheless, the Respondent was released and the surgery delayed.

The Chairman, having been kept apprised of Rep. Flood's condition by Dr. Small, again extended the deadline for filing a response to the Statement of Alleged Violations. In a letter dated August 23, the Chairman informed the Respondent that he now had until September 17 to respond. However, the Chairman also explained to Rep. Flood:

On the other hand, the filing of these motions is only a first step in the procedures, it should require only minimum participation on your part, and thereafter the timing of the successive steps may be adjusted as your state of health compels.

Demonstrating great sensitivity to the problems faced by Rep. Flood, the Chairman once again extended the Respondent's deadline to September 28. The four motions now before this Committee were timely filed on that date.

The Respondent did have the necessary gall bladder surgery performed on September 13. A week earlier, on September 5, in Judge Gasch's courtroom, Drs. Scalletar and Iovine testified that there was no medically sound reason why the surgery had not been performed in late July. In Dr. Scalletar's view, it would take two to three weeks from the time of surgery for Rep. Flood to be capable of assisting counsel in the preparation of his defense; it would take about five weeks before the Congressman would be strong enough to participate in an extensive trial. Dr. Small, the Respondent's personal physician, estimated that the Congressman would require

ten days of post-operative care. Barring complications, he testified, it would be about four to six weeks before Rep. Flood could begin to assist in the preparation for trial. There was no suggestion--and there never has been any suggestion--that the Respondent's ailments were of such a serious nature that sufficient recovery to participate in a lengthy proceeding might never take place.

ARGUMENT

I.

THE PRESENT MOTION IS AN INAPPROPRIATE RESPONSE TO THE STATEMENT OF ALLEGED VIOLATIONS

Rule 12(a) of this Committee's Rules of Procedure explicitly limits the types of responses that are appropriate to a Statement of Alleged Violations transmitted under Rule 11(b). Rule 12(a) specifies:

The response shall be by way of answer or motion, shall be in writing and signed by the respondent or his counsel; and shall be limited to the following:

- (1) An admission to or denial of, under oath, each count set forth in the Statement....
- (2) An objection to any count in the Statement on the grounds that it fails to state facts which constitute a violation of the Code of Official Conduct or any other applicable law, rule, regulation, or other standard of conduct.
- (3) An objection to the jurisdiction of the Committee to consider the allegations contained in the Statement.
- (4) A motion for a bill of particulars.
- (5) An objection to the participation of any member of the Committee in consideration of the allegations contained in the Statement on the grounds that the member cannot render an impartial and unbiased decision. The Committee member against whom the objection is made shall be the sole judge of his qualifications. A motion under this paragraph is not in lieu of an answer.

The present motion is not included in the itemization of permissible responses: it is not (1) an admission or denial; (2) an objection to a count on the grounds that it fails to state facts which constitute a violation; (3) an objection to this Committee's jurisdiction, (4) a motion for a bill of particulars; or (5) an objection that a Member of this Committee is biased. Rule 12(a) also states: "Except for good cause shown, no pleading or motion not described in paragraphs (1) through (5) will be considered by the Committee...." No good cause has been shown for considering the present motion, nor could it be. In drafting the Rules of Procedure--which were adopted on March 21, 1979, by this Committee--only two grounds for dismissal were recognized: failure to state sufficient facts and lack of jurisdiction. Implicitly, this Committee has rejected all other grounds. For this reason, the present motion should be summarily denied.

II.

FAILURE TO RECOGNIZE ILL PHYSICAL HEALTH AS A GROUND FOR DISMISSAL DOES NOT VIOLATE DUE PROCESS OF LAW UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The Respondent's memorandum in support of the present motion urges the position that the Fourteenth Amendment to the United States Constitution requires that this Committee dismiss a Statement of Alleged Violations when a respondent demonstrates permanent physical impairment. No authorities are cited in support of this proposition. After a thorough research of the question, your Special Counsel concludes that no such authority exists.

First, for the sake of accuracy, the Respondent's memorandum is mistaken in its reliance upon the due process protection afforded by the Fourteenth Amendment to the United States Constitution; that Amendment applies to state action only. Only the due process protection afforded by the Fifth Amendment is at issue. The Fifth Amendment prescribes: "No person shall...be deprived of life, liberty, or property, without due process of law." The proceedings before this Committee must comply with the dictates of that clause. The Respondent's memorandum cites the dissents of Justices Warren and Douglas in Hutchison v. United States, 369 U.S. 599 (1962), to support the proposition that "the specific guaranties of liberty are preserved for witnesses before a legislative body just as they are guarded for the benefit of defendants in a criminal court trial." Although even these dissenting opinions do not take the position that a congressional committee witness--or a respondent before this Committee--has due process rights equal to those of a criminal defendant, this memorandum will demonstrate that even if the Respondent is given the maximum due process rights available, the requested remedy here, i.e. dismissal, is totally without justification.

It is well established in criminal proceedings a defendant must be mentally and physically capable of making his defense. The trial and conviction of an individual not so capable violates "immutable principles of justice." Sanders v. Allen, 100 F.2d 717, 720 (D.C. Cir. 1938). Due process of law absolutely prohibits the trial of those incompetent to stand trial. Albritton v. Collier, 349 F. Supp. 994, 996 (N.D. Miss. 1972). This is not disputed by your Special Counsel.

The court in United States v. Doran, 328 F. Supp. 1261 (S.D.N.Y. 1971), was confronted with a defendant it found to be severely impaired emotionally and intellectually, as well as so significantly physically impaired that a two to four-week trial posed a substantial threat of producing severe cardiovascular accident or death. The court's response was to grant a continuance to a date uncertain; it did not dismiss the case.

In another case, the same court was faced with a medical opinion regarding the defendant which stated that the trial could be life-threatening. Further, it was believed that the condition would get progressively worse, not better. The court concluded that despite the condition, the trial would proceed, but that all appropriate safeguards would be provided. Included among the ordered safeguards were: an abbreviated schedule, longer recesses, and setting aside a portion of the courtroom so that the defendant could rest or nap. United States v. Sweig, 316 F. Supp. 1148 (S.D.N.Y. 1970) (Frankel, J.).

The court in Sweig indicated uncertainty as to the consequences of a finding that a defendant's physical condition made trial too risky and that the risks would not lessen because the defendant's condition would not improve. However, it must be noted that the court was willing to tolerate a greater immediate risk to the defendant's health because the defendant's ailments were progressive, and thus delay would probably result in no trial at all.

Nowhere in the Sweig opinion is it suggested that the Fifth Amendment requires an outright dismissal if a determination is made that a criminal defendant is

permanently physically incapable of withstanding trial. .
 If dismissal of charges are not mandated by the
 Constitution in criminal trials under such circumstances,
 certainly dismissal of a Statement of Alleged Violations
 is not constitutionally mandated.

Admittedly, it would be violative of due process to
 require a respondent to participate in a proceeding of
 this Committee when he is physically incapable to do so.
 However, that does not mean that a determination must be
 made on the question of permanency, and that an outright
 dismissal must be granted in the event a permanent
 physical impairment is found.

The Rules of this Committee recognize only two
 grounds for dismissal, and permanent physical impairment
 of a respondent is not one. The Constitution does not
 require otherwise. This Committee has been extremely
 solicitous of Rep. Flood's health problems throughout the
 course of this matter. For instance, 12 weeks, rather
 than three, were given to the Respondent to respond to the
 Statement of Alleged Violations. This Committee can be
 relied upon to fully protect the due process rights of the
 Respondent without dismissing outright the charges against
 him. The extreme relief of dismissal is unwarranted.

III.

EVEN IF PERMANENT IMPAIRMENT OF HEALTH
 WERE TO REQUIRE DISMISSAL OF CHARGES UNDER
 DUE PROCESS, THE BURDEN OF PROOF WOULD FALL
 UPON THE RESPONDENT TO MAKE THE REQUIRED
 SHOWING, AND NO SUCH SHOWING HAS OR CAN BE MADE

Due process does not permit an individual to stand
 trial if (1) the trial would pose an intolerably high risk
 to the health of the defendant, or death, or

(2) the defendant's condition is so severe as to prevent effective participation by him in his own defense. United States v. Sweig, supra at 1167. The burden of demonstrating that either of these situations obtain is on the defendant. Albritton v. Collier, supra at 997.

It may well be true that Rep. Flood is incapable of effectively participating in a disciplinary hearing at present, or that such a hearing would seriously threaten his health. However, all the evidence suggests that the Congressman's condition is improving and that he is making good progress in recovering from a recent operation. Even the Respondent's own physician has testified that, in his judgment, Rep. Flood would be capable of assisting in his own defense in the not too distant future. Importantly, the Respondent's motion only asserts that the Congressman's health is inadequate for him to competently defend himself against the present charges, "at this time". Although the Respondent's memorandum asserts that the proper remedy for permanent impairment is dismissal, the necessary representation of permanence is never made in the motion. Dismissal is clearly improper in this instance.

IV.

IF THE PRESENT MOTION IS TAKEN AS ONE TO DEFER,
RATHER THAN ONE TO DISMISS, IT IS PREMATURE,
AND THUS IMPROPERLY FILED AT THIS TIME

Part I of this argument cites Rule 12(a) of this Committee's Rules of Procedure. That rule lists the permissible motions which may be made in response to a Statement of Alleged Violations. Motions to defer are not among them. See also Memorandum of Special Counsel in

Opposition to Motion to Defer Committee Action Pending Completion of Judicial Proceedings. Thus, this Committee ought to require the Responoent to answer each count in the Statement in a timely manner: that is, within 14 days of the disposition of any appropriate Rule 12(a) motions, as required by Rule 12(b). This Committee need not address the question of deferral of these proceedings on the basis of Respondent's health until Rep. Flood has answered.

Further, where there is reasonable ground to believe that physical disability may prevent a criminal defendoant or a respondent from effectively participating in his own defense or may create an intolerable risk to his health or life, the evidentiary hearing on the matter ought to be held as close to the trial or hearing as is practical. United States v. Knohl, 374 F.2d 427, 437 (2d Cir. 1967).


At the present time, all that is required of the Responoent is a response to the charges in the Statement of Alleged Violations. As this Committee's Chairman wrote to Rep. Flood on August 23: "[This] is only a first step in the procedures, it should require only minimum participation on your part, and thereafter tne timing of the successive steps may be adjusted as your state of health compels." There is no evidence that the Respondent is incapable of admitting or denying the 25 counts of the Statement of Alleged Violations. This Committee ought to insist that he do so.

CONCLUSION

Your Special Counsel urges this Committee to deny tne present motion. Permanent physical impairment is not a ground for dismissal; even if it were, no evidence

has been submitted to demonstrate that Rep. Flood is physically impaired to the extent that he is permanently unable to participate in a hearing. To the contrary, the evidence available to the Committee supports the opposite conclusion. If this motion is construed as one to defer Committee action, it is improperly raised at this time, and ought not be considered.

Respectfully submitted,
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APPENDIX E

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MOTION TO PROVIDE RESPONDENT
WITH COUNSEL, WITHOUT COST
TO RESPONDENT

Respondent, Daniel J. Flood, through his counsel, Louis Geo. Feldmann, respectfully moves the Committee to provide to the Respondent, without cost and expense to him, counsel to consult with and to defend him in these proceedings, and in support thereof avers:

1. Respondent lacks the financial resources necessary to engage competent and qualified counsel.
2. Without the assistance of such counsel, Respondent is unable to adequately and fully defend himself against the charges brought against him in these proceedings.

Respondent respectfully refers the Committee to the Memorandum of Points and Authorities filed in support of this Motion.

Respondent respectfully requests the opportunity to be heard in support of this Motion.



Louis Geo. Feldmann

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF

REPRESENTATIVE DANIEL J. FLOOD,

Respondent

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION
TO THE COMMITTEE TO PROVIDE HIM WITH COUNSEL,
WITHOUT COST

The due process clause of the Fourteenth Amendment to the United States Constitution provides that no person may be deprived of his life, liberty and property without due process of law. In the event the Committee finds that the Respondent is guilty of the charges brought against him, its disciplinary action would necessarily adversely affect his life, liberty and property. In addition it could lead to expulsion from office proceedings in the House of Representatives pursuant to Article I, Section 5 of the Federal Constitution.

Any disciplinary action imposed on the Respondent by the Committee involves his fundamental constitutional rights to his office, and to his life, liberty and property under the Fourteenth Amendment to the United States Constitution and under Article VI of the Bill of Rights. Article VI guarantees to the accused in a criminal proceeding the right to counsel. The due process clause to the Fourteenth Amendment embodies the concept of right to counsel to a Respondent in this type of a proceeding before the Committee in the necessity for Respondent to be represented by counsel is even more critical than the necessity for counsel for a defendant in a criminal proceeding. In this type of Committee proceeding, the Committee functions as accuser, prosecutor, judge and jury from whose decision there is no established right of review; the Respondent is incompetent to defend himself in what would be comparable to the criminal prosecution without the safe-

guards provided by the Constitution. United States vs. Brewster, 33 L. Ed. 2d 507, 522.

The Fourteenth Amendment employs fundamental principles of liberty and justice which lie at the base of all of civil and political institutions. Gideon vs. Wainwright, 83 S. Ct. 792, 795, 1963.

A fair trial in a fair tribunal is a basic requirement of due process, In Re: Murchison, 75 S. Ct. 623. A fair trial requires effective assistance of counsel. Gideon case above cited.

For persuasive authority see: Withrow vs. Larkin, 421, US 35 95 S. Ct. 1456, 43 L. Ed. 2d, 712, where it was held that the due process requirement of a fair trial in a fair tribunal applies to administrative agencies which adjudicate as well as to courts.

Although the investigative function of Congress is entirely independent of the judicial branch of Government, Congress is bound to safeguard individual liberties protected by the Bill of Rights (from separate opinion by Warren, Ch. J., and Douglas, J.) Hutcheson vs. United States, 369, US 599, 82 S. Ct. 1005, 8 L. Ed. 2d. 137.

It is the duty of the courts to insure that the specific guaranties of liberty are preserved for witnesses before a legislative body just as they are guarded for the benefit of defendants in a criminal court trial. (from separate opinion by Warren, Ch. J., and Douglas, J.) Hutcheson vs. United States, above cited.

By reason of the foregoing, Respondent is entitled to have the Committee provide him with counsel, without cost.


Louis Geo. Feldmann

He further states that he has been informed by the Commercial part of the Bank that on the basis of the personal property no further loans can be made to Daniel J. Flood.

Edward W. Jones, III

Edward W. Jones, III

Sworn to and subscribed before me
this 17th day of September, 1979.

Ella T. Zueger

Notary Public

ELLA T. ZUEGER, Notary Public
Hazleton, Luzerne County, Pa.
My Commission Expires Feb. 6, 1983

C6, 1979

LIST OF ASSETS FOR FOLDER

PAGE 1

400504700	FLOCD D J F		INV CBJ 3	INV PWR 2
SET NUMBER	PAR/SHARES	ASSET DESCRIPTION	A.C.V.	P R AMTN
7912537UM7	50	US SVGS BD SER E DT 2-78 DUE 2-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UN5	50	US SVGS BD SER E DT 3-78 DUE 3-83 6.0000% MATLRING 0-00-00	37.50	0 4 0000
7912537UP0	50	US SVGS BD SER E DT 4-78 DUE 4-83 6.0000% MATLRING 0-00-00	37.50	0 4 0000
7912537UC8	50	US SVGS BD SER E DT 5-78 DUE 5-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UR6	50	US SVGS BD SER E DT 6-78 DUE 6-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537US4	50	US SVGS BD SER E DT 7-78 DUE 7-83 6.0000% MATLRING 0-00-00	37.50	0 4 0000
7912537UT2	50	US SVGS BD SER E DT 8-78 DUE 8-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UU9	50	US SVGS BD SER E DT 9-78 DUE 9-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UV7	50	US SVGS BD SER E DT 10-78 DUE 10-83 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UW5	50	US SVGS BD SER E DT 11-78 DUE 11-83 6.0000% MATLRING 0-00-00	37.50	0 4 0000
7912537UX3	50	US SVGS BD SER E DT 12-78 DUE 12-83 6.0000% MATLRING 0-00-00	37.50	0 4 0000
7912537UY1	50	US SVGS BD SER E DT 1-79 DUE 1-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537UZ8	50	US SVGS BD SER E DT 2-79 DUE 2-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VA2	50	US SVGS BD SER E DT 3-79 DUE 3-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VB0	50	US SVGS BD SER E DT 4-79 DUE 4-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VC8	50	U S SVGS BD SER E DT 5-79 DUE 5-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VD6	50	US SVGS BD SER E DT 6-79 DUE 6-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VE4	50	U S SVGS BD SER E DT 7-79 DUE 7-84 6.0000% MATLRING 0-00-00	37.50	0 4 CC00
7912537VF1	50	US SVGS BD SER E DT 8-79 DUE 8-84 6.0000% MATLRING 0-00-00	37.50	0 4 0000

1974

LIST OF ASSETS FOR FOLDER

PAGE 2

NUMBER	PAR/SHARES	ASSET DESCRIPTION	A.C.V.	P R AMTN
C5C47C6 FLOCD D J F			INV OBJ 3	INV PWR 2
TOTAL SUB-CLASS 07			712.50	
361A76	5,000	DELAWARE RIVER PORT AUTH 1ST SERIES 5.6250% MATLRING 1-15-09 HELD BY LOCATION NO. 1	4,707.03	0 0 C000
268AUB	5,000	JCHNNSONBURG PA WTR E SWR AUTH REV 6.5000% MATLRING 12-15-13 HELD BY LOCATION NO. 1	5,014.44	0 0 C000
579CP7	5,000	NEW BRIGFTCN AREA SCH AUTH SCH BLDG REV 6.0000% MATLRING 2-01-95 HELD BY LOCATION NO. 1	5,038.33	0 0 C000
722AC9	10,000	NORTHAMPTON PA BUCKS CNTY SWR REV 6.2000% MATURING 11-01-13 HELD BY LOCATION NO. 1	9,490.41	0 0 C000
170KZ6	5,000	PENNSYLVANIA ST HIGHER EDL FACS AUTH COLLEGE & UNIV REVS SER 5 5.7500% MATURING 1-01-07 HELD BY LOCATION NO. 1	5,028.74	0 0 C000
93AW6	5,000	PENNSYLVANIA ST IND DEV AUTH 7.7500% MATLRING 7-01-90 HELD BY LOCATION NO. 1	5,133.37	0 0 C000
91CW0	5,000	WILLIAMSPORT MUN WTR AUTH WTR REV 5.7000% MATLRING 1-01-92 HELD BY LOCATION NO. 1	4,727.58	0 0 C000
TOTAL SUB-CLASS 08 <i>Municipal</i>			39,139.90	
TOTAL CLASS 10			39,852.40	
50011	22,931.0900	UPB TRUST FIDUCIARY SAVINGS ACCOUNT	22,931.09	0 0 C000
50199	1	UPB SAVINGS PASSBOOK #01-015-888-9	1.00	0 4 C000
TOTAL SUB-CLASS 02			22,932.09	
51939	2,000	1ST VALLEY BANK 7.25% DT 12-31-73 4 YEAR AR #6752 1-C	2,000.00	0 4 C000
51944	2,000	1ST VALLEY BANK 7.5% DT 2-5-75 DUE 2-5-81 #10979 1-C	2,000.00	0 4 C000
TOTAL SUB-CLASS 06			4,000.00	
TOTAL CLASS 22			26,932.09	
48104	142	FIRST VALLEY CORPRCATION HELD BY LOCATION NO. 1	6,242.00	0 5 C000
48104	1,000	FIRST VALLEY CORPRCATION HELD BY LOCATION NO. 50	2.00	0 5 C000
TOTAL SUB-CLASS 15			6,244.00	

C6, 1979

LIST OF ASSETS FOR FOLDER

PAGE 3

400504700	FLOOD D J F	INV OBJ 3	INV Pwr 2
SET NUMBER	PAR/SHARES	ASSET DESCRIPTION	A.C.V. P R AMTN
0561051103	1,000	PALAKER CCRP	8,000.00 0 4 0000
0798407102	502	SAN JUAN RACING ASSN INC	1,565.00 0 4 0000
0560402105	19	WESTINGHOUSE ELEC CCRP	1,225.17 0 5 0000
		TOTAL SUB-CLASS 20	10,790.17
		TOTAL CLASS 40	17,034.17
4990350305	1	COMBINED INS CC #26099692 FV \$15M ACCIDENTAL DEATH DANIEL J FLOOD INS UPB TR U/A CT 2-26-78	1.00 0 0 0000
4990350306	1	COMBINED INS CC #34576383 FV \$4M ACCIDENTAL DEATH DANIEL J FLOOD INS UPB TR U/A DT 2-26-78	1.00 0 0 0000
4990350307	1	COMBINED INS CC #19142649 \$5M ACCIDENTAL DEATH DANIEL J FLOOD INS UPB TR U/A CT 2-26-78	1.00 0 0 0000
4990350308	1	CATHOLIC KNIGHTS OF ST GEORGE #74939 FV \$500 DANIEL J FLOOD INS UPB TR U/A DT 2-26-78	1.00 0 0 0000
4990350309	1	MUTUAL LIFE INS #7668410 FV \$5M PREFERRED RISK MODIFIED LIFE DANIEL J FLOOD INS UPB TR U/A DT 2-26-78	1.00 0 0 0000
4990350310	1	MUTUAL LIFE INS #6304483 FV \$25M EXECUTIVE EQUITY LIMITED PAY LIFE DANIEL J FLOOD LPB TR U/A DT 2-26-78	1.00 0 0 0000
4990350311	1	MUTUAL LIFE INS #7668411 FV \$5M PREFERRED RISK MODIFIED LIFE DANIEL J FLOOD INS UPB TR U/A CT 2-26-78	1.00 0 0 0000
4990350312	1	FED EMPLOYEES GROUP LIFE INS REG INS FV \$60M DANIEL J. FLOOD LPB TR U/A DT 2-26-78	1.00 0 0 0000
2990350098	300	LITTLE THEATER OF W-B INC LEBS SEP 1955 2% DUE ON DISSOLUTION	1.00 0 4 0000
ASSET NUMBER	PAR/SHARES	ASSET DESCRIPTION	A.C.V. P R AMT:
		TOTAL CLASS 50	5.00
		TOTAL ASSETS	83,827.66

APPENDIX F

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO PROVIDE RESPONDENT
WITH COUNSEL, WITHOUT COST TO RESPONDENT

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Special Counsel to the
Committee on Standards of
Official Conoact
United States House of
Representatives

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO PROVIDE RESPONDENT
WITH COUNSEL, WITHOUT COST TO RESPONDENT

Respondent, through counsel, has moved this Committee to provide him with counsel to defend him against the charges presented in the Statement of Alleged Violations, passed unanimously by this Committee on June 7 of this year. In support of his motion, Respondent avers that he "lacks the financial resources necessary to engage competent and qualified counsel" and that without such counsel he is "unable to adequately and fully defend himself" in this matter.

Your Special Counsel opposes the granting of this motion on two grounds: First, no authority exists to support Respondent's proposition that a Representative lacking financial resources has a right to have counsel appointed for his defense in proceedings before this Committee. Second, Respondent has not demonstrated that he is in fact sufficiently lacking in financial resources

as to justify the appointment of counsel without cost to him. In addition, your Special Counsel would point out to this Committee that this motion is not one contemplated by Rule 12(a) as a response to a Statement of Alleged Violations, and thus this Committee may require a response to the Statement of Alleged Violations before addressing this motion.

STATEMENT OF FACTS

From January 15 through February 3, 1979, Rep. Flood was tried on eleven counts of bribery, conspiracy, and perjury in the United States District Court for the District of Columbia. Attorneys Axel Kleiboemer and Walter Fleischer entered appearances on behalf of the Congressman during that trial. No request was made by Rep. Flood, under Rule 44 of the Federal Rules of Criminal Procedure or 18 U.S.C. §3006 for appointment of counsel. Because a unanimous verdict could not be reached, a mistrial was declared on February 3 by United States District Court Judge Oliver Gasch. A retrial has been scheduled several times since then, but, because of health problems suffered by Rep. Flood, has not yet been held. At this time, Rep. Flood has not made an application to Judge Gasch for appointment of counsel to defend him against the criminal charges.

Your Special Counsel contacted Mr. Kleiboemer, Rep. Flood's principal criminal defense attorney on May 2, 1979, after this Committee unanimously passed a motion to convene an inquiry into the possibility of violations of House Rules by Rep. Flood. The Congressman's rights under Rule 11(a) of this Committee's Rules of Procedure were explained to Mr. Kleiboemer at that time. Mr. Kleiboemer

informed your Special Counsel that he was uncertain whether he would represent Rep. Flood before this Committee. In a letter to your Special Counsel, dated June 1, 1979, Mr. Kleiboemer stated that he had been "informed that steps have been taken to find new counsel for Mr. Flood to represent him before the Committee."

When this Committee unanimously adopted a 21-Count Statement of Alleged Violations on June 7, 1979, Kleiboemer refused to accept service on behalf of Rep. Flood. This Committee's Staff Director was advised by Mr. Kleiboemer that he would not be serving as the Respondent's counsel in the present matter and that service ought to be made on Ms. Helen Tomascik, Rep. Flood's Administrative Assistant.

Since that time, this Committee's Chairman has repeatedly urged Rep. Flood to retain counsel. In letters dated June 11 and June 19, 1979, the Chairman urged the Respondent to secure counsel. On July 17, 1979, the Chairman reminded attorney Kleiboemer of Rep. Flood's failure to retain counsel as of that date, and warned that "any continuing failure to secure counsel cannot serve as the basis for further delay beyond the date dictated by the state of Rep. Flood's health." In a letter to the Respondent, dated August 23, 1979, the Chairman took note of the difficulties Rep. Flood was experiencing in retaining counsel and offered assistance if the difficulties persisted. To the knowledge of your Special Counsel, no such assistance has been requested.

On September 6, 1979, this Committee was informed by a representative of the Respondent that attorney Louis Geo. Feldmann, of Hazelton, Pennsylvania, would prepare

the Rule 12(a) responses to the Statement of Alleged Violations on behalf of Rep. Flood. Attorney Felomann did in fact timely file Rule 12(a) motions on September 28, 1979, but he also moved to enter only a limited appearance before this Committee, limited to the making of these motions. Mr. Feldmann indicated in his motion that he did not intend to represent the Respondent in any other aspect of this Committee's proceedings.

In the present motion, it is urged that Rep. Flood lacks the financial resources to retain counsel for his defense before this Committee. An affidavit signed by Mr. Edward W. Jones, II, Vice President & Trust Officer of the United Penn Bank, accompanies the motion. The substance of this affidavit is that the bank holds \$83,827.66 in personal property assets owned by Rep. Flood and that upon information and belief, Rep. Flood owns no other assets except for a home in Wilkes-Barre and a parcel of land in Bear Creek. The affidavit also stated that the bank earlier had liquidated \$52,000 in personal property assets and distributed same to Rep. Flood, and that a \$50,000 loan has been made by the bank to the Congressman. No affidavit from the Respondent is attached to the motion.

The Respondent's income is unknown to your Special Counsel. However, it is known that Rep. Flood continues to draw his Congressional salary. Further, on July 23, 1979, the Respondent informed this Committee's Chairman that friends were endeavoring to raise funds for legal counsel to represent him before this Committee. Your Special Counsel is unaware of the amount of funds this effort has raised.

ARGUMENT

I.

NEITHER THE RIGHT TO COUNSEL CLAUSE OF THE SIXTH AMENDMENT OR THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES GRANTS A MEMBER OF CONGRESS THE RIGHT TO APPOINTMENT OF COUNSEL, WITHOUT EXPENSE, FOR REPRESENTATION BEFORE THIS COMMITTEE, EVEN IF THE MEMBER IS UNABLE TO AFFORD COUNSEL.

In relevant part, the Sixth Amendment to the Constitution of the United States provides: "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence." The United States Supreme Court has construed this clause to mean that federal defendants unable to employ an attorney have a right to have one provided to them by the court. Johnson v. Zerbst, 304 U.S. 458 (1938). Later, the Supreme Court extended the right of appointment of counsel to indigent criminal defendants in state criminal prosecutions under the Fourteenth Amendment's due process protection. Gideon v. Wainwright, 372 U.S. 335 (1963). However, since the proceedings before this Committee constitute neither a criminal prosecution (Sixth Amendment) nor a state action (Fourteenth Amendment), these two amendments afford no protection to the Respondent here.

The only provision of the Constitution which might provide the type of right Respondent asserts is the Fifth Amendment's due process clause: "No person shall...be deprived of life, liberty, or property, without due process of law." However, the Fifth Amendment has only been construed to require the appointment of counsel to indigents in proceedings in which the individual's

liberty is at stake. For example, an indigent has been found entitled to the appointment of counsel at a parole revocation hearing. Earnest v. Willingham, 406 F.2d 681, 684 (10th Cir. 1969). When indigent defendants are faced with the possibility of imprisonment in civil contempt proceedings, they too are found entitled to appointment of counsel. United States v. Anderson, 553 F.2d 1154 (8th Cir. 1977); United States v. Sun Kung Kang, 468 F.2d 1368 (9th Cir. 1972).

In proceedings in which there exists no risk of loss of personal liberty, courts have acknowledged, at most, that the individual has a right to retain an attorney. Even this right does not always attach; the determination of when the due process right to counsel attaches depends upon the nature of the proceeding and the consequences which may result from the proceeding. Cf. Watkins v. United States, 354 U.S. 178, 188 (1957).

In Goldberg v. Kelly, 397 U.S. 254, 270 (1970), the United States Supreme Court determined that recipients of funds under the AFDC program had the right to be represented by counsel at a hearing, before their benefits were terminated. However, the Court in Goldberg explained: "We do not say that counsel must be provided at the pretermination hearing, but only that the recipient must be allowed to retain an attorney if he so desires." Similarly, in Ferguson v. Gathright, 485 F.2d 504, 508 (4th Cir. 1973), cert. denied 415 U.S. 933 (1974), the court denied the plaintiff the right to appointed counsel in a hearing regarding the possible revocation of his driver's license. Even under 5 U.S.C. §555(b) of the Administrative Procedure

Act, which explicitly entitles respondents to appear with counsel, courts have not found a requirement that counsel be appointed. Nees v. S.E.C., 414 F.2d 211 (9th Cir. 1969).

There is no precedent for the appointment of counsel to defend a Member of Congress who is the subject of a proceeding by this Committee. Respondent's motion cites no precedents; your Special Counsel's review of the Committee's previous investigations also reveals none. Although Congress has appropriated funds for counsel for a Member whose election was contested, it has never done so for respondents before this Committee. Since the liberty of respondents before this Committee is never at stake, it must be concluded that appointment of counsel is not constitutionally or otherwise required.

II.

EVEN IF THE FIFTH AMENDMENT DID REQUIRE THE APPOINTMENT OF COUNSEL TO MEMBERS OF CONGRESS FINANCIALLY UNABLE TO PROVIDE THEIR OWN, THE RESPONDENT HAS FAILED TO PROVE THAT HIS FINANCIAL SITUATION WARRANTS SUCH AN APPOINTMENT.

There has been no showing by the Respondent that he is without resources to retain counsel. Rep. Flood has not revealed to this Committee his entire financial condition. An individual's entire financial picture must be examined in order to make the factual determination of whether the individual is unable to retain an attorney. Glenn v. United States, 303 F.2d 536, 542 (5th Cir. 1962); United States v. Anderson, 567 F.2d 839, 840 (8th Cir. 1977). The Criminal Justice Act of 1964, 18 U.S.C. §3006(A)(b), requires courts to make an "appropriate inquiry" into a

defendant's finances when he claims that he is unable to afford counsel. Courts have held that when a defendant refuses to provide the information necessary to make such an inquiry, he is not entitled to the appointment of counsel. United States v. Kaufman, 452 F.2d 1202 (4th Cir. 1971), cert. denied 405 U.S. 989 (1972).

Rep. Flood has failed to provide this Committee with a full and detailed accounting of his personal finances upon which it can base an informed, factual decision as to his indigency. The present motion was accompanied only by an affidavit from Edward W. Jones, II, Vice President and Trust Officer of the United Penn Bank, and by a bank print-out listing Respondent's assets. The affidavit reveals that Rep. Flood owns substantial assets: over \$80,000 in personal property, a home in Wilkes-Barre, and a parcel of land in Bear Creek. Beyond that it cannot speak because the affiant admits to having no first hand knowledge that these assets constitute the complete holdings of the Respondent.

Rep. Flood has not provided this Committee with a personal affidavit detailing his financial condition. Neither has an audit been submitted regarding his current assets and liabilities. Further, there has not even been a representation made by Rep. Flood that the material attached to his memorandum represents a complete accounting of his finances.

Based upon the documents currently before this Committee, it is evident that Mr. Flood does not lack the financial resources necessary to qualify for the appointment of counsel. Courts have differed as to what constitutes indigency for purposes of court-appointed counsel; there is no specific guideline or standard which is employed. However,

the defendant has the burden of proving his indigency. Anderson, supra at 840. The accused does not have to be totally devoid of resources in order to qualify as an indigent; it is sufficient if he is substantially inhibited from asserting a right or claim due to a lack of financial resources. Whittington v. Gaither, 272 F. Supp. 507, 512 (N.D. Tex. 1967). The Criminal Justice Act simply requires the appointment of counsel when the defendant is "financially unable to obtain counsel." The determination of indigency is made on a review of the facts of each case and rests on an analysis of a variety of factors including real or personal property, employment benefits, annuities, pensions, outstanding debts and extent of financial obligations.

The limited material presented by Respondent clearly demonstrates that Mr. Flood hardly qualifies as an indigent. In addition to the over \$80,000 in personal property, the house, and real estate holding owned by Rep. Flood, as a Member of the House of Representatives, he continues to draw his full salary. Furthermore, Rep. Flood has informed this Committee's Chairman that a trust fund has been established by friends to raise money for his defense before this Committee. Upon a review of the facts available to this Committee, it cannot conclude that the Respondent is unable to afford counsel.

III.

THE PRESENT MOTION IS NOT ONE
 CONTEMPLATED BY RULE 12(a) AS A RESPONSE
 TO A STATEMENT OF ALLEGED VIOLATIONS,
 AND THUS THIS COMMITTEE IS FREE TO REQUIRE
 THE RESPONDENT TO ANSWER THE STATEMENT'S
 TWENTY-FIVE COUNTS BEFORE DISPOSING
 OF THIS MOTION.

Rule 12(a) of this Committee's Rules of Procedure explicitly limits the types of appropriate responses to a

Statement of Alleged Violations transmitted under Rule 11(b)
 Rule 12(a) specifies:

The response shall be by way of answer or motion, shall be in writing and signed by the respondent or his counsel, and shall be limited to the following:

- (1) An admission to or denial of, under oath, each count set forth in the Statement...
- (2) An objection to any count in the Statement on the grounds that it fails to state facts which constitute a violation of the Code of Official Conduct or any other applicable law, rule, regulation, or other standard of conduct.
- (3) An objection to the jurisdiction of the Committee to consider the allegations contained in the Statement.
- (4) A motion for a bill of particulars.
- (5) An objection to the participation of any member of the Committee in consideration of the allegations contained in the Statement on the grounds that the member cannot render an impartial and unbiased decision. The Committee member against whom the objection is made shall be the sole judge of his qualifications. A motion under this paragraph is not in lieu of an answer.

The present motion does not fall within any of the foregoing categories. Rule 12(a) continues: "Except for good cause shown, no pleading or motion not described in paragraphs (1) through (5) will be considered by the Committee...." Respondent has failed to show good cause as to why this motion should be considered at this time by the Committee. For that reason, it would be justifiable for this Committee to summarily reject this motion at the present time.

However, if this Committee wishes to consider the merits of the present motion notwithstanding the Respondent's failure to show good cause, it ought not permit this consideration to delay the answer to the


Statement of Alleged Violations. Under Rule 12(b) of this Committee's Rules of Procedure, the Respondent has 14 days to answer each count in the Statement not dismissed by the Committee under Rule 12(a) motions. Since the present motion is not a proper Rule 12(a) motion, this Committee ought to direct the Respondent to make his answer within the required 14 days, even if this motion has not been addressed.

CONCLUSION

Your Special Counsel urges this Committee to deny the present motion. Further, this Committee is urged to require the Respondent to submit an answer to the Statement of Alleged Violations upon this Committee's disposal of any proper Rule 12(a) motions, and not wait until it disposes of the present motion.

Respectfully submitted,
McCANDLESS & BARRETT

By:


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Special Counsel to the
Committee on Standards of
Official Conduct
U.S. House of Representatives

APPENDIX G

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

SUPPLEMENTAL BRIEF RE. MOTION TO
PROVIDE RESPONDENT WITH COUNSEL,
WITHOUT COST TO RESPONDENT

Louis Geo. Feldmann, Esq.
1009 Northeastern Bldg.
Hazleton, PA. 18201
(717-454-2406)

Specially appearing for
Respondent before the
Committee on Standards of
Official Conduct
United States House of
Representatives

LGF/jay - 11/6/79 - 1/3

BEFORE THE
 COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
 UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
 REPRESENTATIVE DANIEL J. FLOOD,
 Respondent

SUPPLEMENTAL BRIEF RE.
 MOTION TO PROVIDE RESPONDENT
 WITH COUNSEL, WITHOUT COST
TO RESPONDENT

This Committee is now faced with the question of whether or not they are going to order Congressman Flood (a Member of the House of Representatives from 1943 to the present date, with the exception of two terms) TO APPEAR BEFORE THIS COMMITTEE WITHOUT COUNSEL.

As I stated to this Committee at the previous hearing, I, personally, have very strong feelings about this matter.

First of all, the trend of the Supreme Court of the United States and of other Courts, has been towards requiring Counsel for every person who appears before them.

Some of the language in the Opinions indicates that this resulted from the so-called "Allan Report", which Report was written by the Attorney General's Committee on Poverty and the Administration of Criminal Justice.

That Report states: "Poverty must be conceived as a relative concept. An impoverished accused is not necessarily one totally devoid of means. A problem of poverty arises for the system of criminal justice when at any stage of the proceedings the lack of means of the accused substantially inhibits or prevents the proper assertion of a right or claim."

Counsel for the Committee has raised the question that Courts have decided in certain cases that it was not necessary to appoint counsel. I agree with that statement, but I must point out to this Committee that these cases involve things that have been defined as "PRIVILEGES" and not "RIGHTS".

It would certainly appear that service in the Congress of the United States is not only a right, but a very distinguished RIGHT. It is given by the people, in the case of the House of Representatives, by their vote.

In the Withrow vs. Larkin case, 421 US 35, 95 S. Ct. 1456, 43 L. Ed. 2d, 712, it was held that due process requirement of a fair trial in a fair tribunal applies to Administrative Agencies as well as to Courts.

It was further held in a separate Opinion by Chief Justice Warren and Justice Douglas (Hutcheson vs. the United States, 369 US 599, 82 S. Ct. 1005, 8 L. Ed. 2d 137) that although the investigative function of the Government is entirely independent of the Judicial Branch of the Government, Congress is bound to safeguard individual liberty protected by the Bill of Rights.

(The above two cases were quoted in Respondent's original Brief).

Taking these statements together with the Allan Report quoted above, they seem to stand for the proposition that: where the nature of proceedings are highly technical (as they are in this case) it is not a simple matter of defense. There must be skilled counsel. There must be representation, investigation and many documents must be reviewed.

Add to this the situation where a man is handicapped by ill health. He especially needs competent counsel to help him to prepare his defense and to enable him to be heard which is a due process requirement.

We previously put in this record at the last hearing, two weeks ago, that Congressman Flood had spent approximately two-thirds of the elapsed period of the year 1979 in the hospital. Mr. Flood was only released from the hospital last Friday, November 2, 1979.

Thus, the Committee must face two decisions:

1. Will they see that a fellow member's, of the Congress, rights are protected by providing competent counsel.
2. To determine when Congressman Flood will be required to begin his defense before this Committee.

This latter decision raises the question of his ability to do the following:

1. Assist counsel in the preparation of the case and preparing the necessary Response to the Committee's allegations against him,
2. To be able to attend the hearings in this matter.
3. To be able and competent to testify at said hearings.

The Courts have recognized that due process required by the United States Constitution is not a rigid but a flexible concept and that the right to counsel may be intertwined with due process.

The Courts have been continually expanding the right to counsel. The Supreme Court held that absent a valid waiver, no person could be imprisoned for any offense unless he was represented by counsel at his trial. *Argersinger vs. Hamlin*, 407 US 25, 92 S. Ct. 2006 (1972).

In this case, the offense was a misdemeanor which carried a very small imprisonment penalty and the Court held that no matter how small, the defendant had a right to counsel.

In a recent case (*Salas vs. Cortez*, 154 Cal. Reporter 529, 593 Pacific 2d 226 (1979) the California Supreme Court held that

under the due process clause of the Constitution, the appointment of counsel to represent indigent defendants in paternity proceedings where the State is a party, is required.

It should be noted that these proceedings were civil and not criminal in nature.

In the above case, the Court stated that: "An adjudication of paternity may profoundly affect a person's life. It may disrupt an established family and damage reputations."

In the case which this Committee has before it, it is hard to imagine anything that would more damage one's right to the pursuit of happiness than "an adjudication by this Committee that Congressman Flood was guilty of the allegations made against him."

The Courts have always held: "Liberty for the purpose of the 14th Amendment is not confined to mere freedom from bodily restraint, but extends to the full range of conduct which the individual is free to pursue, including the right to practice any of the common occupations of life and to have others engage such individual to perform those acts which are his occupation." Shaw vs. Hospital Authority of Cobb County 507 Federal 2d 625 (1975).

The Supreme Court of the United States in Boddie vs. Connecticut 401 US 371, 91 S. Ct. 780 (1971) further buttressed the "right to due process".

The Supreme Court as early as 1957 held that the protection in the Bill of Rights was applicable to a House Committee Investigation. Watkins vs. United States 354 US 178, 77 S. Ct. 1173 (1957).

What I have tried to state to the Committee is that in addition to the 6th Amendment of the Constitution of the United States, there is also the necessity of due process. Under the circumstances in this case, which is a highly complex matter and in order that Congressman Flood be given an opportunity to be

heard, the necessity follows that he needs competent counsel to advise him on these matters. In order to get that counsel, this Committee should undertake to provide the necessary funds or in the alternative to provide COMPETENT COUNSEL, satisfactory to Congressman Flood.

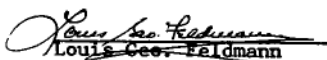
WITHOUT THIS, THERE CAN BE NO DUE PROCESS.

I respectfully submit to the Committee that before making any decision to proceed with this case, at this time, the Committee should first determine the total physical and mental condition of the Congressman.

The question would then arise, can Congressman Flood, even with counsel, properly defend himself, at this time.

After having made that determination, the Committee should either continue this matter for an indefinite period or immediately take steps so that the Congressman can have competent counsel.

Respectfully submitted,


Louis Geor. Feldmann

Specially appearing for Respondent

APPENDIX H

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of
REPRESENTATIVE DANIEL J. FLOOD,

Respondent.

MOTION TO DEFER COMMITTEE ACTION
PENDING COMPLETION OF JUDICIAL PROCEEDINGS

Representative Daniel J. Flood, by undersigned counsel, respectfully requests that this Committee defer any further action on this matter until the trial of his criminal case is completed. This Motion is filed pursuant to Committee Rules 12(a) and 12(e) (1)(B).

The Committee is referred to Respondent's Memorandum of Points and Authorities filed in support of this Motion.

Respondent respectfully requests the opportunity to be heard in support of this Motion.

Respectfully submitted,


Louis Geo. Feldmann

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,

Respondent

IN RE: Motion to Defer Committee Action
Pending Completion of Judicial Proceedings

RESPONDENT'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF HIS MOTION
TO DEFER COMMITTEE ACTION PENDING
COMPLETION OF JUDICIAL PROCEEDINGS

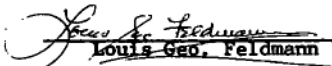
In its report involving expulsion proceedings against Congressman Hishman (H. Rep. 94-1477 94th Congress, 2nd Session September 7, 1976), the Committee said: "Historically, when a criminal proceeding is begun against a Member, it has been the custom of the House to defer action until the judicial proceeding is final. The Committee recognized the soundness of this course of action when it reported House Resolution 46 (94th Cong. 1st sess., H. Rep. No. 94-76) adopting Rule XLIII, paragraph 10.

In its report, the Committee stated it would act where an allegation is that one has abused his direct representational or legislative position - or his official conduct has been questioned - but where the allegation involves a violation of statutory law, and the charges are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course.

Due process demands that an accused be afforded recognized safeguards which influence the judicial proceedings from its inception through final appeal. Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded upon appeal.

. . . . The Committee, while not taking a position on the merits of this case, concludes that no action should be taken at this time. We cannot recommend that the House risk placing itself in a constitutional dilemma for which there is no apparent solution. Id. at 4 (emphasis added)."

On the basis of the foregoing, the Committee should grant this Motion.


Louis Geo. Feldmann

APPENDIX I

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO DEFER COMMITTEE ACTION
PENDING COMPLETION OF JUDICIAL PROCEEDINGS

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Special Counsel to the
Committee on Standards of
Official Conduct
United States House of
Representatives

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL
IN OPPOSITION TO MOTION TO DEFER COMMITTEE ACTION
PENDING COMPLETION OF JUDICIAL PROCEEDINGS

Respondent, through counsel, has moved this Committee to "defer any further action on this matter until the trial of [Rep. Flood's] criminal case is completed." As sole authority in support thereof, Respondent cites a single House Report which involved expulsion proceedings against Rep. Andrew J. Hinshaw. In that case, under a significantly different set of facts, this Committee recommended that no action be taken while judicial proceedings were pending against the respondent.

Your Special Counsel has concluded that this authority is not controlling, and strongly recommends against the granting of this motion. -First, the motion is not timely; second, even if the motion is construed as a timely challenge to the jurisdiction of this Committee, it is totally without merit; third, precedent does not support the motion; and, fourth, public policy disfavors the granting of the motion.

STATEMENT OF FACTS

Investigation by this Committee and the United States Department of Justice into allegations of wrongdoing levied against the Respondent, Rep. Daniel J. Flood, began in early 1978. The Justice Department's investigation culminated in an indictment handed down by a Federal Grand Jury in Washington, D.C.

From January 15 through February 3, 1979, Rep. Flood was tried on 11 counts of bribery, conspiracy, and perjury. Because a unanimous verdict could not be reached, a mistrial was declared on February 3 by United States District Court Judge Oliver Gasch. A retrial was set for June 4. In the interim, this Committee, on May 2, 1979, unanimously passed a motion to convene an inquiry into the possibility of violations of House Rules by Rep. Flood.

The trial scheduled for June 4 did not take place as scheduled because of Rep. Flood's ill health. This Committee was formally notified of the delay by Mr. Kleiboemer, Rep. Flood's attorney for the criminal proceedings.

On June 7, 1979, this Committee unanimously adopted a 25-count Statement of Alleged Violations, under the provisions of Rule 11(b) of this Committee's Rules of Procedure. The Statement charged Rep. Flood with accepting over \$60,000 in bribes and with perjury before a Federal District Court. Rep. Flood was required to respond to the Statement by way of answer or motion within 21 days.

Due to continuing health problems (See Statement of Facts in the Memorandum of Special Counsel In Opposition To Motion To Dismiss Statement of Alleged Violations), the Respondent was given several extensions of time within which

to respond to the Statement of Alleged Violations. Those responses were timely submitted on September 28. The criminal trial date has also been postponed several times due to of Rep. Flood's poor health. The retrial is now scheduled for December 3, 1979.

ARGUMENT

I.

THE PRESENT MOTION IS AN INAPPROPRIATE
RESPONSE TO THE STATEMENT OF ALLEGED VIOLATIONS

Rule 12(a) of this Committee's Rules of Procedure explicitly limits the types of appropriate responses to a Statement of Alleged Violations transmitted under Rule 11(b). Rule 12(a) specifies:

The response shall be by way of answer or motion, shall be in writing and signed by the respondent or his counsel, and shall be limited to the following:

- (1) An admission to or denial of, under oath, each count set forth in the Statement....
- (2) An objection to any count in the Statement on the grounds that it fails to state facts which constitute a violation of the Code of Official Conduct or any other applicable law, rule, regulation, or other standard of conduct.
- (3) An objection to the jurisdiction of the Committee to consider the allegations contained in the Statement.
- (4) A motion for a bill of particulars.
- (5) An objection to the participation of any member of the Committee in the consideration of the allegations contained in the Statement on the grounds that the member cannot render an impartial and unbiased decision... A motion under this paragraph is not in lieu of an answer."

A motion to defer falls under none of the enumerated five paragraphs. This Committee's purpose in limiting motions at

this preliminary stage to those listed in paragraphs (2) through (5) is to achieve an orderly consideration of issues. Paragraph (5) deals with bias. It can easily be seen that an objection to the participation of a Member who is thought not to be impartial ought to be raised at the very start. Paragraphs (2), (3), and (4) deal with the sufficiency of the Statement itself or whether this Committee has jurisdiction to consider the Statement. The wisdom of these issues being raised and decided before a response is made to the Statement does not require explanation.

The motions recognized by Rule 12(a) are very different from the present one. The Respondent in the motion now before the Committee asks that this Committee defer its action. But it is the Respondent's turn to act, not this Committee's. This Committee is waiting for an admission to or denial of the 25 counts raised in the Statement of Alleged Violations. A more proper time to request a deferral of action by this Committee would be after an answer is made to the charges, and the question of holding a disciplinary hearing arises. The present situation is analogous to a judge asking a criminal defendant to plead to an indictment, and the defense attorney rising to move the court to postpone the trial date.

Although Rule 12(a) provides for exception to its rule that "no pleading or motion not described in paragraphs (1) through (5) will be considered by the Committee," it requires that "good cause" be shown. No good cause has been shown by the Respondent as to why this Committee ought to entertain the Respondent's motion at this time.

The issue raised by this motion did not escape the attention of the drafters of this Committee's Rules of Procedure. Rule 12(e)(1) contemplates the possibility of the Committee voting to defer action on the Statement of Alleged Violations if a judicial proceeding is pending, but only after a response to the Statement has been made. It was recognized at the time the rules were adopted that the logical time to grapple with the question of deferral would be after a response had been entered. Your Special Counsel, seeing no reason to depart from the sensible policy of this Committee to take up issues in a logical, orderly fashion, recommends that this Committee not consider the question of deferral at this time.

II.

IF THIS COMMITTEE CONSTRUES THE PRESENT MOTION AS A CHALLENGE TO ITS JURISDICTION TO CONSIDER THIS MATTER BECAUSE OF THE PENDENCY OF JUDICIAL PROCEEDINGS, THEN IT OUGHT TO DENY THE MOTION BECAUSE THIS COMMITTEE DOES HAVE POWER TO CONDUCT PROCEEDING AGAINST MEMBERS OF THE HOUSE OF REPRESENTATIVES NOTWITHSTANDING CONCURRENT JUDICIAL ACTION.

Respondent's motion very clearly does not challenge this Committee's jurisdiction over him. It does not assert that the fact of the pendency of judicial proceedings strips this Committee of the power to discipline a Member. The motion merely "respectfully requests" that this Committee defer action, and as reason therefore cites an instance in which this Committee chose to defer. In the matter of Andrew J. Hinshaw. Respondent's memorandum extensively cites H.R. REP. No. 94-1477, 94th Cong., 2d Sess. (1976), which accompanied this Committee's recommendation to the full House on the Hinshaw matter. That report unambiguously

expresses the view that this Committee or the full House could take action if such was its will. The recommendation to defer action resulted from "policy" consideration and "custom".

The power of Congress to discipline its own members is granted by Article I, Section 5, Clause 2 of the Constitution of the United States, which states: "Each House may determine the Rules of its Proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." This power is full and plenary, and is subject to a single qualification: two-thirds of the members of the acting House of Congress must vote to expel.

As long ago as 1914, the Committee on the Judiciary discussed the question of the extent of Congress' power under this clause. The particular question under discussion was the issue of punishing a Member for misconduct occurring before his election or in a former Congress. The Committee determined that the power of Congress admitted of no exceptions, other than the two-thirds requirement already mentioned. However, the Committee recognized that the question of power is quite a different matter than the question of policy:

In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective membership of the respective Houses of Congress, restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved.

H.R. REP. No. 570, 63d Cong., 2d Sess. (1914), quoted in the Matter of Rep. Charles C. Diggs, Jr., H.R. REP. No. 96-351, 96th Cong., 1st Sess. 4 (1979).

This power was granted to Congress in the Constitution to assure that it would have the means to protect its institutional integrity. The founding fathers thought it necessary to expressly empower Congress to discipline its own Members, not as a substitute for the power of courts to punish those who violate the criminal laws, but as an independent power for an independent purpose. Under Article III, criminal matters are assigned to the judiciary; under Article I, the discipline of errant Members of Congress is left to the Congress. Both branches of government have power to act when a Member of Congress commits wrongs which are both unlawful and which reflect discredit upon the House in which the Member sits.

The doctrine of separation of powers indicates that the power of Congress to discipline its own Members is concurrent with and equal to the power of the judiciary to punish wrongdoers in society. The United States Supreme Court has recognized that when Congress and the judiciary are both charged with responsibilities that involve the same matter, both may exercise their constitutional powers. For example, the Court in Sinclair v. United States, 279 U.S. 263, 295 (1929), upheld the right of Congress to conduct a hearing on matters delegated to it under Article IV, §3, notwithstanding concurrent litigation involving the same matter.

Although Congress has elected not to act in some situations in which judicial proceedings were pending, it has on other occasions acted despite the pendency of judicial proceedings. It must be emphasized that in those instances in which Congress elected not to act, its decision was not based on a lack of power, but rather on policy considerations. (These cases will be discussed, infra.) However, in two situations the House of Representatives has taken action against Members notwithstanding the pendency of judicial proceedings. This confirms that the House is fully aware that it retains jurisdiction over Members who are subject to pending judicial proceedings; the exercise of that power is simply a question of policy.

In the Matter of Victor L. Berger, the House voted to exclude a Congressman because of his violation of the Espionage Act of 1917. An appeal of his conviction was pending in the United States Court of Appeals at the time the House took its action. The Special Committee assigned to investigate the case reported that it "decided at the outset that it would not be governed by the action of the judge and jury...but would carefully consider all evidence...to determine for itself the question of whether or not Victor L. Berger was guilty of a violation of the Espionage Act,...and whether or not he is ineligible to a seat in the House of Representatives." VI Cannons Precedents, ¶56, at 52. The resolution of the Special Committee to exclude Rep. Berger was approved by the House. Because the House refused to seat Rep. Berger under Article I, §2, of the Federal Constitution, rather than discipline him--as here--under Article I, §5, the holding of Powell v. McCormack, 395 U.S. 486, suggests that the exclusion of

Rep. Berger was probably improper. However, that does not diminish the value of the Berger case as precedent establishing the power of Congress to proceed against a Member without deferral to judicial proceedings.

More recently, this Committee was confronted with the same question raised by the present motion in the Matter of Rep. Charles C. Diggs, Jr. Counsel for Rep. Diggs vigorously urged this Committee to defer action pending resolution of his appeal of a criminal conviction. This Committee soundly rejected Rep. Diggs' motion on May 23, 1979, by an 8-3 vote. Further, there is nothing to indicate that the three votes in favor of deferral were based on the theory that this Committee lacked the power to proceed.

Last, this Committee has implicitly recognized in its Rules of Procedure that it has power to take disciplinary actions against Members notwithstanding the pendency of judicial proceedings. Rule 12(e)(1) provides that this Committee may vote to defer action on the basis of an ongoing judicial proceeding, after the Statement of Alleged Violations has been answered by the respondent. This Rule recognizes that the issue may arise, and provides a procedure to resolve the issue. However, the Rule does not require that deferral be granted; it is clearly a discretionary decision. Also, the vote is provided for only after the answer to the Statement has been made. If this Committee had any doubts as to its power to act during the pendency of judicial proceedings, it undoubtedly would have permitted the issue to be raised at the very outset of its proceedings.

All available authority supports the view that this Committee is empowered to exercise its responsibility to administer and enforce standards of official conduct pursuant to H.R. Res. 1099, 90th Cong., 2d Sess. (1968), regardless of what the courts do. If this Committee wishes to defer action, that is a policy decision, not one required by law or precedent. The Rules of Procedure of this Committee provide for that policy decision to be made after the answer to the Statement of Alleged Violations has been submitted by the Respondent. Your Special Counsel recommends to this Committee that the established procedure be followed, and that this issue not be considered at the present time.

III.

AS A MATTER OF SOUND POLICY THE COMMITTEE
SHOULD NOT DEFER ACTION PENDING COMPLETION
OF JUDICIAL PROCEEDING.

Your Special Counsel has already demonstrated that the Respondent's Motion is an inappropriate response to the Statement of Alleged Violations and that even if the Motion is to be considered, it should be denied because this Committee has the constitutional power to act despite the pendency of judicial proceedings. These are the only conclusions that this Committee need reach. Rep. Flood ought to be required to respond to the Statement of Alleged Violations as Rule 12 requires. This does not mean that this Committee will rush into its investigation of the Respondent in competition with his criminal trial, which is set to begin on December 3. It means only that Rep. Flood will be required to make his initial response to the charges so that this Committee will be able to determine its course for future action.

However, it is important for this Committee to recognize that there are important public policy considerations that militate against deferring action regardless of the pendency of judicial proceedings. Should the judicial proceedings be delayed or again result in a hung jury, the Committee must be prepared to squarely confront the issue.

A.

The Committee Should Act Immediately
When Abuse of Legislative Position
Is Charged.

Your Special Counsel readily concedes that in some instances, such as the matter of Rep. Andrew J. Hinshaw and others, the House has, as a matter of policy, chosen to defer to concurrent judicial proceedings. However, these instances generally have not involved allegations that the Member has abused his "direct representational or legislative position," or that the wrongs involved "official conduct." The House has on many occasions distinguished these types of wrongs from those involving "a possible violation of statutory law." In the former case, the House has recognized that "public opinion could well interpret inaction as indifference on the part of the House." H.R. REP. No. 94-76, 94th Cong., 1st Sess. 2 (1975); See also H.R. REP. No. 93-616, 93d Cong., 1st Sess. (1973). The distinction raised in these reports, it must be pointed out, does not establish with finality the policy to be followed when a misconduct involving official duty also violates statutory law. But it is clear that Congress must be more sensitive and more concerned about misconduct which involves a direct abuse of office.

The charges in the Statement of Alleged Violations in this matter concern precisely the kind of official conduct that requires great concern by the House. Twenty-four of the 25 counts in the Statement charge the Respondent with the receipt of bribes in exchange for agreeing to use his official position to obtain economic benefits for certain organizations and individuals. Such activity is the essence of an abuse of representational capacity of the sort which Congress has the right--indeed the duty--to deal with expeditiously and firmly. The representational process is severely debased when a Member of Congress accepts money to exert his influence on behalf of private interests. This results, in turn, in dissolution of public confidence in this Body and a diminution of the integrity of this Body. Article I, Section 5, Clause 2 of our nation's Constitution was included precisely so that Congress could protect itself against such an assault to its institutional integrity.

The recent adoption by the full House of rules requiring financial disclosure, limiting outside earned income, limiting the use of franking privileges, and prohibiting unofficial office accounts clearly establishes an intent to better regulate the official conduct of House Members. This Committee must consistently demonstrate by its action that the spirit of unimpeachable ethics will not be permitted to lapse. It ought to bear in mind its own recent observation regarding deferred disciplinary action:

For the House to withhold any action whatever until ultimate disposition of a judicial proceeding could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period longer than the two-year term of the Member.

H.R. REP. No. 94-76, 94th Cong., 1st Sess. (1975).

In light of Congress' ever-increasing concern for its institutional integrity, deferral of disciplinary action to judicial proceedings ought not to be undertaken lightly. This is particularly true when, as here, the charges brought against a Member deal directly with abuse of his public trust.

B.

Past Precedent Is Consistent With
the Recommendation that this
Investigation Not Be Deferred.

The proceeding that is most analogous to the present investigation is the matter of Representative Charles C. Diggs, Jr. The violations of House Rules with which Rep. Diggs was charged arose from "essentially the same conduct which led to Rep. Diggs' indictment and conviction." H.R. REP. No. 96-351, 96th Cong., 1st Sess. 1 (1979). This Committee chose not to defer its investigation despite the fact that Rep. Diggs was actively pursuing an appeal from his conviction for mail fraud and false statements.

A resolution to expel Rep. Diggs was offered in the House on March 1, 1979, and on March 21 this Committee adopted a resolution to conduct an investigation. A motion to defer was filed by Rep. Diggs and was rejected by a vote of 9-3. On April 4, 1979, a Statement of Alleged Violations was adopted. Again Rep. Diggs filed a motion to defer Committee action pending resolution of judicial proceedings, which was denied by a vote of 8-3. Rep. Diggs responded with a general denial of the charges. On June 7, 1979, the Committee adopted a Statement of the Scope and Purpose of the Investigation. Oral argument on the judicial appeal was

heard before the United States Court of Appeals for the District of Columbia on June 11, even as preparations for the House investigation continued. The hearing was scheduled to begin June 25, 1979, but never got underway because Rep. Diggs admitted he was guilty of misuse of clerk-hire funds. The House adopted a resolution censuring Rep. Diggs and requiring that he repay the misappropriated funds. The Court of Appeals had not ruled at the time the Committee issued its report. Id.

Rep. Diggs' conduct involved misuse of his position as a Member of Congress, as do the allegations against Rep. Flood. It was entirely appropriate that this Committee not defer action pending resolution of the judicial proceedings. An entirely different situation would exist if the charges stemmed from common criminal activity, not involving a Member of Congress acting in his official capacity.

The instances in which action has been deferred pending resolution of judicial proceedings are distinguishable from the present case. In the Matter of Rep. Andrew J. Hinshaw, this Committee chose to defer action, but cautioned:

The Committee wishes to express clearly, however, that in this case its conclusion is based entirely on the instant set of facts and in no way implies that different circumstances may not call for a different conclusion. Having considered the facts of this particular case and recognizing that Representative Hinshaw has been convicted under a State law that while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress, it is the recommendation of the Committee... that House Resolution 1392 [to expel Representative Hinshaw] be not agreed to.

H.R. REP. No. 94-1477, 94th Cong., 2d Sess. 2 (1976) (emphasis added).

This case is clearly distinguishable because the charges against Rep. Hinshaw related to acts committed while he was a county assessor in California. In the present matter, the alleged violations are directly concerned with the official conduct of Rep. Flood. Further, the action deferred was not the investigation of Rep. Hinshaw's conduct, but rather the Committee's approval of the resolution for expulsion. Finally, action was somewhat less necessary to protect the integrity of the House since Rep. Hinshaw had not been nominated for reelection and he had agreed, in writing, to resign if he lost his appeal.

Similarly, in the Matter of Rep. John W. Langley, H.R. REP. No. 69-30, 69th Cong., 1st Sess. (1926), a special committee decided to delay expulsion until the Supreme Court took final action on his petition for certiorari, with the understanding that Rep. Langley would resign if his appeal were not successful. The risk of compromising the integrity of the House was further reduced because Rep. Langley refrained from participation in House business.

Last, in the Matter of Rep. John Dowdy, H.R. REP. No. 92-1039, 92d Cong., 2d Sess. (1972), Rep. Dowdy also promised not to vote or participate in House or Committee business. A letter to that effect was filed with the Speaker of the House. Further, Rep. Dowdy did not run for reelection.

In contrast, Rep. Flood has made no promises regarding his future legislative activities, either orally or in writing. Further, the Respondent has made no offer to resign if he is convicted in judicial proceedings. The Respondent apparently intends to retain his full prerogatives as a Member of the House and to fully participate in the legislative process as soon as his health permits.

C.

House Disciplinary Proceedings Do Not
Depend on the Outcome of Parallel
Criminal Prosecutions.

The core of the Respondent's argument for deferral of disciplinary action seems to be that if the Committee recommends discipline of some sort and if the Respondent is ultimately acquitted of the criminal charges against him, "the House could find itself in an extremely untenable position of having punished a member, at least to some degree, for an act that legally did not occur." H.R. REP. No. 94-1477, 94th Cong., 2d Sess. 4 (1975)(cited in Respondent's Memorandum). First, it must be understood that the House is far from actually imposing sanctions on Rep. Flood. All that is presently required is that Rep. Flood respond to the Statement of Alleged Violations. The concern voiced by the Respondent offers no reason to defer any current action by this Committee; at most it argues against final action. Such an argument is premature because it is possible that this proceeding will never reach the stage of final action.

Second, even the conclusion that an untenable situation would arise if the Respondent were disciplined by the House but not subsequently convicted in court is subject to serious challenge. It is based on the erroneous assumption that the alleged violations are identical with the criminal charges. Proceedings under Article I, Section 5, Clause 2 of the Constitution are not identical with criminal proceedings either in scope or purpose. A Committee investigation into the conduct of a Member is not subject to the same rules of evidence and procedure as is a criminal proceeding. The sanctions in the event of a finding of guilt are enormously different and reflect the

essential dissimilarity between the two proceedings. The Committee inquiry can result at most in the expulsion of a Member for his misconduct, while a criminal prosecution can result in imprisonment.

The power to discipline Members is crucial to the functioning of Congress. The power to expel extends not to all offenses under statutory or common law, but to all cases where the offense is "inconsistent with the trust and duty of a member." In Re Chapman, 166 U.S. 661, 669 (1897). One commentator has described the distinction as follows:

...[T]he question at issue in an expulsion proceeding is not as to guilt of a criminal character, but only as to unfitness for participation in the proceedings of the Congress. The determination of such question is solely for the House concerned; its decision and the grounds upon which it is based are not subject to any judicial scrutiny.

SCHWARTZ, A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES, Vol. I, §413. (1963).

Rep. Flood was indicted and will be tried for violations of specific sections of the Federal Criminal Code. The "acts" for which Rep. Flood will be tried are distinct in legal effect from "acts" which this Committee may find to be violations of the House of Representatives Code of Official Conduct or other appropriate rules of conduct. Criminal statutes are narrowly drawn, whereas the House has a broad mandate to discipline for "disorderly conduct."

A final point to be considered is the possible effect that the ultimate disposition of the criminal prosecution could have on House disciplinary proceedings. By arguing that this Committee should defer its action because he may be found "not guilty," of Federal criminal charges, the Respondent implies that such a verdict would require this

Committee to dismiss the Statement of Alleged Violations. In view of the foregoing discussion of the essential difference between the power conferred on the House under the Constitution and the Government's duty to prosecute for criminal acts, this conclusion is unwarranted. Conversely, a verdict of "guilty" would not mandate summary expulsion. If the House proceedings were dependent on the outcome of judicial proceedings, this Committee would become nothing more than a rubber stamp of the courts. That is not the charge of this Committee. The power of the House of Representatives to discipline its Members may be exercised despite the existence of concurrent criminal proceedings, and is not dependent on the outcome of such proceedings.

D.

The Potential Risk of Pre-Trial
Publicity Does Not Warrant Deferral
of Committee Action

Even though the Respondent did not argue in his Memorandum of Points and Authorities that the motion to defer should be granted on the ground that the publicity attendant to Committee hearings would adversely affect the Respondent's right to a fair trial, it is appropriate to consider the issue, as it is an argument for deferral that has been advanced in the past.

The risk that publicity surrounding this Committee's proceedings will have an adverse effect on Rep. Flood's retrial is speculative. At this stage in the proceedings, no decision has been made to conduct hearings. Further, Rep. Flood has already had one trial on the criminal charges; that trial had its own attendant publicity. In addition, one of the individuals who is alleged to have provided Rep. Flood with bribes has been tried recently,

and the press coverage made prominent mention of the Respondent. At this point, the additional risk of prejudicial publicity posed by this Committee's necessary pursuit of its business would be marginal.

Even assuming that there is a serious risk that publicity stemming from Committee hearings could have a detrimental effect on Rep. Flood's retrial, the degree of risk is not so great that it justifies deferral of Committee action. In Beck v. Washington, 369 U.S. 541 (1962), the conviction in a racketeering case was appealed because of adverse pre-trial publicity stemming in part from news coverage of a Senate investigation in which the defendant was a witness. In spite of the fact that news coverage of the hearings was quite heavy and included extremely disparaging remarks made by several Senators about Beck, the conviction was upheld. The Court did not suggest that the Senate should curtail its investigations in order to protect the witness' right to a fair trial at a later date.

The burden of protecting the Respondent from pre-trial publicity does not fall on this Committee. The Congress has its own Constitutional mandate to conduct its business on behalf of the American people. Disciplinary actions are a crucial part of that business. Federal courts have their own mandate to provide a fair trial, and adequate tools are available to the courts to protect a defendant's rights.

Courts are frequently confronted with the constitutional conflict between the press' right to report news and a defendant's right to a fair trial. The Supreme Court has held that rather than restrict the news media, the trial judge must use other means to "reduce the appearance of prejudicial material and to protect the jury from outside influence."

Sheppard V. Maxwell, 384 U.S. 333, 335 (1966). Such measures include a careful voir dire of the jury to determine whether members have not been unduly influenced, a delay of trial until the effects of prejudicial publicity have dissipated, and a change of venue to a place in which publicity has been less severe.

Ultimately, this Committee must balance the arguments for deferring action against the arguments for proceeding forthwith. At this point it is impossible to know with precision what the balancing factors will be. As has been mentioned, this Committee is not about to take any action which could prejudice the Respondent. It is the Respondent's turn to act by answering the Statement of Alleged Violations. The question of deferral will only arise when the Respondent has answered and disciplinary hearings must be scheduled. At that time, this Committee ought to balance the risk of prejudicing Rep. Flood's right to a fair trial against the Committee's responsibility to uphold the integrity of this House. For the present, your Special Counsel urges this Committee to withhold its decision until the deferral issue is squarely before it.

CONCLUSION

Your Special Counsel urges this Committee to deny the present motion. Under this Committee's Rules of Procedure, the motion is untimely brought, unless it is treated as a jurisdictional challenge. If it is so treated, then it ought to be denied for it is totally lacking in merit. The Committee's Rules provide for consideration of the issue of

deferral after the Respondent has answered. The orderly consideration of issues embodied by those rules requires that the Committee address the issue only when it is ripe. Therefore, this Committee should deny the motion and require the Respondent's answer.

Respectfully submitted,

McCANDLESS & BARRETT

By: David M. Barrett
David M. Barrett
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1707 H Street, N.W.
Suite 1005
Washington, D.C. 20006
(202) 223-8440

Special Counsel to the
Committee on Standards of
Official Conduct
U.S. House of Representatives

APPENDIX J

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MOTION TO DEFER COMMITTEE ACTION
PENDING A DETERMINATION OF RESPONDENT'S MENTAL
AND PHYSICAL CAPABILITY TO PARTICIPATE IN THE
PROCEEDINGS AND ASSIST IN MAKING A DEFENSE

Louis G. Feldmann
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1009 Northeastern Building
Hazleton, PA 18201
(717) 454-2406

Counsel's appearance being
limited in accordance with
Motion previously filed and
granted by Committee

LGF/kms 12/5/79

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of

REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MOTION TO DEFER COMMITTEE ACTION
PENDING A DETERMINATION OF RESPONDENT'S MENTAL
AND PHYSICAL CAPABILITY TO PARTICIPATE IN THE
PROCEEDINGS AND ASSIST IN MAKING A DEFENSE

Pursuant to the Committee's Rules of Procedure, Representative Daniel J. Flood, by undersigned counsel, respectfully requests that the Committee grant a continuance of the scheduled proceedings, pending a determination of respondent's present mental and physical capability to assist counsel, and be able to understand the proceedings, and comprehend the testimony, and fully participate in the proceedings in a meaningful way.

The Committee is referred to Respondent's Memorandum of Points and Authorities supporting the motion to defer committee action, (presented to Committee on October 24, 1979 and/or November 7, 1979), and supplemental documents relating to Representative Flood's present mental and physical condition.

Counsel also offers the attached letter of Dr. James L. Foy, M.D., dated December 3, 1979, outlining the present inability of Respondent to participate in his defense in any way as a result of a restricted stay in Georgetown University Medical Center's psychiatric in-patient service. This examination was in accordance with procedures and an agreement with the U.S. District Court for the District of Columbia dated December 3, 1979.

Counsel expects to be able to present to the Committee Expert Testimony (not previously presented, either in these proceedings, or before U.S. District Court for the District of Columbia) at the Committee session scheduled for 10:00 A.M., December 12, 1979, to support the position and contentions relating to Representative Flood's present mental and physical condition.

Respondent respectfully requests the opportunity for a hearing in support of this Motion.

Wherefore, Congressman Daniel J. Flood, by his Counsel, moves this Committee to defer these proceedings until his health allows him to participate and assist in making a defense.

Respectfully submitted,


Louis Geo. Feldmann

59-279 233

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE MOTION TO DEFER COMMITTEE ACTION
PENDING A DETERMINATION OF RESPONDENT'S MENTAL
AND PHYSICAL CAPABILITY TO PARTICIPATE IN THE
PROCEEDINGS AND ASSIST IN MAKING A DEFENSE

Louis G. Feldmann
Attorney at Law
1009 Northeastern Building
Hazleton, PA 18201
(717) 454-2406

Counsel's appearance being
limited in accordance with
Motion previously filed and
granted by Committee

LGF/kms 12/3/79

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of
REPRESENTATIVE DANIEL J. FLOOD,
Respondent.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE MOTION TO DEFER COMMITTEE ACTION
PENDING A DETERMINATION OF RESPONDENT'S MENTAL
AND PHYSICAL CAPABILITY TO PARTICIPATE IN THE
PROCEEDINGS AND ASSIST IN MAKING A DEFENSE

STATEMENT OF FACTS

Since February 5, 1979, Representative Daniel J. Flood has been admitted and discharged from Georgetown University Hospital on five different occasions, (see data attached).

Respondent has been hospitalized repeatedly for illnesses' totaling almost 208 days (as of Dec. 4, 1979), since February 5, 1979.

Respondent is presently under the medical care of a number of physicians for several major disorders.

See attached statements of James L. Foy, M.D., Barry A. Bukatman, M.D., Edward Janjigian, M.D. and Mary E. Reidy, Ph.D., which statements we respectfully request be made a part of the Record of the Proceedings in this case.

Congressman Flood, at this time, is a patient at Georgetown University Medical Center, and will enter the Medical Center's psychiatric in-patient service on Friday, December 7, 1979. This is in accordance with the procedures of an agreement with the U.S. District Court of the District of Columbia.

Respondent will remain a patient in the psychiatric unit for a period of at least two (2) weeks from this date. See attached letter of December 3, 1979 from James L. Foy, M.D. During this period, Representative Flood will undergo a series of psychiatric tests to determine whether he is able to assist his Counsel in preparation of his defense.

As a patient in the psychiatric clinic, Respondent will be unable to meet with attorneys or in any other manner communicate with the Committee.

The above is necessitated by the type of treatment that the Respondent will undergo, and also the procedures under the program.

Since Congressman Flood will thus be unable to assist in his defense or participate in the proceedings in any meaningful way, Respondent's Counsel respectfully petitions the Committee to grant a continuance until such time as the physicians can make a finding as to whether or not Respondent is capable of assisting, physically and mentally, in preparing a defense to the Statement of Alleged Violations.

THE
FIFTH AMENDMENT
DUE PROCESS OF LAW
PRECLUDES THE TRIAL OF A RESPONDENT
FOUND TO BE INCOMPETENT AND UNABLE TO ASSIST
IN MAKING A DEFENSE

An issue or primary concern in criminal law is whether or not a Defendant is competent to assist Counsel in preparing a defense for trial.

In Dusky vs. U.S., 362 U.S. 402 (1960), the Court outlined the basic thrust of the test:

" '--- whether he (Respondent) has sufficient ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational, as well as factual, understanding of the proceedings against him.' " (Emphasis applied)

This test comports with the basic requirements of due process that a defendant must be competent in order to stand trial. Bishop vs. U.S., 350 U.S. 961 (1956).

Therefore, if the Respondent is found to be incompetent, the trial must be postponed until a time when he is capable of assisting counsel in preparing his defense. While this does not mean an outright dismissal of the proceeding, if the Respondent is found incompetent, it does mean a respondent cannot be required to participate when he is incapable of doing so. U.S. vs. Doran, 328 F. Supp. 1261 (S.D.N.Y. 1971).

Special Counsel has acknowledged this premise of law. In a memorandum submitted to this Committee, Special Counsel stated, "---it would be violative of due process to require a respondent to participate in a proceeding of this Committee when he is physically incapable to do so." Memorandum of Special Counsel

in Opposition to Motion to Dismiss Statement of Alleged
Violations, In The Matter of Representative Daniel J. Flood,
Respondent, Page 9.

CONGRESSMAN FLOOD'S INABILITY TO UNDERSTAND THE NATURE
OF THE PROCEEDINGS AGAINST HIM AND TO RECALL INFORMATION
NECESSARY TO THE DEFENSE IN THIS CASE DICTATE THAT THE
HEARING MUST BE CONTINUED PENDING A DETERMINATION THAT
HE CAN, IN FACT, PARTICIPATE IN A MEANINGFUL WAY.

Counsel fully recognizes that this Committee may make its own Rules, provided said Rules are not violative of the Constitution of the U.S. in any manner. However, since the charges against Congressman Flood are largely based on the criminal law, it would seem that the Congressman, before any tribunal, is entitled to precedents set forth over two centuries ago by the Courts for the protection of anyone charged with a violation of the criminal law. In Counsel's opinion, this includes, in addition to those items emphasized herein, the benefit of every "reasonable doubt".

Before any individual can be brought before a tribunal in a criminal proceeding, two distinct matters must be determined: (1) whether respondent is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense, and (2) whether he is able to comprehend the significance of the trial and his relation to it.

In the matter presently before this Committee, these issues have been addressed by experts who have examined the Respondent, and made findings regarding the applicability of these two points.

Counsel directs the attention of the Committee to the statement of James L. Foy, M.D., dated October 19, 1979, in

which he outlines his professional opinion regarding Respondent's competency to stand trial.

While Representative Flood "understands his current legal situation and the charges made against him", ---he has difficulty comprehending the facts and allegations relevant to his case."

Pretrial Psychiatric Evaluation of James L. Foy, M.D., Oct. 19, 1979, Page 6.

Dr. Foy further finds that Congressman Flood is not sufficiently coherent to provide his Counsel with information necessary and relevant in making a defense. In his opinion, "the defendant's loss of recall and impaired comprehension will result in profound disability in regard to communicating with and assisting his Counsel in preparing and undertaking his own defense". Id. See also Statement of Barry A. Bukatman, M.D., Oct. 26, 1979, pp. 5-6 (points 1-6 inclusive).

CONCLUSION

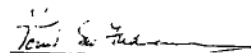
Counsel urges that the Motion to Defer the Proceeding be granted.

The facts will be presented and will show conclusively that Representative Flood is unable to participate in or assist with a defense before this Committee at this time.

Legal precedent requiring that an individual be competent before commencing proceedings is a well established principle.

Deferral of the present proceeding is necessary until Respondent is found to be mentally and physically competent to assist Counsel before the Committee.

Respectfully submitted,


 Louis-Georg Feldmann

GEORGETOWN UNIVERSITY HOSPITAL

3800 RESERVOIR ROAD, N.W.
WASHINGTON, D.C. 20007

DEPARTMENT OF PSYCHIATRY

December 3, 1979

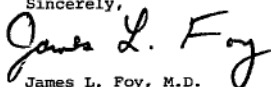
Louis G. Feldman
Attorney-at-Law
Northeastern Building
Hazelton, PA 18201

Dear Mr. Feldman:

Since you are representing Congressman Daniel J. Flood before the House Standards Committee and I am informed of a hearing date December 12, 1979, I wish to state to you that Congressman Flood will be in the Georgetown University psychiatric inpatient service from this Friday, December 7 through December 21 at least.

Mr. Flood has been in the hospital continuously since November 12, 1979 for psychiatric and medical treatment and for evaluation of his competency to stand trial. At the end of the period of Mr. Flood's psychiatric evaluation and treatment, I shall communicate the results to Mr. Axel Kleiboemer, attorney for Mr. Flood.

Sincerely,

A handwritten signature in cursive script that reads "James L. Foy".

James L. Foy, M.D.

JLF/amk

DIVISION OF GEORGETOWN UNIVERSITY MEDICAL CENTER

CONGRESSMAN FLOOD HOSPITALIZED IN THE GEORGETOWN
UNIVERSITY HOSPITAL IN 1979

<u>ADMITTED</u>	-----	<u>DISCHARGED</u>	
February 5, 1979		March 20, 1979	44 days
April 26, 1979		May 2, 1979	7 days
May 30, 1979		August 9, 1979	72 days
September 2, 1979		November 2, 1979	62 days
November 12, 1979		To the Present	

EDWARD R. JANJIGIAN
 22 pierce st.
 Kingston, Penna.
 18704

November 12, 1979

Atty Louis Feldmann
 Northeasterns building
 Hazleton, Penna. 17201.

Dear Atty Feldmann:

Over and over again, I have carefully reviewed the reports of the two Washington Psychiatrists and one Psychologist concerning Mr. Flood's case in which you have taken a personal interest without any remuneration and for which, from several sources, I have heard you praised for this humanitarian and friendly gesture.

As a Former Acting Chief and Assistant Chief of the psychiatric Service at Walter Reed Hospital, and later as Division Psychiatrist of the 71st Infantry Division, 3rd U.S. Army in the ETO during WW II, after discharge as Chief of Psychiatry at the VA Hospital, Mercy and Nesbitt Hospitals here in Wilkes-Barre for some 36 years, I am in full agreement with Dr. Foy's findings and recommendations except for several possibilities which he suggests as diagnostic criteria and his additional suggestion that he be rehospitalised and detoxified and later reexamined psychiatrically for a final reevaluation. There is no need for these procedures. There is only one and only one diagnosis, and the organic damage already done, is irreversible, and therefore I see no reason to continue to torture Mr. Flood any further.

I have known Mr. Flood for some 35 years; more intimately since 1962 following his cancer operation of the esophagus and the various complications still existant as a consequence of the above procedure. I went to School with his former executive assistant, Mr. Gene Haggerty, later replaced by Elko following Mr. Haggerty's death. I also was in School with Mr. Flood's Law Partner, James L. Brown, an attorney here in Wilkes-Barre, and hence I believe I have been rather familiar with Mr. Flood's past history, some of his local and National activities, his personality, some of his habits and idiosyncrasies, and his conduct both as a Congressman and as a citizen of Luzerne County. I particularly became very close to him during the Agnes Disaster in 1972 when I was president of the Luzerne County Medical Society. It was necessary for me to make frequent trip daily to the U.S. Naval Medical Center at Avoca where Mr. Flood had his headquarters. Almost constantly, I observed him to be at his desk there, phoning here, there, everywhere, or interviewing homeless residents of the County, or when not at his desk, riding on helicopters, surveying the Agnes damage in the valley, or visiting the various evacuation centers where I happen to visit also. Too often, hurriedly, he would brunch on a stale ham sandwich, washing it down with Coca-Cola or 7 UP, at times dizzy, exhausted, and shivering from cold and hunger. Often I would say, "Mr. Flood, you've been here 20 hours. How about a little nap?" His answer: "My people need me, Murph."

As time went on, I could, professionally see, the physical punishment he was undergoing, the emotional pangs he sensed for his people. Still he would raise his head high and declare, "By God, Flood against Flood".

EDWARD R. JANJIGIAN
22 pierce st.
Kingston, Penna.
18704

Just prior to his return to his Washington Office as the people gradually returned to their ravaged homes, I could see the complete physical fatigue etched on his features and the stooped slow trudging legislator getting into his auto first I later learned, to see Dr. Boben, and still later various physicians in Washington for some relief, at last, from his physical complaints (abdominal pains, belching, tinnitus, dizziness, insomnia, loss of appetite, concern over the future of the Valley). Subsequently on some weekend visits to his home, and later from Washington, I had several calls from him, asking for advice regarding his medications given him by various doctors, suspicions about some members of his staff who he felt were "pulling the wool over my eyes", always ending with his determined, authoritarian command-"by God, we will not give the bastards the Panama Canal".

The last time I saw Mr. Flood was in 1974 when he came up to visit his law partner, Mr. Brown, who was a patient at the VA Hospital in Wilkes-Barre. Thereafter my only cagy contact with him was a call to his Secretary in Washington. At the time of Mr. Flood's visit to the Hospital I could clinically observe his short shuffling type of gait, his tendency to have difficulty recalling recent events and deficiencies in his concentration and extreme apparent physical fatigue, all indicative of advancing cerebral arteriosclerosis. He was certainly concerned about his physical health and the only question I remember asking me was "what do you think, Murph?". The hundred and hundreds of calls to his office, his open door policy to all citizens of the county, Mr. Elko's false accusations, his concern over the future of our community, his run down physical condition was beginning to take its toll, and he was given many types of medications for his various organic complaints, the mixture of the drugs complicating the whole picture, confusing him more, depressing him still further and making him a drug dependent, confused, lost, tense, insomniac individual in contrast to an alert, highly intelligent, sharp, flamboyant friend of his constituents. In summary, I believe Mr. Flood to be suffering from advanced cerebral arteriosclerosis, complicated irreversibly by too many drugs prescribed by various physicians thus further creating an iatrogenic complication which in all probability will allow Mr. Flood one or perhaps two more years of existence. Organically, though not psychotic, he is incompetent, and therefore unable to stand trial and understand the meaning or consequence of same. Let us leave the man alone, this once magnificent, self assured, effective legislator, and quoting Lerner and Lowe, "Don't let it be forgot, that once there was a plot known as Camelot".

Sincerely


Edward R. Janjigian MD. FACP

GEORGETOWN UNIVERSITY HOSPITAL

3800 RESERVOIR ROAD, N.W.
WASHINGTON, D.C. 20007

DEPARTMENT OF PSYCHIATRY

October 19, 1979

CONFIDENTIALPretrial Psychiatric Evaluation
Re: Daniel J. Flood

This report has been prepared after an extensive investigation of the medical and psychiatric problems of Mr. Flood and a thorough knowledge of his legal situation. The data base is wide and included direct psychiatric examinations, interviews with other informants and the examination of medical records and legal documents, especially the eleven count indictment from the United States District Court of the District of Columbia.

I personally examined Mr. Flood at Georgetown University Hospital on the following dates during the year of 1979: September 21, 24, 25, 27 and October 12. The total time devoted to these interviews was four hours divided among the five days. I interviewed his regular attending physician, Dr. Melvin D. Small, who has provided primary medical care to the patient over the past seventeen years, I interviewed his surgeon, Dr. Charles Hufnagel and a consulting psychiatrist, Dr. Michael Durr, who has himself examined Mr. Flood on numerous occasions over the past two years at the request of Dr. Small. I also interviewed staff nurses at Georgetown University Hospital who have observed the patient closely during his hospital admissions, and some of whom have known Mr. Flood over a period of two years or more.

I have consulted with a clinical psychologist in our department of psychiatry, Mary Reidy, Ph.D., who had examined Mr. Flood in April, 1978 with psychological tests, many of which she repeated during a reexamination of the patient on October 1, 1979.

I have examined the current hospital record in detail. Mr. Flood has been hospitalized for gall bladder surgery since September 2, 1979. I have reviewed summaries of Mr. Flood's previous Georgetown University Hospital admissions from earlier this year. In June, 1979, he had a cataract removed from his right eye and suffered an acute pancreatitis, which complicated his recovery from eye surgery. In addition to the above I have also had at my disposal Mr. Flood's out-patient medical record from the office of the Physician of the Capitol, which provides extensive data on his physical and emotional health and his use of medications, going back to the year 1972 and before.

In order that I might acquaint myself with observations others may have made of Mr. Flood's behavior during his regular work days, I interviewed Helen Tomascik, his Administrative Assistant, for one hour on October 5. She has been a member of his office staff for twenty-five years, employed in various capacities.

DIVISION OF GEORGETOWN UNIVERSITY MEDICAL CENTER

The legal situation facing Mr. Flood required that I have a complete understanding of the issues involved, the observations of his attorneys, and the expectations that his attorneys have of him in cooperating with them in preparing his defense and going to trial within the coming weeks. To this end Mr. Axel Kleiboemer, his attorney, furnished me with copies of the correspondence between himself and Dr. Small over the past eighteen months. This confidential correspondence deals with a discussion of these questions both before and after Mr. Flood's first criminal trial. As indicated above I received a copy of the criminal indictment and studied it. On October 3, I conducted a two hour interview with Mr. Kleiboemer and Mr. Walter H. Fleischer, the defense attorneys. I learned of Mr. Flood's behavior before and during his first trial, and the requirements that his attorneys will need from him in preparing for and undergoing a second trial in respect to cooperating with them, following the evidence of witnesses, and testifying in his own behalf. On October 5, I had a telephone conversation with Mr. James Lawler of Hazelton, Pennsylvania. Mr. Lawler is a trained psychiatric social worker who has known Mr. Flood for several years and who was an observer of Mr. Flood's mental and emotional states and his behavior for nine of the thirteen days during Mr. Flood's first trial in early 1979.

Summary of Medical Problems

The following information has been obtained from Dr. Small, the records of the Physician of the Capitol and hospital records. In 1962 Mr. Flood was found to have a carcinoma of the esophagus. This was surgically removed but has left him with chronic gastric disturbances: hiatal hernia, reflux esophagitis, alimentary hypoglycemia and gastric ulcer disease. He has also suffered from chronic inflammation of the larynx and bowel complaints diagnosed as irritable colon syndrome and diverticulosis. Musculoskeletal problems of a chronic nature have been diagnosed as discogenic disease involving the lumbar and sacral spine and also static instability of the knee joints. He has complained of unexplained ringing in the ears (tinnitus) and infrequent fainting spells. Cataracts have developed in the lenses of both eyes over the past several years. A surgical removal of the cataract in the right eye was performed in June 1979. Vision in the left eye is only twenty per cent and the patient is partially blind. A replacement lens for his right eye will restore some of his visual acuity and this is expected to be ready in the near future.

Since 1968 Mr. Flood has been afflicted with repeated attacks of inflammation of the gall bladder and gall stones. The first episode of this disease process was complicated by a near fatal septicemia. Gall bladder surgery was recently performed during this admission to Georgetown University Hospital on September 13.

All of these physical diseases, acute and chronic, with their attendant stress have resulted in severe episodic anxiety and depression. Anxiety has been manifested by agitation, tremors and insomnia. Depression has been manifested by helplessness, lack of concentration, crying spells, indecisiveness and emotional exhaustion. These stress related reactions of anxiety and depression have been very severe and more lasting since May of 1979.

Psychiatric History

Mr. Flood was first examined by a psychiatrist, Dr. Michael Durr, at the request of Dr. Small on August 22, 1977 then again on March 28 and April 6, 1978. Dr. Durr has examined Mr. Flood on numerous occasions since then and I have interviewed Dr. Durr and have read his consultation reports prepared for Dr. Small. The history I have obtained comes from Mr. Flood himself, Helen Tomascik, Dr. Small, Mr. Kleiboemer and also from medical records and reports.

Mr. Flood relates the periods of extreme "nervousness and shakiness" to his frequent physical illnesses, the stress imposed by them and to an inability to adapt to hospital routine. He has a long history of insomnia, going back 10 to 15 years with frequent awakenings during the night. He has taken various sleeping pills, including barbiturates, for this sleep disturbance and states he is at a point where he cannot do without them. There is a history of excessive use and, at times, abuse of alcohol but he has eliminated this during the past ten years with some apparent lapses of short duration. Mr. Flood goes on to relate an increasing difficulty with his memory, especially for recall of recent events but also progressive memory problems with dates, names, places and telephone numbers. He states that he relies more and more on members of his staff to "fill me in" on people visiting his office, important dates, appointments and schedules. The onset of memory loss and lack of recall is unclear to Mr. Flood but he sees it as an advancing difficulty over the past several years. He goes on to speak of depression as a sadness and despair that comes and goes during the past five years, associated with his perception of failing powers of voice, presence and intellectual sharpness. He has contemplated suicide with an overdose of sleeping pills but rejects this sometimes intrusive thought.

The history obtained from other informants is one of the gradual decline and transformation of a once confident, imposing and theatrical politician to a state of agitated helplessness and indecision. Ms. Tomascik sees this process going back to three years ago or earlier and she underscores two specific changes in Mr. Flood's behavior: increasing forgetfulness with now an inability to recall matters discussed a matter of five minutes earlier and a change in his personal habits from one of fastidiousness to a neglect of good manners and acceptable social conduct. She has noticed his loud belching and his willingness to discuss bowel habits under inappropriate conditions.

Dr. Small and Mr. Kleiboemer have noticed his passivity and carelessness concerning significantly important matters, while he exhibits agitation over more trivial questions such as bathing or elimination. They have also noticed memory lapses, loss of name recognition and serious trouble with recall of very recent events, such as a phone call Mr. Flood initiated earlier the same day. Rambling, repetitive speech has been seen as a progressive problem, as well as clouded thinking at intervals. Mr. Flood's attention is poor and his judgment about mundane matters, whether to sit in a chair or lie in bed, riddled with anguishing indecision and childish helplessness. His nurses confirm all of this with many more examples of his forgetfulness and regressive behavior. Both his physician and his attorney believe Mr. Flood can only bring a surface comprehension and superficial non-analytical intelligence to the complex medical and legal situations confronting him.

The written medical records and a telephone conversation with Dr. W. R. Hoben of Wilkes Barre, Pennsylvania who has also treated Mr. Flood for many years confirm all of the above history. These sources also underscore two significant problems: repeated attacks of hypoglycemia (low blood sugar) and drug dependency. The patient has had repeated severe attacks of dizziness, clouded consciousness and speech disorder secondary to a sharp fall in his blood glucose level, since 1962. This in turn, is caused by his gastrointestinal problems. There is long standing drug dependency, ten years or more, upon sleeping pills (barbiturates), sedative-tranquilizing drugs (meprobamate, Valium, Sinequan) and analgesic drugs (Demerol). Mr. Flood's drug dependence of the barbiturate type is the longest and the one most likely to affect his mental status. Without hospital supervision he takes a minimum of 800 mg. of barbiturates daily. In the hospital, he takes 400 mg. daily, however, he receives other sedative-hypnotic drugs. Dr. Durr concluded that Mr. Flood's mental problems were a combination of depressive disorder, drug dependence, and organic brain syndrome. Other aspects of my own psychiatric diagnosis and treatment recommendations will be made later in this report.

Mental Status Examination

The following objective findings are based upon my own direct examination of Mr. Flood over four hours, on five separate dates. I first examined him on September 21, which was eight days postoperative from his gall bladder surgery.

Mr. Flood sits in a chair in his hospital room attired in hospital gown and bathrobe. He is clean-shaven and well groomed, his mustache is waxed. He appears thin, drawn, and weary. His hair appears dyed. A tic in the right side of his face contracts occasionally. His manner is anxious and complaining. At times he becomes restless and agitated, often enough this is related to physical discomfort in his abdomen. He belches loudly during all the interviews and without embarrassment. His hands and fingers shake, these tremors are worse with fingers extended or when he reaches for objects. His speech is clear but his stream of talk is very repetitious and often tangential to our original topic. He rambles alot. There is no slurring or hoarseness.

His emotional state is pained and anxious with many expressions of discomfort and fear of physical changes in his abdomen. At times he expresses helplessness in a whining childish manner then he excuses himself for acting in this way. He speaks demandingly or angrily to nurses who enter the room, with rare exception. Some depressive affect is exhibited when he is confronted with failures of memory. At these moments he is close to tears.

His thought content and preoccupations are filled with reference to loss of appetite, lack of sleep or rest and abdominal discomfort. It is difficult to move him off these topics and onto other matters. His repetitiveness is most marked around these topics. He pleads with me for reassurance and establishes a submissive relationship. He expresses no delusions and he describes no hallucinations.

He is oriented to month, date, year and day of the week. He concentrates to give these answer. He has severely impaired vision but looks at the newspaper headlines daily. A radio and a television set are in his room but he denies that he uses them. He is oriented to place but gives an incorrect response when asked for his room number. He has occupied this same room for the past nineteen days.

His recall of remote past experiences seems to be adequate. He relates incidents from his youth and anecdotes about his relatives. He gives his mother's maiden name correctly. He is, however, unclear about the dates of his elected terms to the Congress. His recall of names of colleagues is poor for example, he can't remember the name of Melvin Laird, although he identifies him as a famous Secretary of Defense and "a good friend". His recall of past medical events and dates of hospitalizations are fair. He cannot give the name of the resident surgeon who visits him daily. His recall of immediate impressions is quite faulty. He can only retain the names of two out of three objects for five minutes after much practice. At one point he asked me to ring for the nurse because of a pain, and a moment later, when she appeared, he had totally forgotten why he had summoned her. He can repeat only six digits forwards and four backwards. I read a short dramatic story to him. He could recall the salient points but his total grasp was poor and he could not recover significant details.

General intellectual evaluation revealed an intact and excellent vocabulary, correctly used. Calculations were slow, deliberate and accurate up to a point. All mental tasks were performed slowly. In response to a request to name the five largest cities in the U.S. he said: New York, Chicago, and then after a long delay, Philadelphia, Boston and San Francisco. Proverb interpretation was abstract and excellent but repetitious. Tests asking for abstract similarities were fair. He could not say what a poem and a statue had in common.

Insight is fair in that he recognizes his failing memory and shows appropriate distress over this. He realizes his judgment and intellectual powers are impaired. He knows he is ill and not up to his previous acuity and mental facility.

Dr. Reidy's psychological test results with parts of the Wechsler Adult Intelligence Scale, administered on October 1 confirm all of the above mental status findings. Comparing test results from April, 1978 to October, 1979 there is a significant falling of of cognitive function.

Diagnostic Formulation

The findings of the mental examination and psychological tests all indicate a non-psychotic organic brain syndrome which is secondary to either one or several of the following conditions: (a) repeated episodes of hypoglycemia with brain changes; (b) cerebrovascular disturbance; (c) substance induced amnesic syndrome with barbiturate dependence. The patient's history and the course of the mental disorder suggest a combination of (a) and (c), (b) is least likely to contribute a major cause of the impairments, but it is not easily ruled out.

There is also a generalized anxiety disorder and depressive reaction some symptoms of which especially insomnia and tremors, are aggravated by the drug dependence of the barbiturate type.

Competency to Stand Trial

As a defendant in an upcoming criminal trial that may take weeks and require the testimony of many witnesses, Mr. Flood's organic brain disorder does raise questions about his fitness for trial. I will express my opinions on specific points of the competency test. In my opinion he understands his current legal situation and the charges made against him. He has a superficial understanding of the legal issues and procedures in his case and a lesser understanding of the dispositions, pleas and penalties. He has difficulty comprehending the facts and allegations relevant to his case. He will have difficulty with his memory for dates and certain persons who could be identified as defense witnesses in his behalf.

In my opinion the defendant's loss of recall and impaired comprehension will result in profound disability in regard to communicating with and assisting his counsel in preparing and undertaking his own defense. He will have grave difficulty comprehending instructions and advice, making decisions after advice, and following the testimony of others for contradictions or errors.

While the defendant will most likely be able to maintain a superficial collaborative relationship with his attorneys, he will face insurmountable difficulties with testifying in court on his own behalf. Even preparing the defendant to testify in his defense will be fraught with difficulties of memory, attention, coherence, and consistency. He will be totally confused should he take the witness chair. He will poorly tolerate the expected emotional and physical stress of the days of trial including long hours sitting in the courthouse. Even with improved visual acuity he could become confused and disoriented in the courthouse, particularly during weeks of complex testimony. I believe that under certain stressful circumstances he might behave in an irrational manner during trial. These are my considered opinions based on all the information and findings available to me.

Recommendation:

When and if Mr. Flood's medical status stabilizes, I would then recommend hospitalization for the gradual withdrawal of all sedative-hypnotic and tranquilizing drugs. This could be dangerous and life threatening in his case because of age and the barbiturate dependence itself. It should be conducted with great caution and prominent support for the patient. When he is free of these drugs for a month his mental status should then be reevaluated to see if improvement of memory and cognitive functions have taken place. If no improvement is seen then I would surmise that the etiology of his organic brain disorder lies with the irreversible causes: hypoglycemia and cerebrovascular disturbances.

Respectfully submitted,

James L. Foy

James L. Foy, M.D.
Professor of Psychiatry

CURRICULUM VITAE

James L. Foy, M.D.

Born: June 12, 1926, Chicago, Illinois

Education:

- University of Notre Dame -- 1943-1945 - B. S. 1948
- Loyola University School of Medicine -- 1945-1949 - M. D. 1949
- Milwaukee County Hospital -- Internship -- 1949-1950
- University of London Postgraduate School of Medicine -- 1951
- United States Navy School of Aviation Medicine -- 1952
- Ottawa General Hospital (Canada), Resident in Psychiatry -- 1954-1955
- Georgetown University Medical Center, Resident and Chief Resident in Psychiatry -- 1955-1957

Teaching Appointments

Georgetown University School of Medicine: Instructor in Psychiatry 1957-1962; Assistant Professor of Psychiatry 1962-1966; Associate Professor of Psychiatry 1966-1974; Professor of Psychiatry 1974-present.

Previous teaching appointment at The Catholic University of America 1958-1962.

Honors and Experience

Certified American Board of Psychiatry and Neurology, December 1961
 Fellow in the American Psychiatric Association 1963
 Guest Lecturer Washington School of Psychiatry 1965-1967; Faculty 1971-present.
 Assistant Chief Psychiatrist, D. C. General Hospital 1962-1965
 Chief Psychiatrist, D. C. General Hospital 1962-1965
 Consultant Psychiatrist Washington VA Hospital 1965-present
 Fellow in the American Society of Psychopathology of Expression 1975
 A.O.A. Loyola University Stritch School of Medicine, Alumnus Member 1977
 Part-time private practice of psychiatry 1958-present

Numerous committee assignments - Washington Psychiatric Society and American Psychiatric Association. Elected to WPS Council.

Forensic Psychiatry Research Projects:

Co-principal investigator on project, Competency to Stand Trial, at the Institute of Criminal Law and Procedure, Georgetown University Law Center 1968-1970, under a grant from the Ford Foundation.

Co-principal investigator on project, Pre-Trial Diversion of Selected Criminal Defendants to Mental Health Facilities, at Georgetown University Medical Center, Department of Psychiatry 1971-1973, under a grant from the National Institute of Mental Health.

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Lectures and presentations over the past several years to meetings of the American Psychiatric Association and the American Society of Psychopathology of Expression and at Yale University, University of Missouri, Loyola University (Chicago), George Washington University and the University of Virginia, also at Hines V.A. Hospital (Chicago) and the Lutheran General Hospital (Chicago).

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October 26, 1979

Mr. Axel Kleiboemer
 2033 M Street, N.W.
 Suite 700
 Washington, D.C. 20036

Dear Mr. Kleiboemer:

On October 6, 1979, at your request, I saw your client, Congressman Daniel Flood, and evaluated him with specific regard to the question: Is Congressman Flood now competent to stand trial on multiple charges of bribery, conspiracy and perjury? In addition to seeing Congressman Flood, I have examined

- (1) Past medical records including psychiatric examinations by Dr. Michael Durr and records from the physician of the U.S. Capitol;
- (2) Medical records from his current hospitalization; and
- (3) Your letter of February 23, 1978, to Dr. Marvin Small.

I will not attempt to fully review Congressman Flood's medical history. I will only touch upon some of the major points. In 1962, he had a carcinoma of the esophagus surgically removed. Although there has been no return of the cancer, the surgery produced a large diaphragmatic hernia, with multiple abdominal problems from this, i.e., reflex esophagitis, gastric ulcers, irritable bowel syndrome, and recurrent intestinal obstructions. He has had periodic bouts with hypoglycemia which have never been fully explained but are felt to be part of this problem. He also has a long-standing peripheral neuropathy, cataracts, arthritis of the back and knees. His current hospitalization was necessitated by a chronic gall bladder problem and on September 13, 1979, a cholecystectomy was performed.

He has a long-standing history of over-use of sedatives, opiates and alcohol. Congressman Flood has seen many doctors over the years, and partially because of this, it is impossible to get a clear picture of what his use or misuse of medications has been. However, a consideration of only the period of this hospitalization gives an indication of the magnitude of the problem. His

medications for sleep are Tuinal 200 mg.hs, Nembutal 100 mg.hs x 2 prn, and finally Dalmane 30 mg.prn. For pain, he is on Demerol and Phenergan. For anxiety and confusion he has been on Librium and then Haldol. And for depression, Sinequan, initially 175 mg. per day, and now 100 mg. per day. But even his reduction was brought about by use of placebos. This use of medication has been under close medical supervision by a staff of very much aware of Congressman Flood's problem, but who feel that this is the smallest amount of medication possible at this point.

His medical records, from the office of the attending physician of the U.S. Capitol, shows multiple perscriptions for Dalmane, Tuinal, Seconal, Phenobarbitol, Librium, Valium, Meproamate, Elavil, and Sinequan.

Congressman Flood was seen in psychiatric consultation in 1977, 1978 and again during the current hospitalization by Dr. Durr. Dr. Durr summarized his impressions in a letter to Mr. Kleiboemer on July 21, 1978 in which he stated his diagnostic impression as "depressive neurosis and an organic brain syndrome, senility". His evaluation found an impaired memory, rambling speech, and an impaired ability to concentrate.

Your letter to Dr. Small of February 3, 1978, describes observations similar to those of Dr. Durr, i.e., "His speech is slow and often slurred...He was rambling in his thought processes...Mr. Flood appears unable to recall our prior conversations. He professes to have lapses of memory. I found Mr. Flood to be extremely indecisive even with regard to small administrative matters...It appears that Mr. Flood does not fully understand what I am telling him...Mr. Flood has been totally unresponsive in making decisions which call for his immediate attention."

My evaluation of Congressman Flood was specifically directed towards the question of present competency. I feel that it is best to start with some general observations, and then to look at more specific issues. Mr. Flood was awake, sitting in a chair, and watching television. When I came into the room, he commented about my sport coat, and throughout the entire interview, he was able to relate very well on superficial issues. He was aware of events in the world, such as the visit of the Pope, which he was watching at the time, and in fact was moved to tears by the thought that if he was

well, he would be there. He was in a good bit of physical distress from his various gastrointestinal illnesses and would have to get up from time to time and use the bathroom. When he did this, he had difficulty in walking, and commented on the pain that walking caused him. I was with Congressman Flood for about one and a half hours, and clearly, he tired during that time, even with my efforts to avoid tiring him.

Despite the fact that I carefully explained that I was a psychiatrist examining him in connection with his upcoming trial, he was constantly distracted by his physical symptoms, and was quite pre-occupied with discussing his physical condition with me.

In discussing his past life, he had difficulty in recalling information that should have been readily available to him, i.e., after graduation from college he spent a year acting with a company in upstate New York, but did not know the name of the group. He was uncertain of the exact jobs he had prior to his election to Congress, and had difficulty recalling when he was first elected to Congress. He appeared to be trying hard to answer all questions, and was genuinely embarrassed by his lack of information, and felt as if he was inconveniencing me. As stated before, he would frequently drift away from the question we were discussing to discussion of his physical condition.

Looking more specifically to the issues directly related to competency, I carefully questioned Mr. Flood about the issues related to his up-coming trial. Mr. Flood knew the charges against him, he understood those terms, and knew why he was being accused. He knew his lawyer by name, but was unable to identify anyone his attorney has helping him other than someone named Walter. When I asked him how long Mr. Kleiboemer had been his attorney, he responded with a phrase he repeated throughout the interview, "I won't be able to help you with dates" and was only able to say that it was more than a year ago that he first saw Mr. Kleiboemer. Mr. Flood was able to be quite specific about the function of the judge, jury, and prosecutor, and was able to accurately describe the evolution of the charges against him, although being vague about dates and the exact order of events. He felt that the case against him in general consisted of the word of a former

administrative assistant, Mr. Elko, who said that Congressman Flood received money, and in exchange for this, he illegally used his influence on behalf of these people. He knew that his trial was scheduled for November in the U.S. District Court, and that at a trial he did not have to testify against his wishes. He was able to state the difference between guilty and not guilty.

Since his indictment there has been a trial, and although he knew the outcome, i.e., the jury could not reach a decision, he could not remember much of what occurred. He described having great difficulty in staying awake in many instances, and that he did not know who witnesses for the defense were, although he was certain that his lawyer had told him. In his own words, "I wasn't in good shape. I was in very bad physical condition. I couldn't remember dates, places, and conversations, and could not now. That's so hard. What makes it worse was that I was not always able to follow testimony. I felt as if I was missing half of it. I worried that my head would fall over. I was afraid my eyes were closing. I felt like I was falling asleep. It was not fair to my lawyer. I couldn't help him. He would try to remind me of something. I would say yes some of the time and I didn't know. I sat there numb half of the time."

He did not know what the possible sentences were in this case if found guilty, and was not able to discuss any legal strategy other than to plead not guilty based on the defense that he was only acting in the usual fashion of his office. He knew the meaning of terms such as probation, suspended sentence, and incompetent to stand trial. His opinion was that he was indeed incompetent, but that it felt badly to be so considered.

He was quite pleased with his attorney, with whom he has found it easy to work, and although he states he would not be reluctant with regard to asking his attorney questions, to this point he has been very passive and has not done that.

In summary, I will respond directly to the points you raised regarding competency to stand trial in your letter of September 4, 1979, to Dr. Melvin Small. You asked "Whether, if Mr. Flood is presently

suffering from a mental disease or disorder, he in light thereof has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him?" The points you raised, based on this were:

(1) Whether Mr. Flood has adequate memory at all stages of the proceedings, to relate pertinent facts, names and events to his attorneys. In my opinion, Mr. Flood's memory is clearly inadequate to be of any useful assistance to his attorneys.

(2) Whether he has adequate ability to review and evaluate documents and other written evidence bearing on the case. I feel that Mr. Flood lacks the ability to comprehend and understand complex material, and would only be able to evaluate material that would be simple and straightforward.

(3) Whether he has an adequate appreciation of the government's evidence against him and the corresponding ability to consider the wisdom of taking a course other than standing trial. Mr. Flood understands only the outline of the case against him and seems incapable of making any meaningful decisions, and turns to others to tell him what to do.

(4) During such trial, whether he is able to decide objectively whether to exercise his right to testify on his own behalf. In a negative way, Mr. Flood is quite able to do this. He knows that he is unable to testify in an intelligent, coherent, and relevant manner, and therefore feels that he should not testify on his own behalf.

(5) Whether he is sufficiently alert and responsive to follow and recognize any discrepancies in the testimony of witnesses and able to discuss the testimony with his attorneys, and whether, through counsel, he is able to postulate questions to the witnesses. In response to this point, even more than in any of the prior points, Mr. Flood's physical and mental limitations are so overwhelming as to make the possibility that he could do this almost ludicrous.

(6). Does Mr. Flood understand the substance of the indictment, the defense available to him, and the essentials of criminal trial proceedings, including the ability to postulate, through counsel, questions to prospective jurors, and to participate in the selection of jurors based upon responses to such questions? In general, Mr. Flood is able to function reasonable well in these areas, and only in the area of jury selection might there possibly be any significant limitation.

If you have any questions with regard to any of the material in this report, or with regard to any material not covered in this report, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Barry A. Bukatman". The signature is written in dark ink and is positioned above the typed name.

Barry A. Bukatman, M.D.

CURRICULUM VITAEBARRY A. BUKATMAN, M.D.

Education:

Citadel College (B.S.)--1956

Medical University of South Carolina (M.D.)--1960

George Washington University (Internship)--1960-1961

U.S. Army (Medical Corps Captain)--1961-1963.

George Washington University (Resident in Psychiatry)--1963-1966

Experience:

Private Practice, Bethesda, Maryland--1966-present

Research Psychiatrist, Georgetown Institute of Law and
Criminal Procedure--1966-1970Clinical Instructor in Psychiatics, Georgetown University
Hospital--1966-presentConsulting Psychiatrist, Area B Community Medical Health
Center, Washington, D.C.--1974-presentConsulting Psychiatrist, Kensington Health Maintenance
Organization--1975-present

Member of the American Psychiatric Society

GEORGETOWN UNIVERSITY HOSPITAL

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DEPARTMENT OF PSYCHIATRY

PSYCHOLOGICAL REPORT

FLOOD, Daniel
C. A. 75-10

This nearly 76 year old white male was seen for psychological evaluation on April 4, 1978 when he was 74 years, 4 months of age and on September 27, 1979 when he was 75 years, 10 months of age. On the first occasion he was given the Wechsler Adult Intelligence Scale (Verbal Scale only) and the Bender-Gestalt test; on the second only the Verbal Scale of the WAIS was administered due to his impaired vision from the cataract surgery and his lack of a cataract lens. Both times he was a patient at Georgetown University Hospital. Both referxals were to evaluate the patient's intellectual functioning and any possible organic deficits that might be apparent.

TEST BEHAVIOR: Mr. Flood was cordial and cooperative on both occasions. In September, 1979 he could not recall having met the examiner previously nor any of the tests that she administered him. None of the questions elicited any response of familiarity as one might expect.

During the first testing session he was more anxious and concerned when he couldn't recall something or solve a problem he was presented. He tended to dismiss his failures with rationalizations such as: "I'm not very good on names,"; "math was never my strong subject." On the second occasion such concern was absent.

TEST RESULTS: It was my impression in April, 1978 that Mr. Flood showed symptoms of impairment in intellectual functioning similar to those found as a result of organic brain pathology. He had an excellent vocabulary, with very good word knowledge and precise definitions of quite difficult words, an indication that his original intellectual endowment was well in the very superior range of intelligence. However, memory recall for past learned data and for newly presented material was relatively poor. He had some associative memory ability but his preciseness for recall was poor. Arithmetical reasoning was quite poor and generally well below academic achievement level and even below the norm for the general population. Abstract reasoning and concept formation were also poor although less impaired than his arithmetical reasoning. The more difficult concepts he attempted were often literal and concrete. His level of competence in this area was also well below his expected level of functioning. The type of responses was strongly suggestive of intellectual impairment due to someorganic problem.

The Bender-Gestalt protocol revealed difficulties in angulation and overlapping of lines that are often found in individuals' records with problems in visual-motor and visual-perceptual abilities due to organic factors. The protocol was well-planned, showed careful attention to detail and all the "gestalts" were well maintained.

The results of the September, 1979 evaluation revealed further impairment in intellectual functioning with intact word knowledge, vocabulary and language usage but really poor memory recall for past and present memory data, and significantly impaired conceptual formation, abstract reasoning and arithmetical reasoning. Abstract reasoning has deteriorated significantly since April, 1978. His concreteness and literalness in the thinking processes are all the more evident. It is my impression that his impairment is due to organic brain pathology.

Mary E. Reidy
Mary E. Reidy, Ph.D.
Clinical Psychologist

APPENDIX K

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL ON THE LEGAL
STANDARDS FOLLOWED IN THE FEDERAL COURTS TO
DETERMINE THE MENTAL COMPETENCY OF A CRIMINAL
DEFENDANT TO STAND TRIAL

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Special Counsel to the
Committee on Standards of
Official Conduct
United States House of
Representatives

BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
UNITED STATES HOUSE OF REPRESENTATIVES

IN THE MATTER OF
REPRESENTATIVE DANIEL J. FLOOD,
Respondent

MEMORANDUM OF SPECIAL COUNSEL ON THE LEGAL
STANDARDS FOLLOWED IN THE FEDERAL COURTS TO
DETERMINE THE MENTAL COMPETENCY OF A CRIMINAL
DEFENDANT TO STAND TRIAL

Respondent, through counsel, has moved this Committee to defer its disciplinary hearing until a determination is made that the Respondent is mentally and physically able to participate effectively. Anticipating that Respondent would so move, this Committee voted on December 5, 1979, to conduct a hearing to determine the Respondent's mental competence. Such a hearing is without precedent for this Committee, and there are no provisions in this Committee's Rules of Procedure to govern it. To assist this Committee, therefore, your Special Counsel has

prepared this memorandum, which will briefly outline the pertinent federal law regarding the mental competence of criminal defendants to stand trial. It is hoped that the procedures and standards used by the federal courts, while not binding on this Committee, will provide guidance to enable this Committee to fashion standards of its own.

STATEMENT OF FACTS

On June 7, 1979, this Committee unanimously adopted a 25-count Statement of Alleged Violations charging Representative Flood with accepting over \$60,000 in bribes and with perjury before a Federal District Court. Primarily on the basis of his poor physical health, the Respondent was permitted over three months -- instead of the normal 21 days -- to respond to the allegations. On September 28, Respondent filed motions requesting dismissal of the Statement, deferral of consideration of the Statement, and the appointment of counsel. This Committee rejected all three motions.

An answer generally denying the 25 counts was filed by the Respondent on November 19, 1979. At its November 28 meeting, on the motion of Rep. Spence, and in accordance with the provisions of Rule 16 of this Committee's Rules of Procedure, this Committee established December 12 as the date of the disciplinary hearing.

In the interim, Representative Flood's counsel for criminal proceedings pending in the United States District

Court for the District of Columbia introduced psychiatric evidence in the criminal proceeding calling the Respondent's mental competency to stand trial into question. At a status call in early December, this evidence was controverted by the Government. No decision on competence has been made by the District Court.

Anticipating that Respondent's counsel would request that this Committee defer its disciplinary hearings pending a determination of mental competency, this Committee voted on December 5 to hold a hearing for that purpose on December 12, and to defer its disciplinary hearing until after a determination of competency had been made.

DETERMINATION OF MENTAL COMPETENCY TO STAND TRIAL IN
FEDERAL COURT

The issue of a Respondent's mental competency is a novel one for this Committee; no procedures exist to deal with it. However, the federal courts are continually confronted with the question of a criminal defendant's mental competency to stand trial, and the Committee may find their procedures to be worthy of imitation.

In the federal judicial system, this matter is governed by 18 U.S.C. §4244. That statute requires the United States Attorney, and permits the court or defense counsel, to file a motion for a judicial determination of

the mental competency of the accused whenever, prior to the imposition of sentence, there is "reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly assist in his own defense." Id.

In Dusky v. United States, 362 U.S. 402 (1960), the Supreme Court's seminal opinion construing the statute, it was held that a mere finding that a defendant is oriented to time and place and has some recollection of events is not sufficient to base a conclusion of mental competency. Rather, the Court ruled:

that the test must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.

Id. Thus a two-fold finding is required: (1) the defendant is able to consult rationally with his attorney, and (2) the defendant has a rational and factual understanding of the proceeding.

It bears emphasis that this is not a very demanding standard, and it is only in exceptional cases that a criminal defendant is found not to meet it. An accused is generally competent to stand trial. United States v. Ring, 513 F.2d 1001, 1010, n.6 (6th Cir. 1975). A mere

complaint of memory difficulties will not be adequate ground to hold an accused incompetent. United States v. Knohl, 379 F.2d 427, 436 (2d Cir. 1967). Even amnesia does not dictate a finding of incompetency. United States v. Swanson, 572 F.2d 523 (5th Cir. 1978). If this Committee were to adopt the federal court test, it could properly conclude that even though Representative Flood had suffered organic brain damage, and no longer possessed the quick and alert mind he once did, he is nonetheless mentally competent to participate in a disciplinary hearing. Despite uncontroverted evidence of lessened mental abilities, he very well might still have the mental faculties necessary to satisfy the tests laid down by the Supreme Court in Dusky.

As an example, a court in Missouri found a defendant to be competent, notwithstanding the findings of a court appointed panel of psychiatrists that the accused suffered from "moderately severe impairment of intellectual functioning with definite deterioration in recent and remote memory, judgment, abstract thinking and visual motor coordination," which the panel found probably stemmed from "moderately extensive organic brain damage." United States v. Sermon, 228 F. Supp. 972, 974 (W.D. Mo. 1964). One of the experts on the panel expressed the view that the defendant "is now a shell of his former self." Even after the court credited this view, it still concluded that the defendant met the tests dictated by Dusky, and thus held that the defendant was competent to stand trial.

Similarly, a Pennsylvania District Court ruled that a finding that there may be something mentally wrong with the defendant or that he may be emotionally unstable does not necessarily render him mentally incompetent. Crawn v. United States, 254 F. Supp. 669 (M.D. Pa. 1966). Even a finding that a defendant is a paranoid schizophrenic does not dictate a finding of incompetency to stand trial. United States v. Adams, 297 F. Supp. 596, 597 (S.D.N.Y. 1969).

The crucial point is that a finding of various mental or psychological deficiencies by expert witnesses does not necessarily require a finding of incompetency under the Dusky tests. The trial judge must make a legal determination whether, despite his impairment, the defendant possesses the ability to rationally consult with his attorney and to understand the proceedings against him. United States v. Makris, 553 F.2d 899, 908 (5th Cir. 1976). A judge can, and often does, make a positive finding despite psychological conclusions of various mental deficiencies -- such as organic brain damage -- or various psychological states -- such as paranoid schizophrenia. The expert conclusions offered into evidence are but one factor for the trial judge to take into account in reaching his conclusion. United States v. McFalls, 247 F. Supp. 439 (E.D. Tenn. 1965); United States v. Passman, 455 F. Supp. 794 (D.D.C. 1978); United States v. Sermon, supra.

The proper standard of proof that is applied in determining the competency of a criminal defendant to

stand trial is one of a preponderance of the evidence; the Government need not prove competency beyond a reasonable doubt. United States v. DiGilio, 538 F.2d 972, 988 (3d Cir. 1976); United States v. Makris, supra, at 906. The burden of proof, however, is on the Government when the defendant alleges lack of competence to stand trial. This means that if the evidence supporting a finding of competence is in equipoise with the evidence supporting a finding of incompetence, then the court would find the defendant to be incompetent. Otherwise, the court would make its determination based upon whichever end of the scale weighed the heavier. United States v. DiGilio, supra.

RECOMMENDATION OF SPECIAL COUNSEL

Although due process under the Fifth Amendment of the United States Constitution may require greater procedural safeguards for criminal defendants -- whose liberty may be at stake -- than for respondents before this Committee, the procedures and standards used by the federal courts to determine the mental competency of defendants to stand trial are eminently reasonable for this Committee to apply for its disciplinary proceedings. The principal rationale underlying these procedures is to safeguard the accuracy of adjudication. See Note, Incompetency to Stand Trial, 81 HARV. L. REV. 454, 457 (1967). Since this objective is equally as important to

this Committee as it is to the federal courts, it might be appropriate for this Committee to adopt the procedures and standards found best suited to that end by the federal courts.

If this Committee accepts this position, its role in the competency hearing will be to independently determine on the basis of all the evidence: (1) whether Representative Flood is presently able to consult with his lawyer with a reasonable degree of rational understanding, and (2) whether Representative Flood has a rational as well as factual understanding of the procedures against him. This Committee would then make a determination of the Respondent's competency or incompetency to be tried on the 25 counts of the Statement of Alleged Violations based upon the weight of the evidence.

Respectfully submitted,

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