Department of Justice officials were repeatedly warned that Weinberg was not being effectively controlled or supervised and was in fact directing the course of the operation.

They were told that Weinberg's conduct constituted entrapment, and that the targets or middlemen were not formulating the criminal enterprise, but that Weinberg and the FBI agents were.

In fact, Mr. Stewart, a Justice Department operative, advised Mr. Margolis, the supervisor in Washington of both himself and Mr. Puccio, that there was nothing unlawful whatsoever arising out of the mere presence of a Congressman at a meeting with a fictitious sheik's representatives, and that a further showing of consciousness of criminality would have to be required before a charge of bribery could be made out.

Now, how did the government do that? They placed lawyers in adjoining rooms who would call into the room just in case there was no crime being committed and say wait a minute, you have got to get the guy to do something, he hasn't admitted that he is going to do anything wrong. You could give him money now and it wouldn't even mean anything. You have got to take him down further.

That is what they did. That was standard operating procedure. In the other room, where the camera was, was an Assistant United States Attorney coaching Weinberg and Amoroso on how best to inveigle the Congressman into a crime.

We talk about sanctions. You talk about who was involved. We lined up the government's team on one side. Now, Ray Lederer was taken in there by Lou Johanson, the tragic, tragic figure. Lou Johanson's son just committed suicide over this three days ago. How much of a sanction is that?

Lou Johanson was never involved in any criminality before this, and Lou Johanson's son worked for Ray Lederer for two years on his staff. Lou Johanson was a ward leader in the Congressman's district. Is that enough of a reason for Ray Lederer to go to the meeting without any hint of impropriety?

Quoting from the *United States* v. *Jannotti*, the Opinion written by Judge Fullam, it is clean that ". . . the techniques employed here went far beyond the necessities of legitimate law enforcement.

"It would undoubtedly be permissible for government agents to set up an undercover business entity, either real or imaginary, as an attractive target for corrupt overtures by city officials, and even to hint that such overtures would be welcome.

"It would also probably be permissible for the undercover agents to initiate bribe proposals at least in connection with suspected ongoing corrupt activities on the part of the targeted officials.

"But it is neither necessary nor appropriate to the task of ferreting out crime for the undercover agents to initiate bribe offers, provide extremely generous financial inducements, and add further incentives virtually amounting to an appeal to civic duty in order to get the Congressmen into conversations."

I don't know that there is much more that can be said to enable you gentlemen to make the weighty decision that you have to make. But I urge upon you that you step back and take a deep breath and not be stampeded because of some vituperative statements that all politicians are dishonest, they all deserve what they get.

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Ray Lederer didn't deserve to be here. In my opinion, when you talk about sanctioning, you don't do it in a vacuum. You have to weigh the same as you would weigh the administration of a punishment on a child of yours, or on a member of your staff, or any other human being, the totality of the circumstances.

I am not down here on a fool's errand just to come in and make a statement and leave. I really believe it. You ask yourself who is really to be sanctioned here, and don't stop there by saying that is not our function, that is the Judiciary Committee.

The buck stops and starts somewhere. You have before you by virtue of these transcripts of the due process hearing, things that you never had before. I am not saying that in an effort to get you to sway away from Ray Lederer, but you judge him in the light of the atmosphere that he operated in.

That is all we ask. I thank you for your time.

The CHAIRMAN. Thank you.

The Chair now recognizes Mr. Prettyman.

Mr. PRETTYMAN. Members of the committee, I might say preliminarily that all references to Judge Fullam's opinion, of course, are irrelevant. That opinion is on appeal, and it deals with an entirely different case.

I listened very carefully to Mr. Binns, and I did not hear him say that his client did not commit a crime, that he did not take a bribe.

Instead, his argument, as I understand it, was that you stack the government people up one one side, and you stack Mr. Lederer up on the other side, and you see who is worse. You view their conduct against his. They did some terrible things, the implication being, even if he did, too. Maybe they did.

I have said before that I am not here to defend the government. I am not here to argue whether the government is right in this case. I have no interest in that, but it is no excuse for what this gentleman did.

If he took a bribe, it is not of any relevance to this committee that some part of the government acted improperly.

Mr. Binns took a statement that I quoted, one out of all of those that I quoted, "I am on the same vibes."

He said that that was taken out of context. It was not taken out of context because it was followed by a statement a little further on that Mr. Lederer had already talked to Mr. Errichetti before he came into the meeting, and he says we are on the same vibes.

Everybody knew what he was talking about. Then Mr. Binns takes the statement out of context when he cites a statement on page 4 without relation to the rest of what went on at that meeting.

He wants you to go through a whole litany here as to government misconduct, that this was, for example, politically motivated. There is no evidence of that, that Mr. Weinberg was motivated by the selling of his book, but Mr. Weinberg did not control Mr. Lederer.

As a matter of fact, he said very little at this meeting, contributed very little to the Lederer case.

Mr. Binns says the tapes were destroyed. There was no evidence that tapes were destroyed in this case. He said that Mr. Weinberg was authorized to stimulate and give drugs to Members of Congress. There is no evidence that that happened in this case.

He said he solicited gifts from targets. There is no evidence that he solicited any gifts from Mr. Lederer. They said he was authorized to pay gratuities to marks, but there was not anything about he paid anything to Mr. Lederer other than the bribe offer that was given.

They said that he manufactured Federal jurisdiction. That issue, of course, is before Judge Pratt, but there is no evidence in this case that Mr. Lederer did not willingly come from D.C. to New York. He was invited to come, and he came. He was not forced to come. He wasn't dragged into a car.

Mr. Binns says that Mr. Weinberg was paid special bonuses, but none of those specifically related to Mr. Lederer, and moreover, that is a common practice, to pay bonuses to undercover agents, informers of this kind. There is nothing improper about that, and even if there was, it would still have nothing to do with Mr. Lederer's conduct. Mr. Binns says there was no training session for agents as to entrapment.

So what? The issue in this case is, was there entrapment, and even if there was, did he commit the crime anyway? He says that there was questioning by the FBI on February 2 in an effort to test his veracity. That is a red herring. That is a perfectly proper investigative technique. It is done all the time.

He says there were intentional leaks to the press. I don't know whether there were or not. It hasn't been proven yet. Even if it is true, it does not go to the guilt of this gentleman.

He says they violated the Jencks Act. That is still to be determined, but it is irrelevant to what Mr. Lederer did, and it is the statement of these two United States Attorneys that related to the Senator Williams' case, not to this case.

He says the Assistant United States Attorneys were in the next room coaching agents what to say. They were in some cases, but not in this case. The one call in this case came from an outsider, and so it goes on and on, but the worst, I think, is this business about jobs are what Congressman Lederer is all about.

I submit to you that that is an affront to the intelligence of this committee. Anyone who is going to look at that tape, read that record, knows that what they were really talking about was putting money into the district and creating jobs, so that this man will have an excuse in case anyone questions him later as to why he is supporting this farm.

Well, we know what was discussed by Mr. Binns, but where was the discussion of promising to introduce private bills? Where was the discussion of taking the brown bag, of "spend it well," about his phony report to Congress, about the request to Cook for Lederer's share so he could help his shore houses, about the evidence of safety deposit box withdrawal slips and all the rest, the things that really go to what he did.

I did not hear anything about that. Mr. Binns' argument seeks to obscure Mr. Lederer's conduct by his recitation of his assertions of government misconduct, but Mr. Lederer was no naive victim. He was no Boy Scout by his own mouth. He knew very well why he was meeting Weinberg and De Vito, and he knew well what he would receive, money which he used later to repair his house for the beach.

This committee's purpose is to judge Mr. Lederer's conduct, not the conduct of the Executive Branch of government. Despite what

Mr. Binns says, the fact is that the Judiciary Committee can undertake that task if it sees fit.

Mr. Weinberg was a con man, an admitted con man, but that is the kind of agent, unfortunately, that the government sought and uses when it investigates and prosecutes crime. Priests and bishops are not usually present when sophisticated crimes are being committed, and certainly Boy Scouts are not invited to such schemes. We know that from his own mouth.

I ask a question of you that I think each of you must ask of yourselves. Can any one of you comfortably cast your votes knowing that you sit in the same house with a member who was willing to sell his vote for $5,000?

I submit to you that Mr. Binns has done today what he did at the trial. He talked about everything except Congressman Lederer. The jury didn't buy it, and I hope this committee does not, either.

Thank you very much.

The CHAIRMAN. This concludes the closing arguments to the committee.

In the interest of the committee, all of the information it so desires at such time as we undertake deliberation regarding the question of sanction, the Chair will at this time recognize any members for any questions they may have of either counsel.

Mr. ALEXANDER. Mr. Chairman?

The CHAIRMAN. Mr. Chairman.

Mr. ALEXANDER. Mr. Chairman, members of the committee, I would like to address a question to counsel for Mr. Lederer, Mr. Binns.

Mr. BINNS. Yes, sir.

Mr. ALEXANDER. Mr. Binns, assuming that the action of the FBI does constitute entrapment as a matter of law—and it may, we will hear from the courts on that question—assuming further that the actions of the FBI violate the rights of American citizens under the due process clause; assume further, if you will, that the agents and their assistants were themselves unsavory—and many of them are—are you suggesting that accepting money in exchange for a vote is proper conduct for a Member of Congress under any circumstances?

Mr. BINNS. No. What I am suggesting is that you are not going to find any evidence in this record that there was any money accepted in exchange for a vote.

Mr. ALEXANDER. Are you suggesting that accepting money in exchange for an action in Congress is a proper conduct for a Member of Congress?

Mr. BINNS. No. Perhaps I misspoke in the first instance. You are not going to find any evidence in this case that a dime was accepted for any action whatsoever.

Mr. ALEXANDER. Let's assume that for the purpose of our discussion that we are not referring to this particular case, and that we are referring to an instance where there is evidence.

In that instance, where there is evidence of a bribe and of a Member of Congress who accepts money in exchange for promised action in the United States Congress, either as a vote or as an action in Congress, are you suggesting that that is proper conduct for a Member of Congress?

Mr. BINNS. No, I am not.

Mr. ALEXANDER. Thank you very much.

The CHAIRMAN. Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman.

I would like to address my questions to Mr. Prettyman.

Can you point out to me where in the record we have testimony indicating that the Congressman was willing to trade his vote for his willingness to introduce a piece of legislation for money?

Mr. PRETTYMAN. You have to put several facts together in order to get that.

You do not have any statement during the course of the September 11 meeting, or before or after that, where the Congressman specifically said, "I am going to promise to introduce a bill in return for a specific sum of money."

In order to reach that conclusion, however, you do not have to put together too much.

You have his conversation with Errichetti ahead of time. You have immediately, almost as soon as the meeting started, a discussion of private immigration bills which he repeatedly agreed to introduce, and then you have the payoff, and the subsequent acceptance of the $5,000, and prove that he knew precisely what he was getting.

When you put that together, I think you could well understand why Mr. Binns at trial was willing to say that for purposes of this case, he didn't contest that Mr. Lederer took the money.

He did not argue that he took it under duress. He admited he took it voluntarily, intentionally, and when he took it, he knew it was in violation of law. I think he took that position and raised only the entrapment issue because the record as a whole clearly showed that there could be nothing else here except in return for a promise of introducing private bills, the exchange of money which was in fact exchanged.

Mr. BROWN. From looking at the tapes themselves, it seems to me that it is possible to conclude that he was willing to do that in exchange for investment in his district.

Mr. PRETTYMAN. Mr. Congressman, I suppose that each of us will just have to read the evidence and look at those tapes with his own best conscience and his own eye.

I frankly cannot possibly come to that conclusion. The talk about getting money into the district, it seems clearly to me in the context of the way it was spoken, it was always spoken of as an excuse.

Time and again references were made to that, it is "* * * a good excuse. It gives you something to talk about in case somebody asks you."

It seems to me the clear import of that is, you know, that is a great idea because, after all, somebody is going to come along and say this guy is in error, and what are you going to back him for. I can say, "Well, he has put all this money into my district, and that is what he is all about."

That is the way I read it. If you read it differently, I respect that point of view.

Mr. BROWN. I assume part of the thrust of the evidence that is available to us, his plea in this case itself, the plea of entrapment which admits the other elements.

Mr. PRETTYMAN. Well, he didn't have to. The judge—an interesting part of this was to exchange with the judge where the judge said that he would not force him to admit the crime in this case.

He did not agree with that rule, which is present in many jurisdictions, that you have to admit the offense. But Mr. Binns wanted the instructions to the jury only to go to the issue of entrapment and, therefore, he purposely took that position at trial.

I would point out to you that if you view that videotape as meaning only that he was interested in his district, how do you account for the fact that he left the meeting with $50,000?

The CHAIRMAN. Is the gentleman finished?

Mr. BROWN. Yes, I am. Thank you, Mr. Chairman.

The CHAIRMAN. Certainly.

Mr. Binns, let me ask you this. Part of the purpose of the closing or concluding arguments here this afternoon has been for the purpose of both counsel addressing themselves to the question of sanction.

Under the rules of the House, the provisions are for the following sanctions: (a) expulsion from the House; (b) censure; (c) reprimand; (d) fine; (e) denial or limitation of any right, power, privilege or immunity of the Member, if under the Constitution the House may impose such denial or limitation; and (f) any other sanction determined by the committee to be appropriate.

My question to you would be this. Are you saying that none of these sanctions should apply in this case?

Mr. BINNS. I am saying that the sanction of expulsion should not apply, sir.

The CHAIRMAN. Do you go further in that and say what sanction should apply?

Mr. BINNS. No, sir, I don't take it upon myself to advise this committee as to its inherent prerogatives, but I do say that the conduct of this Congressman in this case under the circumstances is not such that should amount to an expulsion, especially in view of the fact to do so would disenfranchise the voters of his congressional district because, if you will remember, he has been elected in spite of the indictment.

The CHAIRMAN. I have just one further question. I think to some degree this ties into the question posed by Mr. Alexander.

I can understand that a court of law where the conviction has occurred has the right and privilege under the law of being able to set aside that conviction, if it finds that in fact the government has overreached, finds in fact the conduct of the government or other agents has been reprehensible or in any manner the due process rights of the accused have been violated.

This being a disciplinary body, one in which no conviction as such has taken place before this committee and, therefore, not having the powers of setting aside a conviction, how does a disciplinary body such as this ignore the actions of the Congressperson, notwithstanding the reprehensibility of all other circumstances?

Mr. BINNS. The conduct of this Congressperson as shown by the government are that sometime after the meeting that he went to, he accepted an unrelated $5,000 payment from his long-time friend and political associate, Louis Johanson, which he reported. That is the best of the government's agents.

Now, I have listened to all this persiflage about how you should view the tape, and you can't come to any but one conclusion. There is a Congressman, Congressman Brown, who came to the opposite conclusion, evidently.

Once again, Mr. Prettyman has seen fit to cite a side bar conference having to do with a technical point of law wherein I said to Judge Pratt, "Judge, I don't care what you consider for the purpose of this instruction request. Consider he did everything that the government charged him for, but I am still entitled to the request."

That was a discussion that is taken completely out of context having to do only with the academic matter of what the proper entrapment instruction was, so that I did not for the purpose of his trial, and he most certainly did not admit to anything.

The case of the United States versus Valencia in the Second Circuit states that in that circuit, one does not have to admit anything in order to plead entrapment. So, the judgment was not giving any grandiose gesture.

We were discussing case law, and I said to him in that context for the purpose of it, I assume he knew, assume he took it voluntarily, but that was not the fact, and it was never admitted and, as a matter of fact, the judge did not charge that way.

The judge charged that that was not what was being done here.

Mr. PRETTYMAN. May I respond very briefly just on the two points. On the disenfranchisement of the voters in his district, I would point out for the record that the primary election was held April 22, 1980. The indictment returned May 28, 1980. The general election was held November 4, 1980, and the jury verdict was January 9, 1981.

As a result, those who voted for him in the primary were not aware he was going to be indicted, and those who voted for him in the general election were not aware that he was going to be found guilty.

As to one of the statements just made that he, Congressman Lederer, accepted a voluntary contribution from his long-time friend, I challenge Mr. Binns to find in this record evidence of that. That is a gratuitous statement on his part which is not supported by this record, but which in fact is disputed by evidence in this record.

Mr. BINNS. May I respond to that, sir?

The CHAIRMAN. Certainly.

Mr. BINNS. I didn't say he accepted a contribution. I said he accepted a payment, and not only is it part of the record, Mr. Prettyman has quoted it as part of a submission by Congressman Lederer to the Congress in his yearly accounting, and that is what the government introduced.

Mr. PRETTYMAN. The problem with that is that he submitted that as a payment for a consultant's fee from Mr. Johanson or his law firm when Mr. Cook testified that (a) he would have known about any such consultant's fee, and (b) there never was one and, moreover, no evidence was offered by Congressman Lederer as to any consulting services that he ever did for that law firm or for Mr. Johanson.

The CHAIRMAN. The Chair recognizes Mr. Bailey.

Mr. BAILEY. Mr. Chairman, since we are finished with counsel, I assume that members have no other questions for counsel.

The CHAIRMAN. Just a minute.

Mr. BAILEY. I would like to defer.

The CHAIRMAN. The Chair recognizes Mr. Spence.

Mr. SPENCE. Yes, Mr. Chairman.

Mr. Binns, I would like for you to run that by me one more time.

Mr. BINNS. Which part?

Mr. SPENCE. That part about taking that money, and what he took it for.

Mr. BINNS. Did you view the tape?

Mr. SPENCE. Yes.

Mr. BINNS. Did you see anywhere in the tape where there was a predicate to his accepting any money whatsoever?

Mr. SPENCE. Well, I saw the tape and I heard the discussion, and all of that, but I wanted you to give me your view of what he was doing and why he was accepting the money.

Mr. BINNS. If you view the tape carefully and read the transcript, you will see that from the outset, the FBI agents secreted the money. They then entered into a completely innocuous conversation concerning (a) the issuance of green cards, and (b) the introduction of a private bill to which the Congressman immediately responded, "I do it all the time, and I will do it for your guy."

Then the talk drifted into discussions of investments into his congressional district and on repeated occasions, Anthony Amoroso tried to infuse into the conversation a discussion of money which the Congressman consistently said. "I am not interested, I am not interested in."

After they had spent 40 some minutes with him telling how they were going to come in, how they had to be trusted, how they were going to be the link between the sheik and Philadelphia, how their word had to be good with the sheik, how they couldn't go back and tell the sheik that they failed in their mission, without the mention of any money, without the mention of any bribe, Anthony Amoroso reached into his valise and gave a package to the Congressman.

I don't know how Congressmen receive (a) contributions. I don't know how Congressmen receive gifts because just prior to this, there was a recitation of how they had made a gift of a ceremonial knife to the Mayor of Camden.

I don't know how Congressmen receive whatever they receive during the course of their term as a Congressman, but I do know this, that you would have to be prescient to know that (a) there was money in the bag or that (b) it represented a bribe because nothing like that was ever discussed.

As a matter of fact, the FBI took pains to skirt the issues, never to say it, I guess under the apprehension that if she said it, he would have gotten up and walked out because if you will take judicial notice, if you will, of the instances where they did discuss with certain Congressmen money, the Congressman got up and left.

Mr. SPENCE. I was interested, because if he is going to be handed a package, and he does not know what is in it, it seems like he would say it was a birthday present or something?

Mr. BINNS. I don't know if that is what Congressmen do.

Mr. SPENCE. I don't take things people hand me without asking what it is. It might jump out and hit me.

Mr. BINNS. It might.

Mr. PRETTYMAN. The one little problem with what Mr. Binns just said is that Mr. Lederer did not report that $5,000 as a gift or as a campaign contribution or any of the other things that he hypothesized about. He reported it as a consultant's fee, and that was struck down by the evidence.

Mr. SPENCE. That is all.

The CHARIMAN. Any other members seeking recognition for the purpose of questions?

If not, the Chair then recognizes Mr. Bailey, who I understand has a statement.

The Chair recognizes you for whatever purpose.

Mr. BAILEY. Thank you, Mr. Chairman.

I would like to, for the sake of the record, present what amounts to some additional views, and they go to a matter which very well might be collateral, but I think it is more fundamental than what we are discussing here, and they have to do with my personal attachment. at least to the Constitution and Rules of Procedure that are far more important than the guilt or innocence of any one individual.

As a point of departure, the questions asked by Congressman Alexander and asked by our chairman here, I think, would serve my purposes very well.

There is no political, ethical or moral excuse for the conduct as alleged. That is a very important word, alleged.

We have laid some dangerous precedents in this case, in my opinion, because of the history of our views of Rule 14. I will, Mr. Chairman, after these proceedings are over, at some time in the future endeavor to try and make public the proceedings that were involved on September 3 of last year, very competently addressed by Mr. Prettyman, incidentally, so that the public can view that process.

I very strongly feel that what we should have done was proceed under Rule 16. We would not have been tied, as I believe we are inextricably tied, to what may involve an intellectual hypocrisy in the utilization of certain court proceedings in this matter; i.e., what does or does not constitute a conviction, whether or not after the choice of a particular procedure we can then define what that word means and proceed because we do not have to suffer any fear of the interference of the courts in interpreting our procedures and/or the definitions that we give them.

I have a difficulty with that because in any conflict between Article I, Section 3 of our Constitution, and the Bill of Rights, what is meant by the Fifth Amendment and what the substantive and procedural due process meaning is attributed to the Fourteenth Amendment, what concept like selective incorporation of those amendments in court cases have brought to us and conflict between those respective sections of our Constitution could mean in this case.

What all those perhaps complicated, those technicalities boil down to is everything that the United States of America is about.

We could have taken Rule 16. We could have conducted our own hearings irrespective of what the courts did and then, I suppose, I would not have to be explaining to a press, incidentally, the vast majority of whom have been very responsive and very decent in their handling of my interpretation of these matters, although I have suf-

fered some mistreatment in a few quarters, I suppose; but we are not talking about waiting until an appeal process is completed. That is not the issue.

We are really talking about whether or not a trial process, because of a decision made by a district judge, Federal district judge, is completed. That is really what we are talking about.

We are also talking about tying what should be our independence to what occurs in a Federal district court, or what occurs in the judicial system, and perhaps to some extent at least in terms of our argument and justifications for behavior, tied to those decisions.

That, in my opinion, is an error. It is the wrong way to proceed, well-intentioned because of the pressures of an election in the Myers case, but not necessary with these other cases at all, if indeed you can disregard politically the impact of maybe an extra month or perhaps two in the handling of one of these Abscam cases.

Such things may appear to be illusive, but they are really at the heart of what is involved in these cases because hypothetically we face the possibility, the possibility of these cases, these jury verdicts, no matter how, with all due respect, Mr. Prettyman, we may wish to, with all the energy that advocacy can muster, argue the definition of conviction or what a jury verdict means.

We face the possibility that those two things can be overturned or changed within the judicial system.

We are then going to have to argue and justify the type of hearing that we have held, the degree to which we have investigated these matters, and the justifications for the decisions that we have reached.

In summary, there is no excuse for conduct of this type if, as alleged, it can be investigated properly and shown, but that is precisely the issue going back to what our very capable and able chairman has said and referred to as this disciplinary proceeding.

No, we do not have to depend upon what happens in a Federal district court. We do not have to depend upon their definitions. I am sure if we did overly great violence to what due process means, at some point some court would find the leverage to step in.

We could wake up in a month or two with every single one of these convictions being thrown out and overturned, and I am not talking about two years in an appeal process, but under Rule 14, we have chosen to proceed on the basis of a court action where things happened a little differently than they normally have in the past.

A little thing called a due process hearing, that is no big thing, is it? Due process of law. It is not a big thing, Mr. Chairman.

It means very little. Due process of law, so that a little hearing pending—pending is a key word—pending due process hearing, Mr. Chairman, pending due process hearing, not on an appeal based upon a certified conviction, but a pending due process hearing that goes to the very issue of whether or not that jury verdict was reached, because all evidence was fairly considered and placed before those people, so that they could make a judgment based thereon.

I get accused of making technical arguments. I guess every little piece of slur and innuendo, although I have nothing to gain by it, can be useful in attacking those arguments, but they are at the heart of everything that we try to do.

I realize that the time for that point of view has perhaps passed and the route the Congressman crossed—and it is moot right now—but I hope that in the future—and I want to take this opportunity to at a public, open hearing clarify my point of view—that we will be able to correct these deficiencies, or at least, regardless of what opinion may be, at least remove the ambiguities which make it difficult for us to reach more credible judgments concerning the lives, the reputations of, although they may be politicians, American ciitzens.

I thank you very much, Mr. Chairman, for my opportunity to present these additional views and comments on the procedure under which we have conducted these cases.

Thank you, Mr. Chairman.

The CHAIRMAN. At this time the Chair would, in the absence of anything further from any members of the committee, thank both counsel for the committee and counsel for Mr. Lederer for your presentations you have made here this afternoon.

This officially concludes this hearing today, and the Chair desires to make this statement.

The matter before us this afternoon is one of grave importance, and one that is not to be treated lightly. Unavoidably, for various reasons, a number of the committee members have not been able to attend this hearing. The Chair personally feels that all members of the committee should participate in the decision of what sanction to recommend to the House.

Therefore, without objection, it is my instruction to the staff that a copy of today's transcript be made available to all members of the committee, those who are present and those absent, and state the committee next meets in executive session on Tuesday, April 28 at 10:00 to continue our consideration of this matter.

Is there objection?

There being no objection, this meeting is adjourned to Tuesday, April 28 at 10:00 a.m.

[Whereupon, at 3:00 p.m. the committee adjourned, to reconvene at 10:00 a.m., Tuesday, April 28, 1981.]

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

IN THE MATTER OF REPRESENTATIVE RAYMOND F. LEDERER

Investigation Pursuant to House Resolution 67, Report of Special Counsel Upon Completion of Preliminary Inquiry.

On March 11, 1981, pursuant to House Resolution 67 (Ex. A hereto) and Rules 11(a) and 14, Rules of the Committee on Standards of Official Conduct (hereinafter "Committee Rules"), the Committee voted to commence a preliminary inquiry (Ex. C) into whether any of the offenses for which Representative Raymond F. Lederer was convicted on January 9, 1981, constitutes a violation over which the Committee has jurisdiction.

Attached hereto are copies of the documentary evidence received in the preliminary inquiry: a copy of those portions of the transcript of Representative Lederer's trial on charges of violating 18 U.S.C. §§ 201

(c), 201(g), 371 and 1952 which counsel for Lederer and/or Special Counsel to the Committee deemed relevant to the Committee's inquiry,[1] copies of the relevant exhibits from the trial;[2] and a transcript of the Committee proceedings on March 17, 1981. Also attached is a letter from counsel for Congressman Lederer, dated March 3, 1981, which was treated by the Committee as a motion to defer the disciplinary hearing and which was denied by Committee vote on March 11, 1981. (The motion was renewed at the Committee's hearing on March 17, 1981, and was again denied.)

1. The Indictment

On May 28, 1980, Congressman Lederer was indicted by a Federal Grand Jury in the Eastern District of New York, along with Angelo J. Errichetti, the Mayor of Camden, New Jersey; Howard L. Criden, a partner in a Philadelphia law firm; and Louis C. Johanson, a partner of Criden's and a Philadelphia City Councilman. The four-count indictment charged them with the crimes of conspiracy (18 U.S.C. § 371), bribery (18 U.S.C. § 201(c)), receiving an unlawful gratuity (18 U.S.C. § 201(g)), and violations of the Travel Act (18 U.S.C. § 1952).

The first count of the indictment charged that from on or about July 26, 1979, until on or about November 1, 1979, Lederer, Errichetti, Johanson and Criden conspired to violate 18 U.S.C. § 201(c) by defrauding the United States as alleged in the second and third counts. It was charged that as part of the conspiracy, the co-conspirators corruptly agreed to seek and receive a sum of money for Lederer in return for his being influenced in his performance of official acts and his being influenced to commit fraud upon the United States. The Grand Jury further charged that as part of the conspiracy, Lederer agreed, inter alia, to assist foreign businessmen to enter and remain in the United States in return for the cash payment of $50,000 and that Lederer did receive that payment in return for his assurances that he would introduce private immigration bills to enable the foreign businessmen to remain in the United States. It was charged that as a further part of the conspiracy, Lederer shared in the proceeds of the $50,000 payment. Twelve overt acts were alleged to have occurred pursuant to this conspiracy.

The court charged the jury that in order to convict under this conspiracy count, the Government had to have established beyond a reasonable doubt that (a) a conspiracy as described in the indictment was willfully formed; (b) Lederer willfully became a member of the conspiracy; (c) at least one of the overt acts alleged in the indictment was committed by one of the conspirators while Lederer was a member of the conspiracy; (d) the overt act was knowingly done in fur-

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[1] Relevancy was determined as follows: Special Counsel designated those portions of the trial transcript, and those trial exhibits, which he thought were relevant to the Committee's consideration. By letter dated March 11, 1981, the Congressman's counsel was given an opportunity to counter-designate, or to suggest deletions from, portions of the trial record. Special Counsel and the Congressman's counsel thereafter entered into a Stipulation, a copy of which is attached hereto, which provides in part: "5. Those portions of the trial transcript, and the exhibits recited above, which have been designated by Special Counsel and cross-designated by counsel for Congressman Lederer shall be deemed the only portions of the trial record which will be considered relevant and material to the Committee's investigation, *provided*, however, that by so stipulating, neither Special Counsel nor counsel for Congressman Lederer concedes that all such portions are necessarily relevant and material to such investigation."

[2] See footnote 1, supra.

therance of the conspiracy; and (e) Lederer was not the victim of entrapment (see Tr. 1139–58).

Count Two of the indictment alleged that between on or about July 26, 1979, and on or about November 1, 1979, Lederer—aided and abetted by Errichetti, Johanson and Criden—corruptly sought, accepted, received and agreed to receive for himself and others a sum of money from FBI Special Agent Amoroso in return for Lederer being influenced in the performance of official acts as a Member of Congress—to wit, his decisions and actions in a matter involving the immigration, residency and citizenship of foreign nationals which might be brought before the House of Representatives. This was alleged to be a violation of 18 U.S.C. §§ 201(c) and 2.[3]

The court charged the jury that in order to convict under this bribery count, the Government had to have established beyond a reasonable doubt that (a) on September 11, 1979, Lederer received a sum of money; (b) when he did so, he was a public official; (c) he received the money in return for being influenced in his performance of an official act; (d) he acted knowingly, willfully, and corruptly; and (e) he was not the victim of entrapment (see Tr. 1158–77).

The third count of the indictment charged that from on or about July 26, 1979, until on or about November 1, 1979, Lederer, again aided and abetted by Errichetti, Johanson and Criden, unlawfully and knowingly asked, demanded, exacted, solicited, sought, accepted, received and agreed to receive a sum of money for himself for and because of official acts to be performed by him as a Member of Congress in a matter involving the immigration, residency and citizenship of foreign nationals which might be brought before the House of Representatives and departments of the United States Government, all in violation of 18 U.S.C. §§ 201(g) and 2.[4]

The court charged the jury that under this unlawful gratuity count, the Government must have proven beyond a reasonable doubt that (a) on September 11, 1979, Lederer received a sum of money for himself; (b) at the time he did so, he was a public official; (c) he received the money otherwise than as provided by law for the proper discharge of his official duty; (d) he received the money for or because of an official act performed by him; (e) he so acted knowingly and willfully; and (f) he was not the victim of entrapment (see Tr. 1177–83).

The fourth and final count of the indictment alleged that on or about September 10 and 11, 1979, Lederer, Errichetti, Johanson and Criden unlawfully and knowingly traveled in interstate commerce from the District of Columbia and the States of New Jersey and Pennsylvania into the Eastern District of New York and used the facilities of interstate commerce with the intent to promote and carry on unlawful activity—namely, bribery—and thereafter promoted and carried on said unlawful activity and distributed the proceeds from it. The Grand Jury alleged that part of that activity was Lederer's receipt of a sum of money for himself and others in return for his being influenced in his performance of official acts as a Member of Con-

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[3] Section 2 is the "aiding and abetting" section of the Code. Since, as noted below, Errichetti, Johanson and Criden were severed from the trial, and they were the only alleged "aiders and abettors" the court did not charge the jury in connection with this section of the Code (see Tr. 947–948).

[4] See footnote 3, supra, in regard to section 2.

gress. It was charged that this constituted a violation of 18 U.S.C. §§ 1952 and 2.[5]

The court charged the jury that in order to convict under this count charging a violation of the Travel Act, the Government must have proven beyond a reasonable doubt that (a) on September 11, 1979, Lederer traveled in interstate commerce; (b) he did so with intent to promote or carry on an unlawful activity; (c) thereafter, he performed an act either to promote or carry on the unlawful activity or to distribute its proceeds; (d) he acted knowingly and willfully; and (e) he was not the victim of entrapment (see Tr. 1183–90).

On their own motions, and with the consent of the Congressman, the charges against Errichetti, Johanson and Criden were severed from the Lederer trial, so that the Congressman was the sole defendant tried before the jury (Tr. 34–35).

2. Summary of evidence at trial

In mid-1978, Melvin Weinberg, an FBI informant and "professional con man," began working on the so-called ABSCAM operation (Tr. 701, 720, 738).[6] ABSCAM was a code name derived from that of a fictitious company named Abdul Enterprises, Ltd., with offices in Holbrook, New York (Tr. 392–393, 569, 704, 737). The company, operated by the FBI, was ostensibly in the business of investing money and was purportedly owned by two sheiks,[7] who were in fact fictitious (Tr. 395). Anthony Amoroso was an FBI agent, assigned to the Miami area, who during 1979 acted in an undercover capacity using the name "Tony DeVito" (Tr. 392). He held himself out as the President of Abdul Enterprises, while Weinberg pretended to be a consultant or financial advisor to the company (Tr. 392–394, 704). In early 1979, the focus of the undercover investigation was upon gambling casinos in Atlantic City, but beginning in July of that year, the focus shifted to political corruption (Tr. 394–397, 518, 754).

On July 26, 1979, DeVito, Weinberg and several undercover FBI agents met on a yacht in Ft. Lauderdale, Florida, with Errichetti, Criden, Johanson, and James Meiler, a businessman associated with Criden and Johanson (Tr. 395–397, 647–648, 704–705). At the meeting, Criden, Errichetti, Johanson and Meiler presented a legitimate proposal to DeVito and Weinberg, purportedly representing the wealthy Arab sheiks, for funding a casino in Atlantic City (Tr. 397–399, 811–813). During the latter part of the discussions, DeVito stated that his employers—the sheiks—were deeply concerned over what had appeared recently in the news media concerning President Somoza of Nicaragua. The news reports indicated that the United States was thinking about returning Somoza to his native country, and this concerned the sheiks because they anticipated coming to the United States at some future time to reside here as a result of political turmoil in their own country (Tr. 403–403A, 440, 585–586, 651, 739–741). Errichetti stated that there would be no problem, that he had connections with the right political figures, and that he "could handle it" (Tr. 403–403A). Errichetti indicated that the Arabs had enough money to take

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[5] See footnote 3, supra, in regard to section 2.

[6] "Tr." references are to the trial transcript, attached as an appendix hereto.

[7] The sheiks are sometimes referred to in the record as "sheik," meaning one person, and sometimes as "sheiks," meaning two persons. These terms are used interchangeably throughout this Report.

care of all expenses, and DeVito directed him to go ahead and see what he could do "along those lines" (Tr. 403A). DeVito also asked Errichetti to find out "how much it would cost" (Tr. 404). According to Weinberg, Errichetti told him he had "congressmen to bring in that were willing to take bribes," and Weinberg encouraged him (Tr. 740–741).

One Ellis Cook testified for the Government (Tr. 641). Since December 1968, and during all of 1979, Cook had been a partner in the Philadelphia law firm in which Criden and Johanson were also partners (Tr. 643). Cook testified that after the July 26, 1979, meeting in Florida (which he did not attend), Criden told him that Errichetti had in turn told Criden that if Criden's law firm "knew any politicians there was money to be made in introducing the politicians to the sheiks" (Tr. 650; see also Tr. 648).[8] It was understood, Cook testified, that the politicians would also receive money—Criden and Johanson both originally spoke of $100,000—in order to be "beholden" to the sheiks (Tr. 650–652). In one of these conversations, Criden brought up the names of Congressmen Lederer and Michael J. Myers, reminded Johanson that the Councilman knew them, and asked, "Why don't you see if they will meet with the * * * sheik * * *." (Tr. 652–653). Johanson said he would talk to them (Tr. 653).

On July 29, 1979, three days after the meeting on the yacht in Florida, Weinberg in Florida called Errichetti in New Jersey at approximately 12:13 PM and recorded the call (Govt. Ex. 1, 1A, 1B; Tr. 706, 742–745). After discussing the name of one Congressman from Philadelphia, the following conversation took place (Govt. Ex. 1A at p. 1):

> ERRICHETTI. Well, there's a couple of other ones, too.
> WEINBERG. Who else?
> ERRICHETTI. Well, there's * * * there's a possibility * * * I * * * chatted with him just briefly on it and I have to meet with, you know, personally.
> WEINBERG. Who's that?
> ERRICHETTI. Congressman Lederer.
> WEINBERG. Congressman Leder?
> ERRICHETTI. Lederer * * * L-E-D-E-R * * * let's see L-E-D-R * * * Lederer.
> WEINBERG. Alrighty.
> ERRICHETTI. He's also from * * * ah * * * Pennsylvania.
> WEINBERG. O.K.[9]

The next day, July 30, 1979, at approximately 4:25 PM, Weinberg in Florida again made a recorded call to Errichetti in New Jersey (Govt. Ex. 2, 2A and 2B; Tr. 706–708). Although Lederer's name

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[8] All of this otherwise-inadmissible hearsay testimony by Cook was allowed into evidence because the District Court ruled that for purposes of admissibility, a conspiracy had sufficiently been proven to exist between, among others, Lederer, Errichetti, Criden, Johanson and Cook (Tr. 852–859), thus making the testimony admissible under the "co-conspirator" exception to the hearsay rule. The ultimate fact question of whether a conspiracy existed, and, if so, who belonged to it, was left to the jury to decide under the court's instructions (Tr. 1134–57). As noted hereafter, the jury found Lederer guilty on the conspiracy count (Tr. 1228).

[9] There are numerous misspellings, awkward or incomprehensible phrases, etc., in the recorded conversations quoted throughout this Report. In each instance, the word or phrase is quoted precisely as it appeared in the exhibits introduced at trial and shown to the jury

was not specifically mentioned, the conversation apparently concerned "the same subject" as the prior one (see Tr. 707). Errichetti asked when he should "schedule those people that we talked about," and Weinberg said he needed a week's time in order to raise the cash. They agreed that the meeting should take place in New York, and Weinberg expressed concern about walking around "with all that cash" (Govt. Ex. 2A at pp. 1–2).

The following day, July 31, 1979 at approximately 5:00 PM, Weinberg again telephoned from Florida to Errichetti in New Jersey and recorded the call (Govt. Ex. 3, 3A and 3B; Tr. 708–713). Errichetti said that he was getting "those guys lined up," and Weinberg said that everything was ready. After a mention of the "the two from Pennsylvania," Weinberg and Errichetti talked about "what price we using." Errichetti initially indicated "one"—meaning $100,000 (Tr. 709)—but there was an agreement that this price should be cut to "50"—meaning $50,000 (*id.*). Errichetti said: "* * * I thought I was explaining to them what the deal was. How it was gonna be done. And they said fine." (Govt. Ex. 3A at pp. 1–2). Weinberg took this latter statement to mean that Errichetti was explaining to the Congressmen what "they have to do for us, for the money" (Tr. 711).

Weinberg called Errichetti back one hour later (Govt. Ex 4, 4A and 4B; Tr. 713–714). In this recorded conversation, Weinberg told Errichetti to obtain for him the names of "these Congressmen" and discussed the possibility of going from the proposed meeting to another meeting in Cherry Hill, New Jersey (Govt. Evt. 4A at pp. 1–2)

Five days later, on August 5, 1979, DeVito, Weinberg and Errichetti met at 4:00 PM in the Northwest Airlines lounge of the John F. Kennedy International Airport (Govt. Ex. 5, 5A, and 5B; Tr. 404–411. 715, 945–946). During the ensuing audio-recorded conversation, Errichetti referred to Congressman Myers and then added: "Congressman Lederer, he's from Philadelphia also." DeVito asked: "Leder?", and Errichetti replied "Lederer * * *" (Govt. Ex. 5A at p. 2).

The next day, August 6, 1979, at 9:30 AM in Room 1028 of the Hyatt House Hotel in Cherry Hill, DeVito met again with Weinberg and Errichetti (Govt. Ex. 6, 6A, and 6B; Tr. 411–413, 715. 945–946). That meeting was audio-taped. Weinberg, after referring to the fact that the money was arranged for Congressman Myers the next week, went on to say, "* * * and then on the rest we'll go one right after another." Errichetti rejoined: "They're there." (Govt. Ex. 6A at p. 1).

The following day, August 7, 1979, there was an audiorecorded meeting at 10:30 AM in the same room of the same hotel between DeVito, Weinberg, Errichetti and Criden (Govt. Ex. 7, 7A and 7B; Tr. 413–416, 715). After a discussion of other Congressmen, Criden said: "And you know there's a third guy." Errichetti added: "Lederer." Criden said "Heh," and Errichetti went on, "Lederer from Pennsylvania." (Govt. Ex. 7A at p. 1). A little further in the conversation, Criden stated: "Besides another guy by the name of Lederer. Congressman from Philadelphia, and the guy you know, first mentioned". To which Weinberg replied. "That will be in touch er, er if not next week, week after next we'll move on that—that's that's the easiest part. That that's no problem, that can be handled. We give you

the O.K. on that now, its no problem with that. * * *" (id. at p. 2). The group then discussed where the next meeting would take place (id. at pp. 2–3).

The next day, August 8, 1979, DeVito, Weinberg and Errichietti met in the same hotel room at 4:30 PM—a meeting which was audio-recorded (Govt. Ex. 8, 8A, 8B; Tr. 416–418, 439, 443–444, 715). After a discussion of Congressman Myers, Weinberg asked, "Alright, then who would be the next one after him," and Errichetti replied, "I guess it would be Lederer." Weinberg asked, "Lederer?", and Errichetti replied, "Congressman Lederer, O.K. * * *" (Govt. Ex. 8A at p. 2).

Almost a month later, on September 2 or 3, 1979,[10] after DeVito had met with Congressman Myers on August 22 (Tr. 631), there was an audio-taped telephone conversation between Errichetti and Weinberg (Govt. Ex. 9, 9A and 9B; Tr. 715–716). During the course of that conversation, the following colloquy occurred (Govt. Ex. 9A at pp. 1–2):

> WEINBERG. * * * Now, the other thing is did you find out who the next one is?
>
> ERRICHETTI. Yes.
>
> WEINBERG. Good.
>
> ERRICHETTI. Congressman Lederer, as I told you before.
>
> WEINBERG. Right.
>
> ERRICHETTI. He's all set.
>
> WEINBERG. All set?
>
> ERRICHETTI. The only problem he's got is he said he has to make it early because he has to be in Washington for an important vote in the afternoon.
>
> WEINBERG. All right.
>
> ERRICHETTI. So, whatever time you could make it, as early as possible. He said, please, you know. So, I go, all right, when I get a hold of him, I'll set the thing up as far as time.
>
> WEINBERG. All right.
>
> ERRICHETTI. So you talk to Tony and get the time set up, like say 10 o'clock, 10:30, you know, whatever.
>
> WEINBERG. Okay.
>
> ERRICHETTI. On Tuesday. On the 11th.
>
> WEINBERG. All right.
>
> ERRICHETTI. It's all set.
>
> WEINBERG. Okay.

Three days later, on September 6, 1979, a telephone conversation was recorded again between Errichetti and Weinberg (Govt. Ex. 10, 10A and 10B; Tr. 716–718). During this conversation, the following occurred (Govt. Ex. 10A at p. 1):

> ERRICHETTI. Right. Everything's set for Tuesday morning [September 11] with the candidate.
>
> WEINBERG. Right.
>
> ERRICHETTI. All set ready to go.
>
> WEINBERG. OK.
>
> ERRICHETTI. 10 o'clock.

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[10] The transcript of the tape itself indicates that the meeting was held on September 3 (Govt. Ex. 9A at p. 1), whereas Weinberg's attention was directed to the date of September 2 (Tr. 715). The two references, however, would appear to have been to the same conversation.

According to Weinberg, the "candidate" referred to in this conversation was Congressman Lederer (Tr. 718).

Three days later, on September 9, 1979, a further audio-recorded conversation took place between Weinberg and Errichetti (Govt. Ex. 11, 11A and 11B; Tr. 718–719). Included in this conversation was the following (Govt. Ex. 11A at pp. 1–2):

> ERRICHETTI. Alright now listen, Number Two. The candidate. Congressman.
>
> WEINBERG. Yeh.
>
> ERRICHETTI. OK. He called like an hour or two ago and said please Mayor I can be in New York, at five, five thrity [thirty].
>
> WEINBERG. Alright.
>
> ERRICHETTI. Cause I have to fly up from Washington, I got to vote on a very important bill and I can't get out of Washington before then. What I'll do is I'll go pick him up at LaGuardia.
>
> WEINBERG. Alright.
>
> ERRICHETTI. And, then meet you, you know, at the Hilton.
>
> WEINBERG. OK.
>
> ERRICHETTI. The regular thing.
>
> WEINBERG. Alright. * * *
>
> ERRICHETTI. What I intend to do is spend you know some time in, to spend Tuesday in New York, rather than coming back Monday night.
>
> WEINBERG. Right. * * * Alright so we'll make the meeting be around five-thirty.
>
> ERRICHETTI. Yes.
>
> WEINBERG. OK.
>
> ERRICHETTI. I'd say about, er, how, how longs it take to go from LaGuardia to er * * *?
>
> WEINBERG. From Kennedy to LaGuardia?
>
> ERRICHETTI. Well, well LaGuardia to Kennedy.
>
> WEINBERG. Er, about 15, 20 minutes, maybe in a little traffic may take a little longer.
>
> ERRICHETTI. OK. So I'll, I'll have to go to LaGuardia, pick him up, and bring him over to the Hilton.
>
> WEINBERG. Oh, OK.
>
> ERRICHETTI. That's all I got to do. Alright?
>
> WEINBERG. Alright * * *.

Cook testified that sometime after the August 22 meeting with Congressman Myers but before September 11, Johanson told Cook in Criden's presence that he, Johanson, had spoken with Lederer and set up a meeting with the sheik's representatives (Tr. 656–675). According to Cook, Johanson had told Lederer that the Criden firm could make a fee for introducing Lederer to the sheik's representatives and that Lederer would receive $50,000 for going to the meeting (Tr. 657). Lederer reportedly responded that "he would be glad to do it for Lou [Johanson] and all he wanted was a $5,000 contribution for the spring primary" (Tr. 657, 683, 686). Johanson indicated that he had told Lederer that Lederer would receive the money at the meeting, and

that just prior to the meeting Lederer would meet with Errichetti (Tr. 657–658).[11]

Criden told Cook that Lederer would be flying up from Washington for the meeting; that Criden and Johanson would go to LaGuardia Airport from Philadelphia and meet Lederer; that they would take Lederer to meet Errichetti, who in turn would take him to the sheik's representatives; and that Criden and Johanson would not themselves attend the meeting (Tr. 658–660). Cook further testified that on September 11, 1979, Criden and Johanson did in fact leave their office in Philadelphia, and they told him they were driving to LaGuardia Airport to pick up Lederer for the meeting (Tr. 660).

On that day, Tuesday, September 11, 1979, there was a meeting at 5:18 PM in Room 717–718 of the Hilton Inn at the John F. Kennedy Airport in Queens, New York, between DeVito, Weinberg, Errichetti,[12] Congressman Lederer, "Ernie Poulos"—an undercover FBI agent whose real name was Ernest Haridopolos (Tr. 424, 433, 825–826)—and another agent named Byrd (Tr. 433). The meeting was videotapped (Govt. Ex. 12A, 12B–1, 12B–2, 12C, 12D; Tr. 416, 418–428, 607, 745–761, 815–817, 820, 826–830). The videotape opened with a scene showing DeVito sitting alone, stating that he was anticipating a meeting with Errichetti and Lederer and that in front of him was $50,000 in five packages, each containing $10,000. He placed this money in a brown paper bag, wrapped the bag, and put it in a briefcase to his immediate right (Ex. 12A at p. 1; Tr. 826–827). After a brief break in the scene, Errichetti and Lederer entered the room together and began talking (Ex. 12A at pp. 1–2; Tr. 432–433, 827). Errichetti introduced Lederer to DeVito (Ex. 12A at p. 2).

Poulos, who had been in the room for the introductions, then left and joined another special agent in the bar downstairs (Tr. 424, 433, 827–828). Sitting nearby, at the entrance to the lounge area, were Criden, Johanson, and Errichetti's nephew (Tr. 828–829), who had driven Errichetti to the hotel the night before (Tr. 433). Poulos spoke to the nephew, who said that one of the men with him was "Howard," but he did not know the other one (Tr. 829).

Meantime, at the meeting upstairs, the following pertinent parts of the conversation were taking place (Ex. 12A at pp. 3–39; emphasis added throughout):

> WEINBERG. * * * Ah, Angie must have explained to you.[13]
>
> LEDERER. *He told me some things you're interested in and ah we're on the same vibes.* Ah I'm very interested in the port of Philadelphia and I understand you're applying (IA) I just heard, big words, interested in the port of Philadelphia.

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[11] Cook was also told that Errichetti either would prepare, or had prepared, Lederer to speak with the sheik's representatives "about immigration matters, finance in the district * * *," but it is not clear whether Cook was told this before or after the September 11 meeting with Lederer (Tr. 657).

[12] DeVito testified that by this time he had had contact with Errichetti from a dozen to two dozen times (Tr 445), that Errichetti had been present when payoffs had been made to others (Tr. 446, 462), and that Errichetti himself had been paid off on three occasions—one of them the evening before the September 11 meeting—in connection with licenses and gambling in Atlantic City (Tr. 624–626, 630–632).

[13] DeVito assumed this meant that Errichetti had explained to Lederer that the sheik's representatives wanted Lederer "to introduce a bill and that he was going to be paid for it" (see Tr. 436–437). Weinberg confirmed that the explanation must have been that Lederer "was to receive the money to do us a favor" (Tr. 748). He based this on his 5 PM July 31, 1979, recorded conversation with Errichetti (Tr. 748–751).

DEVITO. Right.

LEDERER. You guys do any background on me?

ERRICHETTI. Yeah, tell them what you want.

DEVITO. Yeah, why don't you, why don't you.

LEDERER. Well, I'm a Member, of course, but I'm on the Ways and Means Committee. I'm on the Subcommittee on Trade. That's the whole gammit. I'm the ranking member of the Miscellaneous Subcommittee which is race tracks, casinos, Vegas interests, anything else that falls under the cover of Ways and Means. Do you know anything about Ways and Means?

WEINBERG. Yeah.

LEDERER. Alright, it's under the Constitution, the tax committee, and ah that's my story. He tells me that your fella is, outside some considerations of family that he's concerned about, humanitarian, I would do that anyway. I'm not gonna jerk you off there.

WEINBERG. Yeah.

LEDERER. But if he's interested in the port of Philadelphia then I can do the fuckin' ballpark. Cause that's jobs and that's what I'm about. My people are working.

DEVITO. OK, but ah * * *

ERRICHETTI. Mention the green cards to him.

LEDERER. Oh well, thats what I said humanitarian.

WEINBERG. The main thing is what he's scared of is what happened to Somoza and the Shah. They're all scared that when they know there country is going to be overthrown eventually, there's no. You know that as well as I do. The new ones gonna take over and all these shieks are going to be thrown out, that you can sponsor him, whatever help he needs, that he can count on you.

LEDERER. I would do that and I do that all the time, for a lot of people. * * * If you wanta spell it out, tell me now what your fears are, (IA).

DEVITO. Well, okay. What I want to make sure of is now I, here again, I understand, that one of the ways, uh, we're mainly interested in, we have one shiek and another shiek, okay we have two different fellows here, who want to insure that when the time comes, okay, they have to get out of where they are, okay.

LEDERER. They're not going to be standing with their dick in their hands.

DEVITO. Yeah, exactly, alright. And when I talked with Angelo about this thing, at the particular time was the fact that they were talking about sending Somoza back. You know, the newspapers had it that this country was thinking of sending him back. Well, this scarces the shit out of anybody that's * * * uh * * *

LEDERER. Did you read today's Newsweek on Somoza by any chance?

DEVITO. No, I didn't.

LEDERER. Well one of the agreements, yesterday I cut it out. They made a * * * Somoza wants to come back to the United

States. He's in South America somewhere and he got a commitment from our government that he wanted to go back. He is just afraid of the next administration.

WEINBERG. Is that what is it?

LEDERER. Now, what I don't understand and I'm going (IA) on you.

WEINBERG. Yeah.

LEDERER. Somoza went to school with Jack Murphy. You fellows from here, you gotta know who Jack Murphy is?

DEVITO. I know the name.

LEDERER. Well Jack Murphy is Chairman of the Merchant Marine Committee, he's a New Yorker, and I don't know where his loyalties are, he went to school and ah Murphy got up on the floor of Congress and talked for him. I just hope, you know, Murphy is not gonna go south on him.

DEVITO. Well this is what, this is why we're here to insure that * * * uh. I understand that you can introduce legislation.

LEDERER. Right, a bill. Private bill. Sure.

DEVITO. Alright, well.

LEDERER. I want to meet him though, I mean, what's your thoughts on that?

WEINBERG. No, no problem.

DEVITO. Well yeah, at some time, yeah.

LEDERER. You don't want down the line somebody to say * * *

ERRICHETTI. I'm gonna invite him down to the party.

WEINBERG. Definitely.

ERRICHETTI. Cocktail party, we'll have Ray there. You're gonna see him face to face and you can chat with him.

LEDERER. See, you want to protect him too, you know. Why all at once does a Philadelphia Congressman want to help somebody to * * *

DEVITO. Well that's what we came up with.

LEDERER. That's doing your homework.

DEVITO. Alright. What we came up with, okay, our position in this thing is we want to get him into the position where you're going to stand up for him, okay, if need be, the legislation to get him into the country, okay? I understand possibly we can work something out through contacts with the State Department and what not to bring him in to start with. Then introduce the legislation or I understand that you can introduce the legislation, you know, prior to him being brought, not prior to him coming from over there, but him all of a sudden appearing here, maybe on a visa of some sort.

LEDERER. See that's gonna be experience here, that's why I'm talkin about doing your homework. Just get him here.

DEVITO. Okay, well, what we came up with was the fact that, through the Mayor's ingenuity, is that if we can show that he's involved in some type of enterprise here and he's putting dollars into the country, this would sort of help you. In other words * * *

LEDERER. It helps him. That's what's more important.

DEVITO. Well, it help him but it gives you something * * * to protect yourself. In other words, if you're going to stand up, somebody may say, well, why is this guy standing up for him? Well now you've got. * * * If we do that and we invest some money in Philadelphia and in that area, what that does is that it not only protects us, okay.

ERRICHETTI. It protects you.

DEVITO. It protects you.

LEDERER. Sure.

DEVITO. And that's what * * *

WEINBERG. He just don't want you to use our matches there. [Laughter.]

DEVITO. And that's what it does. It will, you know, protect you from, you know, from sort of standing out and saying why the hell is this guy so interested in ah helping these people.

LEDERER. You see I have a track record already on private bills. I've introduced a couple. I'm working on one right out of New York City now. Somebody I met down in Wildwood went back to Czechoslovakia. I got Charley Vanik working on it. So I have a track record. But it's so much nicer if, you know, if a guy's got a legitimate interest in the port of Philadelphia.

DEVITO. That helps you.

LEDERER. Oh certainly. Helps him. It helps, helps my argument to get him in here. You know, Christ, this guy's like one of us. He's one of the family. He's got our people working. He took a chance on us. Let's take a chance. I'll get all Philadelphia Congressmen on, then I'll get Pennsylvania Congressmen, you know, to support the bill.

WEINBERG. That's no problem for him to do. We can take care of that. But the main thing is he wants sure that he's buying friendship.[14]

LEDERER. Sure. Let me ask you this. How many members of his family do you want to bring in?

WEINBERG. We don't know. We're only talking about him and the other one. That comes down the line later on.

DEVITO. Right now, what we're concerned of, concerned with, is the two, the two sheiks, okay? And if this thing, you know if this thing works right, there could be a lot of money in this thing, as I told Angelo before, in that we may wind up with, the way those guys talk, they may want to spread it around that, you know, this can be done, therefore, these other guys may come forward to get themselves the same type of insurance and, hey, they're looking to pay.

LEDERER. I'm not worried about that. He's my friend. He wants to help this guy, that's where I'm at, you know. If you

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[14] DeVito interpreted this as meaning that "We were buying Mr. Lederer to help us with our problem" (Tr. 451; see also Tr. 453).

want to do it down the road and it helps somebody I'll do it. First get a track record with me.[15]

WEINBERG. Alright, you'll meet him at the cocktail party.

LEDERER. OK.

ERRICHETTI. I'll plan the party for next month, whatever it may be, at your place, when we have it down the shore.

LEDERER. Do it after November. What's your time table?

DEVITO. What, with bringing him in or the party?

LEDERER. When is he coming here?

DEVITO. Well he comes in and out all the time.

LEDERER. Oh okay.

DEVITO. Okay.

WEINBERG. That's no problem.

DEVITO. That's no problem. What we're doing here is * * * we're sort of hedging a bet, is what we're doing. Ah somehow I don't seem to think that you understand, you know, exactly what the position is. What we're doing is we're hedging the bet. He may never have to ah * * * *

LEDERER. Okay.

DEVITO. He may never have to leave there.

WEINBERG. He wants to * * *

LEDERER. Hopefully he won't. That's the best of all worlds.

DEVITO. Exactly.

WEINBERG. He wants to sleep good at night.

LEDERER. A little insurance.

DEVITO. That's all he's doing. He's, you know * * *

LEDERER. I understand.

DEVITO. It's like at the table, he's got blackjack and he wants to insure the bet and * * *

LEDERER. But Tony, I know I'm stopping you. If he wants to buy insurance you have to sit down and do the policy. Part of the policy is he gets to know me. Hopefully my main thing is the port of Philadelphia, he'll have some interests there. We've got Levino Shipping, you know. Imagine if you tried to send Levino back to Greece. The fuckin city of Philadelphia would go off the wall.

WEINBERG. I think what most of these Arabs are scared of is Carter and this goddamn human rights bullshit. That's what they're all scared of, that he comes out with his human rights, Somoza the thing and the Shah.

LEDERER. See I don't know nothing about his country to give you that and I can't talk for Carter. I just can't give you that. No, I can give you me though and I'll work * * *

WEINBERG. That's what we want.

DEVITO. That's what we're here for.

LEDERER. You got that when I, Mario [16] got * * *

WEINBERG. That's what we want, you've got to say that you're with him that's what we're saying.[17]

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[15] DeVito interpreted this statement to mean that "* * * we'll do this one and if anybody else, just establish your track record with the first payoff and then we'll go on to something else" (Tr. 454–455).

[16] DeVito thought Lederer was referring to Errichetti (Tr. 458).

[17] DeVito interpreted this to mean that "the Congressman is with the Arab" (Tr. 459), that "the Congressman has got to say that he's with the Arab and he's going to introduce the private bill and help him" (Tr. 460).

LEDERER. If I'm going to be the captain of a football team, I'm gonna have to, you know, call some plays.

WEINBERG. No, no you got a free hand, you'll meet him.

DEVITO. That's why we want to, like I said, that's why when we talk to Angelo, Angelo says, hey, one of the best ways to do it is if we get this guy to invest money alright. He says, we're going to, you know, we're going to put money in the right people's hands, you know, to insure things but what we're going to do also is, he's always looking to develop areas, he's always looking to invest his money because on top of everything else if he leaves there he's go to have his money spread out so that he's got something.

WEINBERG. He's got to get it out of the country.[18]

DEVITO. If he leaves there with all the money there, hey, let's face it, nobody's going to want to help him, so what he's doing is he's investing his money around the world, both of them are, and Angelo's suggestion was something that we were looking for any saying, hey, I've go this guy, meaning you, who will do it for him, okay, but what the key is, is, if we can even invest money in Philadelphia in the Congressman's area where it gives him a lot of protection on his own position say, "This is why I'm standing up for the guy, not only, you know not because * * * " [19]

LEDERER. Well that helps, that helps.

DEVITO. Well it helps an awful lot, I mean * * *

LEDERER. Yeah. But the thing is, you know, like so much with this guy. If he's got that kind of money and I think if certain things are happening in Philly, he'll make bucks, you know he don't just put it there he might have enough, but the name of the game is to make more of it I think.

WEINBERG. Well we're moving down near there now, we're going to take an apartment down there to work out of.

LEDERER. But you know and I, I—this might not be things you want to hear, but do you guys, businessmen, did you know to make sure that the guy * * *

DEVITO. Oh yeah.

WEINBERG. That's our job. Well that's my job and Tony's job.

DEVITO. That's what we're getting paid for.

LEDERER. Alright then we're not boy scouts.

DEVITO. No.

LEDERER. OK.

DEVITO. That's what we're getting paid for.

WEINBERG. That we know, and we'll make * * *.

LEDERER. See, I'm high on the city, alright, and ah okay I (IA).

WEINBERG. We'll make that move but if you ever worked for Arabs they're very slow in movin. They want to be very sure

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[18] DeVito said he meant that the shiek would have to get his money "out of the country so that when he left the country he would have money for himself" (Tr. 470).

[19] This was interpreted by Weinberg to mean: "* * * in case people ask why he'd bring up a Bill to bring the Arabs in, well, he can say, he's investing money in Philadelphia" (Tr. 757.)

and we don't like to lie to them. We tell them that we're coming into a town and we got this, we got that, he takes our word, Angie could tell you.

ERRICHETTI. Sure.

WEINBERG. And then we make the move.

LEDERER. OK.

WEINBERG. He's not the type of guy you can rush, "Look we want to go into Philly."

LEDERER. Well, I like the idea that if you have the political climate, you have a man who's got a lot of bucks I guess, who can conceive to become an American citizen. You know because the political climate says, Gees, the Arabs are buying the farms, the Arabs are buying this, and they'll take it all back, they're not here, the guy gonna leave the paper here. He's going to stay here to enjoy it.

WEINBERG. That's the whole idea. They realize the end is coming soon. They want to keep their money in this country.

DEVITO. That's why he's willing to pay for, you know, for what he gets.[20] He, you know, he figures with people like you on his side, okay, introduce legislation, from there stand up for him, you know, in case it comes to * * * you know I'm trying to envision like the worst situation, you know.

LEDERER. I want you to give me the worst. I'll tell you how far I can get.

DEVITO. Well, that's what I'm saying. Like it's, it's not like a Somozo, okay, where this guy has been involved in, they're saying atrocities and different things like that. I mean this is what you see in the newspapers, before the public.

ERRICHETTI. He's a clean businessman.

DEVITO. This guy is not like that but what he wants us to do is to insure that, you know, if like these Arab students that revolt because they don't like what's going on. What he wants to do is to insure that you're going to stand up for him.

LEDERER. He's got it.

DEVITO. And then, you know.

LEDERER. Sure. We just attracted a French bakery to Philly. Are you familiar with that bakery?

ERRICHETTI. Sure.

LEDERER. The hottest number in American legislation today, next to oil, is sugar and I ripped that there thing right through the Congress, to give them every break in the world.

WEINBERG. Let me tell ya.

LEDERER. Put my people to work I'll show you what I can do.

WEINBERG. The worst thing that they can say about them is, they stole the money out of the country.

LEDERER. Was it American money?

ERRICHETTI. Like everybodys doing.

WEINBERG. Alright. That's the worst thing you can say about them. As far as the people, they all get taken care of over there. I don't think the guy's into anything that killed

[20] DeVito testified that he was here referring to bribe money (Tr. 482).

anyone. I never heard anything bad about him. The only thing I can tell you he's doing wrong is taking the people's money which is his money, (IA) and stealing it out of the country. And that's the worst they can say about him.

LEDERER. Pop with me some more things.

DEVITO. Well, that's what we're here, you know, I'm explaining to you what his position is, okay, and what I'd like you to tell me is how you could work around, you know, just getting him to stay, you know, to stay here. What do we do, bring him in here first?

LEDERER. Bring him in on a visa right, sooner or later he's gonna invest, gonna have through whoever his accountants, and his underlings, business people doing things. If he can't go through the regular naturalization, right, when the time comes, then I'll introduce a private bill to keep him in the country. Well it'll take time, it's not gonna happen overnight, there's a law on that. We'll get him to be a naturalized citizen. Now with that his family will come in, his immediate family, but I'm a little scared he wants his cousins, nieces.

WEINBERG. No, no. He wants that, that's extra.[21]

LEDERER. I don't know if I can do that, I don't know if I can do that.

ERRICHETTI. Him he can do.

LEDERER. Him we can do, we'll get his wife * * *

DEVITO. Alright, we're not worried about relatives at this point. Ange has brought up another way of getting relatives in by, you know, putting them on the rolls * * *[22]

ERRICHETTI. Jobs.

DEVITO. * * * of different places. But what we're mainly concerned about is him. OK this goes for both of these fellows when I say him, okay, him, his immediate family, okay to come in. So what you're telling me then is he comes in like on a visa.

LEDERER. Right.

DEVITO. A visa has so many days for expiration, okay.

LEDERER. Yeah, we get an extension.

DEVITO. Okay but within that time frame though.

LEDERER. Then he applies for American citizenship at the right time.

DEVITO. Yeah but what I'm saying that within that time frame then you would introduce some kind of legislation to keep him in here.

LEDERER. Yeah. That's an extension.

DEVITO. Okay, now, there's * * * Do you conceive of there being any kind of opposition to something like this?

LEDERER. Well not with what you guys are telling me, you know, at this time. You know, if he's a guy, see I don't know enough about him, if he's a guy, who lost his sheik-

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[21] DeVito interpreted this to be a recognition by Weinberg that if additional members of the shiek's family were to be brought in, this would involve a payment "far beyond" the figure being offered Lederer (Tr. 491).

[22] DeVito testified that he had previously discussed this matter with Errichetti, but not in connection with the Lederer matter (Tr. 492).

dom, you know, fiefdom, he's been doing business in this country, has established, ah, a history in the American business community, you know, then, that's less of a problem. Now if he's lining people up against the wall, I'm not gonna jerk you off, you know, that's converse for him.

DEVITO. Well, no.

ERRICHETTI. No, he's not.

LEDERER. You telling me there's not. Now I'm telling you again to reinforce it. But if he's just a normal businessman he is no different than my grandfather who came here and opened up a grocery store, you know. Those things are given.

DEVITO. Well, I grant you that but there's going to have to be, I would imagine, some kind of opposition to letting a guy like this into the country anyway. I mean just because of the fact that, you know, they're liable to, they're gonna come up with, he's a big thief, he's depleted his country, he's stealing everybody blind, and how come the Americans are taking him. That's why we're coming to you, is to make sure he gets in.

LEDERER. Okay, how, how can, we do that? Get into some of the mechanics, right?

DEVITO. Alright, that's what I want you to tell me. How we do it.

LEDERER. Well some of the mechanics. Like I'll introduce a private bill which will go over to the subcommittee on judiciary. The woman over there who's the chairman of it is named Liz Holtzman, I don't know her that well. Alright, but we got like Austin Murphy from Pennsylvania, he's one of my asshole buddies. I say Austin I got a private bill I want to put through the subcommittee, get it out to the full committee, talk to him he's a friend of yours Pete Rodino. Now I get it out of the subcommittee and then Mario [23] does his trick with Rodino. We pass the legislation. Now there are other mechanics and we do this from time to time. I don't necessarily take an active role in it, never had reason to, you know, outside of giving it over to my staff and say look here's my private bill. I want somebody to get an extension on a visa ah want somebody you know, paper work, to become a naturalized citizen. I've never got into, I'll have to read these things. But the political clout that all Congressmen have is the thing, you know, to introduce some private bill for Mario Archetti to have his visa extended, you know, ah, he's a political undesirable, ah political desirable, things like that. But I, I can't dot the I's for you right now, if you want I'll dot them for you later. I'll do it soon.

DEVITO. Okay.

LEDERER. I don't want to fuckin bargain with you but it's very important to me that Philadelphia's gonna, I don't care if he goes into scrap metal or what but I want him to do something in my city.

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[23] Here again, DeVito assumed Lederer was referring to Errichetti (Tr. 499).

WEINBERG. Well once we can go back and tell him that you're on his side.

LEDERER. No. You got that when I walked in the door.

ERRICHETTI. That's all.

DEVITO. OK. That, Backing up and I'm getting repetitive in this but * * * going back to the fact that, that, by us having him invest in Philadelphia gives you a lot more credibility in backing this guy and protecting yourself in the fact that somebody may not, you know, come down the line and say, well, why would this guy back him? You know, there's got to be a reason he's not doing anything for them. And when he come up with the fact that if we put money into Philadelphia, into some kind of business enterprise.

ERRICHETTI. Ray Lederer, Ray gets the fuck up and screams bloody murder. This is my constituent I'm fuckin putting a bill in and that's the case.

LEDERER. Well. The thing is I guess Tony you just don't know enough about me. These hands are clean. Now nobody challenges my integrity, you know. I can do that. The reason that I suggest, I don't care if he goes to California, invests in California, I don't give a fuck Miami buys a hotel.

DEVITO. Yeah.

LEDERER. For his sake, not for mine, I'm not going to be deported, you know. Nothing's going to happen to me but it's a valuable tool when I go to bat for him. If anybody wants to challenge my perogatives as a United States Congressman, that's on them, that's out on the street, let them do what they want, you know. I'm clean I'm trying to tell you that. They can't, there's no reason for anybody to challenge me, you know.

ERRICHETTI. He puts the bill in and that's it.

LEDERER. The thing is. He's his attorney, whoever his attorney is, comes to me and says, Congressman, and this happens all the time with Congressmen. An attorney will come and say I want to bring somebody from Italy, I want to bring somebody from Ireland, they're clients of mine. The family has come to me. They want me to get somebody into the country and keep him here. He can't do it as an attorney. You need a private bill from the Congressman. Well I do it. Well, what I'm trying to overemphasize is when he goes before the naturalization board or whatever, the hell it is, you know immigration board. "Why Sheik, do you want to be an American citizen?" "Well in the city of Philadelphia I have five million dollars invested and I have people working for me you know. I want to watch it. I like the country", the whole, the gamit you know. That's, that's the strength he gets. For instance if he's going to put his whole operation in ah Washington County, Pennsylvania, alright, I'd still introduce the bill for him. Right.

DEVITO. Right.

LEDERER. But it would be better to go to A. J. Murphy who is a Congressman from western Pennsylvania. Do you know

what I mean? Because that's where the man's strength is. Not the Congressman, but that's where the client's strength is, that's where his investments are. But I won't be too worried about clearing me. I'm serious, you know.

DEVITO. Okay.

LEDERER. He. Him. He's the guy from Philadelphia.

DEVITO. Well I know.

LEDERER. Put him into some charity, you know.

DEVITO. That's what Angelo suggested and that's why, like I say. He's willing to put up big money to you, alright, you know, to put him in this position. There's going to be others that I'm sure are going to want to do the same thing. That's something down the line. I'm not really worried about them. I work for * * *

LEDERER. You wanna help, yeah, right"

DEVITO. I work for the two guys but what I'm trying to say * * *

LEDERER. You want to help the other guy okay but you don't want to start bouncing the ball. I'm not gonna jerk you off.

DEVITO. No no * * *

LEDERER. You didn't want me to do that, did you?

DEVITO. What I'm mainly interested in is these two guys, okay, and handling these two guys in the best way we can and that's why we went to Angelo because we've known him for a long time. We've done you know, business together with him and he say that he's very friendly with you, that you'll be able to introduce legislation to get these guys in.

ERRICHETTI. I say, I say,

LEDERER. We can do that.

ERRICHETTI. He's a stand-up guy. He's got balls like Ange Errichetti's.

LEDERER. Well you want to tell the truth too Tony. Now when you get down to the 6th or 7th guy. I'm gonna say "hey fellas."

WEINBERG. No, no.

LEDERER. I want you to know that now.

DEVITO. Forget about the 6th or 7th guy.

LEDERER. You're worried about these two guys.

DEVITO. I'm just worried about these two guys.

LEDERER. That all I'm getting at.

DEVITO. I'm just telling you something that might be, you know, something down the line. [Phone rings.]

ERRICHETTI. Hear what he said. Hear what he said. He's giving you a commitment on those two guys. A commitment. [Phone rings again. MW answers it.] [24]

WEINBERG. Hello, heh. this is Mel. Yeh what's up? Alright. Okay. Okay. Everybody's here. Alright. Bye-bye. [MW hangs up the phone.]

WEINBERG. Friend, Feinberg. Fuckin pain in the ass.

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[24] The caller was identified at trial as Alex Feinberg, with whom DeVito was to meet later in the evening (Tr. 520).

LEDERER. Well, what I'm trying to say is, down the line. You might want me to introduce a third guy, I might go for it, then a fourth guy, I might have to say (IA) * * *

ERRICHETTI. [Laughter.]

DEVITO. Maybe by that time, listen to me. Maybe by that time you know somebody else in another state that we can * * *

LEDERER. Right.

DEVITO. In other words we can do.

LEDERER. And maybe I don't, though, Tony.

WEINBERG. We're only interested * * *

DEVITO. I'm not asking * * * You've gotta commit yourself in that respect too.

WEINBERG. We only got two that we worried about.

LEDERER. I'm telling you I'm going to the wall for these two guys for this man.

DEVITO. I'm only asking you to commit yourself is what I'm saying.

LEDERER. Yeah.[25]

DEVITO. To me, I'm just throwing this out, as far as, if this comes about, which may never come about, maybe they'll be somebody, a Representative from another state that we can do a similar thing, you know, and have one of these other guys invest money there and have those people come forward.

LEDERER. Okay, I understand that.

WEINBERG. But right now we're just worried about these two, they're the ones we work for."

DEVITO. We're just worried about these two.

LEDERER. What kind of shape are they in now about coming?

WEINBERG. No problem.

DE VITO. There's no problem. Absolutely no problem.

WEINBERG. No problem whatsoever. But they know that the end * * *

LEDERER. Because I'm giving a commitment you know and I want to know a timetable.

WEINBERG. No, no * * * is the end. We don't know. The end may come five years, ten years, it may never come. But they are scared.

LEDERER. I'm prepared if it's this next week. That's what I am saying.

WEINBERG. No.

DE VITO. No. You see what happens with these guys. Uh. I tell you, if I had probably the kind of money that they have and the political situation in the way, in other countries the way it is. Uh, these things start all of a sudden and uh, two, three, four, five months. six months, then all of a sudden, you know, the guy's, he's in the jackpot and he's, you know, he's got to go someplace. So what he's doing is he's

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[25] DeVito testified that at least by this point he was satisfied that Lederer was aware of what he was being offered and had committed himself to the bribe. DeVito, however, wanted to continue the conversation until the money was paid (Tr. 521–522; see also Tr. 570, 593, 609).

being smart, he's taking his money, you know, and he's spreading it around to the right people so that when the time comes, if the time comes, that they have to move for him, then they're gonna be there.

LEDERER. Okay let me ask you this. What's he got in investments here now?

WEINBERG. Oh quite a bit.

LEDERER. What kind?

WEINBERG. Well we're gonna be in uh. He's got a lot of loans out right now. Quite a few loans, we just bought a big corporation down in Georgia. It's a loan, a hundred million dollar loan we put in. Uh he owns * * *

ERRICHETTI. (IA) [Laughter.]

LEDERER. Yeah.

ERRICHETTI. That's the kind of big we're talking about.

WEINBERG. He owns quite a bit of real estate.

ERRICHETTI. I could vouch for that too by the way.

LEDERER. Alright (IA).

WEINBERG. He owns quite a few hotels and most of it so far we've been putting it out as mortgages.

LEDERER. Okay.

WEINBERG. Alright.

LEDERER. Does he own any shipping or anything?

WEINBERG. He's in shipping. He has a shipping company now over in England.

DEVITO. But we're not into, it's not into this country.

WEINBERG. But we are gonna. We're working on that now.

ERRICHETTI. That's why we are talking about the port of Philadelphia.[26] * * *

LEDERER. Which one of you guys was CIA?

DEVITO. Me.

LEDERER. You in Vietnam?

DEVITO. Huh.

LEDERER. You in Vietnam?

DEVITO. No.

LEDERER. You ever run across a guy named Connie McAnn?

DEVITO. Connie McAnn?

LEDERER. About forty?

DEVITO. No.

LEDERER. Tight friend of mine. Talked to Mario on the way over [27] and he wanted to check me out, just chance you might have known him and you could check me out.

DEVITO. Okay.

WEINBERG. We depend upon this * * *

LEDERER. He'll tell you what kind of (IA) I have.

WEINBERG. Congressman we depend on this man here.

DEVITO. I'll tell you what. You just said it. We depend on Angelo to * * *

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[26] DeVito testified that the purpose of the preceding line of conversation was to show Lederer that the sheik was able and prepared to invest money in Philadelphia as a way of protecting Lederer if the Congressman was challenged as to why he was introducing a bill on the sheik's behalf (Tr. 562–656).

[27] DeVito took this as an indication that Lederer and Errichetti had had a conversation prior to the beginning of this meeting (Tr. 633–634).

ERRICHETTI. To bring the right people.

DEVITO. To bring the right people to us, okay.

ERRICHETTI. Period.

LEDERER. I don't think what you're asking is impossible because if it was I'd walk through the door. It's a big ballgame, alright, I don't think you're Boy Scouts. I'm not a Boy Scout.

DEVITO. No, I know we're not Boy Scouts, we're talking money investing.

LEDERER. But I don't wanta go down the road, you know * * *

DEVITO. Yeah.

LEDERER. Things I can't deliver. I believe I can deliver this, how important it is to you, alright.

WEINBERG. That's good enough.

DEVITO. Well. Let me, let me.

LEDERER. No, go ahead I want you to be satisfied (IA).

DEVITO. Yeah, yeah. I mean you say you believe you can deliver.

ERRICHETTI. [Laughter] (IA) Jesus Christ.

LEDERER. I know. Any talents I have they're yours. I won't slack off."

DEVITO. All right.

LEDERER. But I can't tell you that the umpteenth person, that's one of the things I wanna set out right away.

WEINBERG. No, no there is no umpteenth person.

LEDERER. That's where I'm hedging. I want that clear.

DEVITO. I'm just hedging. I'm just taking. All I'm doing is I'm taking you as being on our team. In other words you're being loyal to us.

LEDERER. It's gonna be a two way street.

DEVITO. Yeah.

WEINBERG. Congressman.

DEVITO. Hey. That's why we're gonna come into Philadelphia.[28]

LEDERER. Call me Ray.

ERRICHETTI. [Laughter.]

WEINBERG. Ray, Ray, when it comes. if there's a third or fourth or fifth person, even a third. we'll come to you, and tell ya it's a third, and we'll make our deal then.

LEDERER. Okay.

WEINBERG. We're just talkin' about two people, no third.

LEDERER. Okay.

WEINBERG. Alright, so that you understand that.

DEVITO. We don't wanta push. Like I say * * *

WEINBERG. We're not gonna put the whole team on this here, okay.

DEVITO. The team protects itself. We don't want to put any burden on your back that's * * *

LEDERER. I'm wanna deliver on this one, deliver it clean.

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[28] DeVito testified that he wanted it clear to Lederer in the foregoing conversation that the Congressman would have to commit himself to, and be loyal to, the sheik before the sheik would invest money in Lederer's district (Tr. 576–578).

(IA) Can I tell you I can do it (IA). I know I'll bust em. Ah, I'm sure you'll be satisfied.

DEVITO. That's a guarantee for me.

ERRICHETTI. [Laughter.]

DEVITO. That's a guarantee for me.

LEDERER. Ah you give me just these tools that I talked about. What I would like to do, with the guy, even if he never comes to Philadelphia, at the right time. If you guys, you're hooking your star to him, right, is what you're doing.

DEVITO. Oh yeah.

LEDERER. We'll get him around, he gets into business, we'll throw him in front of a couple, you guys do it for tax purposes anyway, let him pop for Catholic Charities here. I don't suppose he would want to do the United Jewish Appeal. So we'll stay away from that. You might want him to do the United Fund or something like that.

WEINBERG. Not the UJA [laughter].

LEDERER. Well I understand that, that's his thing, you know, I'm not gonna tell the guy where he's got to put his money but they're the kind of things I can see doing you know. If I'm going to be the quarterback, at that end of it.

DEVITO. Right.

LEDERER. I'm telling you those are the things you're going to have to do, you're gonna have to get him on the society page. Whether it's in the Camden Carrier or the Philadelphia Inquirer.

DEVITO. I realize that probably the pressure might come from just such groups as the Jewish people, to not let this guy in.

ERRICHETTI. Let the Catholics fight for him.

DEVITO. And what not.

ERRICHETTI. Let the Catholics fight for him.

WEINBERG. He would probably even give a donation to the Jewish people.

LEDERER. There are, Tony, there are things that make the job a lot easier. If you don't want to do them, make the job tougher, we'll still try to do the job, but there, and if he's gonna start putting investments in, you guys know what income taxes are in this country. He's not giving anything he's just trading it off somewhere else. He gives to the government or he gives it as goodwill that's what he does.

DEVITO. Sure I realize that and ah * * *

LEDERER. Well, I want him to realize it.

WEINBERG. No, he, that's what I handle for him.

DEVITO. That's the position he takes and that's why he's spreading money around like he does, ah like even now to insure that people are going to be with him.

LEDERER. Well, that scares me too, well not scares me, I'm concerned, I have nothing to be scared of. You know, you don't want to overdo spreading money.

DEVITO. We're not, we're not * * *

LEDERER. Like I'm a one time, oncer, you know, you can go to sleep on that, but you don't wanta have too many hands in the fire, too many hands in the soup.[29]

DEVITO. No, no, we're not, we're not going to. We're * * *

ERRICHETTI. We understand.

WEINBERG. We understand that.

LEDERER. Maybe you've got this all worked out and I'm just popping. You want to pop your concerns. You want me to pop mine.

DEVITO. Hey, I'll you what. Anybody, that thinks he knows everything is a guy I don't want to be around, because that's the guy that gets you in trouble, that's the guy who says he knows everything. And when you discuss things with people and you get other input into ideas, and what should be done and what shouldn't be done. That's where you * * *

ERRICHETTI. Don't slough off that Ways and Means Committee.

DEVITO. Yeah.

ERRICHETTI. That's the most valuable fuckin' committee in the whole Congress.

LEDERER. If you know anything about it.

WEINBERG. That the most important committee in Congress.

ERRICHETTI. That's the most important committee. Ullman is the Chairman. This guy and Ullman are like two (IA).

DEVITO. I'm not * * *

LEDERER. I want you to * * *

DEVITO. I don't, I don't.

LEDERER. I want you to be satisfied.

DEVITO. Okay, I think I am satisfied in that you're gonna, you're gonna get this guy in the country, that's all, that's where I'm concerned.

ERRICHETTI. Two guys.

DEVITO. Well, two guys, I say, when I say one I mean the two.

ERRICHETTI. He wants to hear two, wants to hear two, that's what he wants to hear.

DEVITO. Okay when I say one I mean both.

ERRICHETTI. He committed to two guys.

WEINBERG. That's all, as long as he handles the two guys.

LEDERER. And he'll at least give Mario a running account of how things are coming.

WEINBERG. Oh yeah * * *

LEDERER. But he does have a ton of dough invested in this country though?

DEVITO. Oh yeah, yeah.

WEINBERG. I say he has * * *

DEVITO. And he's invested.

ERRICHETTI. I know one of them 100 million dollars. I know one of them (IA).

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[29] DeVito said he interpreted the preceding statements by Lederer to mean that "he is scared that if we go too far with this thing we will have too many people involved, and that creates concern" (Tr. 583).

LEDERER. I don't know the details. Just as long as, that gives us (IA).

WEINBERG. He has quite a bit * * *

LEDERER. Here's a guy who took a chance on America. America can't take a chance on him, okay. But that's to his benefit not mine, it makes my job easier.

DEVITO. Yeah. Well that's what I say he's investing and wisely so in other countries so that he can go anyplace. You know he doesn't want to put everything into, as ah, all the eggs in one basket.

LEDERER. I understand.

WEINBERG. Well let me put it this way. An eight hundred million dollar deal wouldn't bother him one bit.

LEDERER. Jesus Christ, that's staggering.

ERRICHETTI. Staggering isn't it, my fuckin' head * * *

LEDERER. He could buy his own fuckin country.

WEINBERG. Huh.

LEDERER. He could buy his own country.

WEINBERG. That's what they're trying to do. They tried to buy England.

ERRICHETTI. [Laughter.]

WEINBERG. I think they own half. They've got in already.

LEDERER. That's a ten, if you have anything else.

DEVITO. No, I just. Like I said, my only concern is, is being here and getting loyalty toward him. Them. Okay and you * * *

LEDERER. I'm loyal to this guy.

DEVITO. Well. That means you're loyal to us and him. That's uh * * * what you know what I'm getting at.

LEDERER. But I think it's important, (IA).

DEVITO. No, no.

LEDERER. I, I just think it is important that I meet the guy.

DEVITO. Oh, yeah, eventually we'll get, you know, we'll get it all together.

LEDERER. Because, let's not make it, you know, I'm asking you to back it up a little. You said a month, back it up. But I don't wanta say hey this June or something like that.

ERRICHETTI. November.

DEVITO. No, we'll work it out within the near future.

ERRICHETTI. I want Ray and his wife there and I want some other people, you know, from Philly.

WEINBERG. We'll handle that. We threw him a party down on the yacht, presented him with a ceremonial knife.[30]

LEDERER. You'll never get me there.

WEINBERG. Huh?

LEDERER. You guys (IA), you'll never get me down there.

WEINBERG. What Florida?

LEDERER. Yeah.

WEINBERG. Don't like it?

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[30] DeVito explained that this was a reference to presenting Mayor Errichetti with a gift of a ceremonial knife (Tr 597–598). It was an effort to show that the sheik did exist and that Errichetti had met him (Tr. 598).

LEDERER. Ah, I like it, it's just not my bag, I go down the shore.

ERRICHETTI. I get him down Longport.

LEDERER. I'll go to Longport on the way to Wildwood or something like that.

WEINBERG. It's too cold in the winter time.

LEDERER. Well I'm a city kid. I'm a hot dogger.

DEVITO. Well. Like. Somebody said that we both know, how is the, what was the expression he used, uh, he says money talks and bullshit walks.[31]

LEDERER. And bullshit walks. Ozzie Myers' favorite saying."

DEVITO. What's that?

LEDERER. Another Congressman from Philly. He's a friend of mine. He savs money talks and bullshit walks.

ERRICHETTI. That's right, that him.[32]

WEINBERG. Alright. I guess that's it then.

DEVITO. Well let me * * *

ERRICHETTI. Okay. Now if you're going to go back, I'll see you, Ray. I'll chat with you next week or a couple of weeks or whatever it may be.

LEDERER. How about you two. Do you ever get to Washington?

DEVITO. Yes. We stop in there all the time.

LEDERER. Someday we'll have lunch.

WEINBERG. We definitely will.

ERRICHETTI. Go to lunch you three * * *

DEVITO. Have you got a card, or something or is there way I can get a hold of you in Washington?

LEDERER. Sure.

WEINBERG. We'll give you our card.

LEDERER. Do you have cards?

DEVITO. Yeah.

ERRICHETTI. I got one in my pocket if you want to give him vours. Tonv? Do you want me to give it to him? I'll give him one of your cards.

DEVITO. Yeah. Okay.

LEDERER. You do get down there, heh?

DEVITO. Yeah.

ERRICHETTI. You go to lunch you three guys, you'll get to know each other.

LEDERER. Overnight some night according to my schedule if we can go to the Democratic Club and uh uh.

DEVITO. Yeah, sure, sure. I hope, I hope you don't mind a brown paper bag with this in.

ERRICHETTI. This is Tony's card, Ray. You wanna back of it (IA).

LEDERER. That's a heavy card. That's (IA) Where's yours?

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[31] DeVito said that he was here addressing Errichetti rather than Lederer (Tr 608).

[32] Defense counsel contended that Weinberg, not Errichetti, said this; this portion of the tape was replayed; DeVito could not be certain who had said it; and the matter was left to the jury (Tr. 602–609).

ERRICHETTI. [Laughter.] Did anybody call me? [33]
WEINBERG. I just gave you mine.
DEVITO. I hope you spend it well.
ERRICHETTI. Okay, Ray.
DEVITO. You can take a little piece of that and buy us lunch when you come down.
LEDERER. You've got that anyway. I can't, are you registered under foreign nationals?
[Laughter.]
ERRICHETTI. Okay, Buddy.
DEVITO. Take care, Ray.
LEDERER. Ah any idea when you might be down?
WEINBERG. Ah. Well we're gonna leave tomorrow to go down to Cherry Hill and then from there to look at apartments down there to take.
ERRICHETTI. Cherry Hill, New Jersey. They'll be at the Hyatt House. I'll, I'll be with them Ray, tomorrow and Thursday. So if you want to call them for anything, you know whatever * * *
LEDERER. Okay, but no. I just like the idea that maybe sometime when he's down there * * *
DEVITO. Yeah.
LEDERER. When Tony comes in, you bring him down, you know. It'll be, tell you what it'll be, it'll be something like, he may even get upset, this guy's evidently got a lot of paper. I'll introduce him to a couple of the chairman and all say how you doin.
DEVITO. Yeah.
LEDERER. A couple of minutes, they're gonna get their hat, they're not gonna stay around.
DEVITO. Uh uh.
LEDERER. But he'll know you're not jerkin' him either.
DEVITO. Yeah, oh yeah. Well I tell you what. He trusts us.
ERRICHETTI. Okay buddy [laughter].
DEVITO. He trusts us to any extent.
LEDERER. You're the main guys.
ERRICHETTI. Yeah that's true, he trusts these guys. These two fuckin guys here * * *
LEDERER. He takes your judgment.
DEVITO. Once, once he feels that our judgment has been misplaced, you know, then we're in a, in a bad light. That's why I, you know, when I talk to you or if I talk to anybody, I just want to insure that, you know, * * * you know, that's where you're coming from. As long as, you know, you're going, you're going to be in our corner and you're going with us to do the, to do the deal.
LEDERER. Well, what I'm trying to say to you is. I'm not going to live in your backyard, you're not gonna live in my backyard. You, you came down, go out to the house, have a few pops.

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[33] The videotape reveals that it was at this point that DeVito handed Lederer the brown paper bag (see Tr. 609). The bag contained $50,000 (Tr. 815).

DEVITO. Yeah, no, no. What I don't want to do is, like I said before, I don't want to put you in, a position that people are going to look and wonder, that's and I agree with you about living in my backyard and living in your backyard. It's * * *

LEDERER. You want people * * *

DEVITO. It's nice to meet once in a while on, on a casual basis.

WEINBERG. We like to keep a low profile.

LEDERER. I know you, that says something (IA).

DEVITO. Yeah and you know * * *

WEINBERG. Anything that you get that's a good investment, give us a call.

LEDERER. Well I'm not a businessman. I'm not in business. You know a hell of a lot more about it than I do. (IA)

DEVITO. We're in trouble if we don't.

ERRICHETTI. Well, what I intend to do though, Ray, is so, you know, I intend to bring them to Tom Kelly, our friend, okay.

LEDERER. Have them sit down with you. Take them down to the Downtown Club. He's the port guy * * *

ERRICHETTI. He's the port guy, Tom Kelly and I are fuckin asshole buddies.

DEVITO. Okay.

ERRICHETTI. Have a nice trip back bubby.

LEDERER. Tony take care.

ERRICHETTI. See you in Fishtown, kid. [Laughter.]

DEVITO. This way, over here.

ERRICHETTI. That way.

LEDERER. Listen, see you in Washington, at least down in Longport.

[RL exits the room.]

* * * * *

ERRICHETTI. Okay * * * I talked to Ray. Okay. Now Ray's gonna try to line up * * * Between Ozzie and Ray I'm try to line up guys that's gonna try to lock the whole fuckin' state up to be honest with you.

DEVITO. Yeah.

[End.]

In the meantime, Poulos had remained downstairs in the lounge during most of the meeting (Tr. 829). Eventually, he saw a man whom he identified as Lederer come into the lounge area with a brown paper bag tucked under his right arm—a bag that looked similar to the one he had seen with DeVito containing $50,000 (Tr. 829–830). Lederer engaged in a brief conversation with Criden and Johanson and almost immediately thereafter left the area, without having a drink with them (Tr. 830).

According to Cook, he met at 8:30 AM on the following day, September 12, 1979, with his law partner, Criden, at the Fairmont Hotel in Philadelphia (Tr. 661). Criden said that "they"—presumably meaning Criden and Johanson—had met Lederer at the airport in New York the evening before and had taken him to see Errichetti, who

had gone with Lederer to a meeting (Tr. 662–663).[34] Criden told Cook that Lederer had left the meeting with $50,000, that Lederer had given the money bag to someone, and that Errichetti handed the bag to Criden with only $30,000 left (having taken $20,000 as his own share) (Tr. 663–664, 690, 694). The remaining $30,000, according to what Cook said Criden told him, had been divided as follows: $5000 to go back to "Mel" (Weinberg) and "Tony" (Amoroso), $5000 to be put in an envelope with the initials "RL" for a "political contribution for Congressman Lederer," $4500 to go to Cook, and $15,500 to be split between Criden and Johanson (Tr. 664).

At the meeting between Criden and Cook, Criden actually produced $5000 in an envelope marked "RL" in Criden's handwriting and told Cook to put it in a safety deposit box to hold until spring for Lederer's primary (Tr. 665). Cook and Johanson, on September 12, 1979, placed this envelope in a safety deposit box which had previously been opened in the names of Cook, Criden and Johanson (Tr. 665–667; Govt. Ex. 17). Criden also gave Cook $4500 in an envelope for himself, which Cook put first in his safety deposit box on September 14, 1979, and later in his savings account (Tr. 665, 667–668; Govt. Ext. 15).

On September 20, about a week after Cook's conversation with Criden, Johanson told Cook that he had met with Lederer, that the Congressman needed $500, that Cook should withdraw that amount in $20 bills from Lederer's $5000 (Tr. 668–670). Cook at first forgot to make the withdrawal and then, on September 25, 1979, went to the bank and made the withdrawal, converting the $100 bills in the envelope to $20 bills (Tr. 668–672; Govt. Ex. 18). Within a day or two after he had given the money to Johanson, Johanson told Cook that he had seen Lederer, and had given him the $500, but that when Lederer had previously said he needed "five," he had meant $5000 and not $500; therefore, Cook was instructed to return to the bank and obtain the remaining amount in the envelope (Tr. 672–673). Cook did so on September 27, 1979, and gave the $4500 to Johanson (Tr. 673; Govt. Ex. 18). Johanson thereafter told Cook that he had given the money to Lederer, who needed it to repair a roof or a porch at his house on the shore (Tr. 673).[35]

Cook testified that he was not aware of any payment by his law firm to Lederer as a "consultant." and that he would have been aware of any such payment (Tr. 674). However, Lederer reported in his Ethics and Government Act Financial Disclosure Statement, filed with the House of Representatives on June 2, 1980, that he had received $5000 during 1979 from Johanson at his law firm's address as a "consultant's fee" (Tr. 852–857; Govt. Ex. 20).

On February 2, 1980, two FBI agents (one of whom, Cyril Gamber, testified at the trial) interviewed Lederer at his residence in Philadelphia (Tr. 831–833). According to Gamber,[36] the Congressman was advised of his rights, and he executed a waiver of his right to remain

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[34] DeVito testified that it was his understanding that prior to the September 11 meeting, Errichetti had agreed with Lederer that Lederer would be paid $50,000 if he made a commitment to the sheik's representatives (Tr. 632–633, 639–640). However, DeVito was not clear as to who had given him this information or when.

[35] Cook was given immunity from prosecution by the Government in return for his testimony (Tr. 674–675). He had to return to the Government all the ABSCAM money he had received (Tr. 675, 698)

[36] A motion to suppress this testimony was denied at Tr. 45–50, 326–331.

silent and to have his attorney present (Tr. 833–834). Lederer related that he had been approached by Johanson on behalf of individuals interested in investing large sums of money in the Port of Philadelphia (Tr. 834). Using an airline ticket provided by Johanson's law firm,[37] Lederer flew to New York as a favor to Johanson (Tr. 834). He said he was picked up by Johanson and a man who he thought was Johanson's law partner and taken to a hotel suite, which he entered alone (Tr. 835). He said he encountered three men, one of whom almost immediately left (*id.*). Lederer identified the others as "Tony" and "Mel," and said they told him they represented an Arab sheik interested in investing $100 million in the City of Philadelphia (Tr. 836). They wanted Lederer to put them in touch with the right people in Philadelphia to handle their investments (*id.*). There ensued, said Lederer, a general discussion that included possible immigration problems, and then the meeting broke up, with Lederer under the impression that he might meet the sheik sometime in the future (Tr. 836–838). Lederer said he joined Johanson and his partner for a drink in the lounge and then drove with them back to Philadelphia (Tr. 838). He said he learned during this ride that their law firm had a great deal of money to gain from legal fees connected with the proposed Philadelphia investments (*id.*).

Lederer denied to the agents that his help had been solicited on immigration problems, that there had been any mention of private bills,[38] that he had been offered, or had solicited, money, that Errichetti had been present, or that he recalled leaving the room with a paper bag (Tr. 838–842). After this, Lederer declined to be interviewed further (Tr. 843).[39]

3. Lederer's defense

Lederer presented twelve witnesses who testified favorably as to his reputation for honesty, integrity, and good character generally (Tr. 868, 870, 872, 874, 884, 890, 892, 893, 896, 903, 914, 915). It was also stipulated that if four named individuals were called as witnesses, they would testify that prior to his involvement with DeVito and Weinberg, Lederer had introduced private immigration bills on their behalves and that he had not sought or even discussed being paid for his work (Tr. 1016–17; see also Tr. 444, 915–917). DeVito conceded that he was not aware of these bills (Tr. 443–447, 450).

Lederer's counsel also attacked Weinberg—his past, previous offenses, monetary payments to him by the Government, his failure to file tax returns, inconsistencies in his testimony, etc.[40]—as well as various other aspects of the Government's case. However, these attacks became essentially irrelevant when Lederer, through his counsel, asked that only one issue be submitted to the jury: whether the Congressman

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[37] Cook confirmed that his firm had paid for Lederer's flight from Washington to New York (Tr. 674, 686, 695).

[38] Lederer said that if any such discussion had occurred, he would have ended it on ethical grounds (Tr. 839–840).

[39] Lederer apparently admitted in pleadings filed with the District Court that he had told "blatant falsehoods" to the agents who interviewed him on February 2 (see Tr. 46).

[40] Lederer showed, by way of example, that two Assistant United States Attorneys had been critical of Weinberg's over-zealous efforts in a case involving another Member of Congress (Tr. 917–920, 922–930, 931–942).

had been improperly entrapped.[41] In effect, Lederer admitted having committed the crime but claimed that he did not have the requisite predisposition at the time he embarked on this course of conduct. Specifically, for purposes of the trial, he did not contest the facts that $50,000 was passed to him; that when he took the brown paper bag, he knew it contained money; that he was aware when he did so that it was a violation of law; and that he acted voluntarily, intentionally and corruptly (Tr. 982–984).

The District Court took the position that entrapment had two aspects—an inducement by the Government, and a lack of predisposition on the part of the accused to commit the crime. The court refused to submit the issue of inducement to the jury, concluding as a matter of law that inducement had been proven, so that predisposition was the only issue left (*e.g.*, Tr. 859–865). He charged the jury at length on this issue (Tr. 1134, 1167–73, 1221–27). He instructed, in fact, that unless the Government had proven beyond a reasonable doubt that Lederer had had a predisposition to commit each offense prior to doing so, he was to be found "not guilty" of each such offense (*id.*).

4. The Verdict

On January 9, 1981, after a five-day trial, the jury found Lederer "guilty" on all four counts of the indictment (Tr. 1228–30).[42]

5. Special Counsel's Recommendations

On the basis of this Preliminary Inquiry, the Committee is required to determine whether one or more offenses were committed by Congressman Lederer over which the Committee has jurisdiction (Committee Rule 14). The Rules of the House of Representatives provide that the jurisdiction of the Committee extends to any alleged violation by a House Member "of the Code of Official Conduct or any law, rule regulation, or other standard of conduct applicable to the conduct of such Member * * * in the performance of his duties or discharge of his responsibilities" (Rule X, Cl. 4(e), Rules of the House of Representatives—hereinafter "House Rule").

Special Counsel submits that a review of the evidence in the Congressman's trial reveals that he violated four laws applicable to his conduct as a Member and at least three House Rules relating to such conduct.[43]

The statutes which Congressman Lederer was convicted of violating, 18 U.S.C. §§ 201(c), 201(g), 371 and 1952, establish a minimum standard of conduct for House Members by making it illegal for any public official to accept a bribe or unlawful gratuity, to conspire to accept a bribe or unlawful gratuity, or to travel in interstate commerce with an intent to accept a bribe or unlawful gratuity. The offenses carry pos-

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[41] Lederer asserted the entrapment defense throughout the trial (e.g., Tr. 36–37, 377–382, 466–468, 722–725, 774–775, 784–791, 797–804, 859–865, 948–998).

[42] Receiving an unlawful gratuity is a lesser-included offense within the crime of bribery. The jury was instructed on both crimes at the request of defense counsel, and found Lederer guilty of both the primary and lesser-included offenses. However, he could not receive additional punishment as a result of his conviction under Section 201(g).

[43] This submission and subsequent comments by Special Counsel are made pursuant to Committee Rule 11(a)(E), which authorizes the staff of the Committee to make "a recommendation for action by the Committee respecting the alleged violation which was the subject of the inquiry."

sible penalties—in addition to substantial fines [44]—ranging from two to fifteen years' imprisonment.[45]

House Rule XLIII, Clause 1, provides in pertinent part: "[a] Member * * * of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives." The pertinent portion of House Rule XLIII, Clause 2, provides that "[a] Member * * * shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of the duly constituted committees thereof." And House Rule XLIII, Clause 3, provides in pertinent part: "A Member * * * of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress." [46] The evidence in Congressman Lederer's case reveals that all three of these Clauses were violated. Clearly, conspiracy to accept a bribe relating to a Congressman's legislative duties, traveling in interstate commerce with intent to do the same, and actually accepting such a bribe, are acts inconsistent both with conduct reflecting creditably on the House and also with adherence to the various rules applicable to Congressman Lederer. They thus are acts which violate Clauses 1 and 2. They are also acts consistent with the receipt of money by virtue of improper influence exerted because of Mr. Lederer's position in Congress, and therefore violate clause 3.[47]

In view of the evidence adduced in this case and the nature of Congressman Lederer's transgressions, Special Counsel recommends that the Committee conclude that offenses were committed over which the Committee has jurisdiction. Special Counsel further recommends that the Committee hold a disciplinary hearing for the purpose of determining what sanction to recommend to the House respecting Congressman Lederer (Committee Rule 14).

Because of Mr. Lederer's failure to contest the most basic aspects of the Government's burden of proof, his trial had an awful simplicity. Once he told the court he would not contest that he had been given $50,000, that he knew he was receiving money, and that he did so cor-

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[44] Sections 371 and 1952 carry possible fines of $10,000. Section 201(c) carries a possible fine of $20,000, or three times the monetary equivalent of "the thing of value" given in exchange for the performance of official acts, whichever amount is greater.

[45] Sections 371 and 1952 carry possible prison terms of up to five years, and Section 210(g) carries a possible prison term of up to two years, and a possible fine of $10,000, or both, but since this is a lesser-included offense within bribery (see footnote 42, *supra*), Lederer could not receive punishment under Section 201(g) in addition to that which he may receive for his conviction under Section 201(c).

[46] Clause 3 is comparable in many respects to Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2, p. B12 (July 11, 1958), which by tradition, precedent and subsequent statute carries the force of law. *See, e.g.*, H. Rep. No. 1364, 94th Cong., 2d Sess. at 2 *et seq.*; H. Rep. No. 1742, 95th Cong., 2d Sess. at 3; H. Rep. No. 856, 96th Cong., 2d Sess. at 5; Pub. L. No. 96–303, 94 Stat. 855 (July 3, 1980). Rule 5 provides in pertinent part that "Any person in Government service should * * * never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties." *See also* Rules 6 and 9 of the same Code of Ethics for Government Service.

[47] It could be persuasively argued that Congressman Lederer also violated House Rule XLIII, Clause 4. This Clause prohibits a Member from receiving more than $100 per year, directly or indirectly, from any foreign national or agent of a foreign national or from any person having a direct interest in legislation before the Congress. Although the sheiks were fictitious—DeVito and Poulos were not truly agents of a foreign nation, and no one involved actually had a direct interest in legislation—Congressman Lederer did not know this and in fact thought he was dealing with people having precisely those interests. Clause 4 obviously was intended to address a Member's state of mind rather than facts which may be untrue but are believed to be true by him. The situation is thus analogous to that before the District Judge, who instructed the jury in effect that Lederer could be corruptly influenced in his performance of an official act even though the sheik was a fictitious person, so long as Lederer believed that the sheik existed and that he accepted money in return for being influenced in his future official acts in regard to the sheik's immigration, residency or citizenship status (see Tr. 1165).

Special Counsel nevertheless does not press this argument because he submits that there are clear violations of Clauses 1 through 3.

ruptly, the question for the jury was resolved into one of entrapment, which in turn condensed itself into the issue of predisposition to commit the crime. Nevertheless, Mr. Lederer made his concessions "for the purpose of the trial." Therefore, Special Counsel would call the Committee's attention to certain facts that relate both to predisposition and to basic elements of the offenses themselves.

As revealed by the foregoing recitation of facts developed at trial, there was evidence, *inter alia*, that:

—Lederer was aware in advance of the key September 11, 1979, videotaped meeting with undercover FBI agents that one or more immigration bills would be discussed at that meeting and that he would be offered $50,000.

—He indicated to Johanson in advance of the meeting that he would only need $5,000, intended at that time to be used for his spring primary.

—He met and talked with Mayor Errichetti prior to the meeting, however briefly. Errichetti had participated in prior payoffs to others and had himself accepted a number of payoffs from the same undercover agents dealing with Lederer.

—The discussion at the meeting with DeVito revealed (see, in particular, the underscored portions quoted above) that while no mention was made of a "bribe" or even of a specific amount of money being offered, Lederer was aware that a money offer was being made and that he had to agree to introduce one or more private immigration bills in order to receive the money. He made such an agreement at the meeting.

—Lederer did, in fact, accept the brown paper bag at the end of the meeting without any question as to what it contained.

—The money was divided up almost immediately following the meeting among those who were not aware of the Government's participation, and $5,000 was set aside for Lederer.

—Lederer soon thereafter asked for and received $5,000 for his personal use.

—When confronted by FBI agents on February 2, 1980, Lederer repeatedly lied about his involvement in the September 11, 1979, meeting.

—Lederer lied in his official report to the House about his 1979 income when he accounted for the $5,000 as a "consultant's fee" from Johanson.

It is clear from the evidence as a whole that Congressman Lederer was not simply derelict in his duties—in his failure to appreciate the niceties of the behavior taking place around him—but rather that he was an active participant in the type of scheme that strikes directly at the democratic process. He sold his promise to vote in a particular way on legislation for a substantial sum of money. He participated with others in dividing the illegal gains from an illegal operation. He was not taken in by friends; he dealt largely with people he had never seen before. If there are mitigating circumstances to all this that would preclude the Committee from acting, they are difficult to discern from this record.

Special Counsel recommends that the Committee conclude that Congressman Lederer has committed violations of law and House Rules, that the Committee has jurisdiction over such violations and that the Committee should proceed promptly to hold a hearing for the

purpose of determining what sanction to recommend to the House in this case.

LEDERER HEARING EXHIBIT A

[H. Res. 67, 97th Cong., 1st sess.]

Resolution authorizing an investigation and inquiry by the Committee on Standards of Official Conduct

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers, and employees of the House of Representatives and, among other things, prohibits the acceptance of gifts, directly or indirectly, from foreign nationals or their agents or from any person having a direct interest in legislation before the Congress or the acceptance of compensation from any source for the exertion of improper influence, and provides that all such Members, officers, and employees shall conduct themselves at all times in a manner which shall reflect creditably on the House of Representatives; and

Whereas Federal law prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); prohibits the receipt of unauthorized fees relating to naturalization or citizenship (18 U.S.C. 1422); and prohibits conspiracy to commit any offense against the United States (18 U.S.C. 371); and

Whereas information has come to the attention of the House of Representatives alleging that certain Members of the House of Representatives have improperly accepted or agreed to accept money from undercover Federal agents and others in the course of an investigation initiated and/or conducted by the Federal Bureau of Investigation; and

Whereas clause 4(e)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with the authority (1) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representatives, (2) to investigate any alleged violation, by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities and, after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances, and (3) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation by a Member, officer, or employee of the House of Representatives of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry and investigation of alleged improper conduct which has been the subject of recent investigations (commonly referred to as

ABSCAM) by the Department of Justice, including the Federal Bureau of Investigation, to determine whether Members, officers, or employees of the House of Representatives have violated the Code of Official Conduct or any law, rule, regulation or other applicable standard of conduct. The scope of the inquiry and investigation may be expanded by the committee to extend to any matters relevant to discharging its responsibilities pursuant to this resolution or the Rules of the House of Representatives.

SEC. 2. The committee may report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such disciplinary action, if any, that the committee deems appropriate by the House of Representatives and may provide such other reports of the results of its inquiry and investigation as the committee deems appropriate.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to request or compel—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person—

(i) at a hearing; or

(ii) at the taking of a deposition by one or more members of the committee; and

(B) the production of things of any kind, including, but not limited to, books, records, correspondence, logs, journals, memorandums, papers, documents. writings, graphs. charts, photographs, reproductions, recordings, tapes (including audiotapes and videotapes), transcripts, printouts, data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and other tangible objects; and

(2) by interrogatory, the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) A subpena for the taking of a deposition or the production of things may be returnable at such places and times as the committee may direct.

(c) The authority conferred on the committee by subsections (a) and (b) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to or is unable to act, by the other acting alone, except that in the event either so declines or is unable to act, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised, and the committee shall be convened as soon as practicable to render that decision; or

(2) by the committee acting as a whole.

(d) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them. A subpena may

be served by any person designated by either of them and may be served either within or without the United States on any national or resident of the United States or any other person subject to the jurisdiction of the United States.

(e) In connection with any inquiry or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(f) Any member of the committee or any other person authorized by law to administer oaths may administer oaths pursuant to this resolution.

(g) All testimony taken by deposition or things produced by deposition or otherwise, or information furnished by interrogatory pursuant to this section, other than at a hearing, shall be deemed to have been taken, produced, or furnished in executive session.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of rule XI of the Rules of the House of Representatives, at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings as it deems necessary.

SEC. 6. The committee is authorized to coordinate its investigation with the Department of Justice and to enter into any agreement with that Department which the committee determines to be essential for the prompt and orderly performance of its duties: *Provided*, That such agreements shall not be inconsistent with applicable law or with any Rule of the House of Representatives unless otherwise provided herein for the purpose of this investigation. Without regard to clause 2(e)(2) of rule XI of the Rules of the House of Representatives, the committee may restrict access to information received from the Department of Justice to such members of the committee or other persons as the committee may designate.

SEC. 7. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and the House of Representatives in any judicial proceeding concerning or relating in any way to any inquiry or investigation conducted pursuant to this resolution, including proceedings to enforce a subpena.

SEC. 8. The authority conferred by this resolution is in addition to, and not in lieu of, the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedure as may be appropriate.

SEC. 9. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

LEDERER HEARING EXHIBIT B

PHILADELPHIA, PA., *March 3, 1981.*

Hon. LOUIS STOKES,
Chairman, Committee on Standards of Official Conduct,
Washington, D.C.

DEAR MR. CHAIRMAN: I represent Congressman Raymond F. Lederer. I have been contacted by E. Barrett Prettyman, Jr., Esq.,

Special Counsel to the Committee on Standards of Official Conduct with respect to scheduling a date for a hearing in connection with Congressman Lederer's status.

We are currently engaged in a Due Process Hearing before the Hon. George C. Pratt, in the United States District Court for the Eastern District of New York. The testimony phase of that hearing has terminated, and the Judge has ordered submission of briefs by defense counsel and the government.

I propose that no Congressional hearing take place pending the outcome of the Due Process Hearing before Judge Pratt. In the event that the Due Process Hearing does not result in favor of Congressman Lederer, you have his assurance that his resignation will be tendered forthwith. In the event that the Due Process Hearing is resolved favorably to Congressman Lederer, we would then request a hearing before the Committee on Standards of Official Conduct.

I submit the above proposal in an effort to spare your Committee an unnecessary hearing. Would you be good enough to advise me as to whether or not this proposal is acceptable to you and the members of the Committee.

Respectfully,

JAMES J. BINNS, PA.

LEDERER HEARING EXHIBIT C

RESOLUTION

Whereas, on January 9, 1981, Representative Raymond F. Lederer was convicted in the United States District Court for the Eastern District of New York of criminal violations of the following sections of the United States Code:

(Count I)—Title 18, United States Code, section 371 [conspiracy].

(Count II)—Title 18, United States Code, section 201(c) [bribery].

(Count III)—Title 18, United States Code, section 201(g) [illegal gratuity].

(Count IV)—Title 18, United States Code, section 1952 ["Travel Act"].

And Whereas, under federal law, each of the foregoing criminal offenses is punishable by a term of imprisonment of at least one year;

Now therefore be it Resolved, in accordance with Rule 14 of the Rules of this Committee, that this Committee conduct a preliminary inquiry pursuant to Rule 11(a) to review the evidence of the foregoing offenses and to determine whether they constitute violations over which the Committee is given jurisdiction under clause 4(e) of Rule X of the Rules of the House of Representatives;

And be it further Resolved, that Representative Lederer and his counsel be immediately notified of this action and informed of the Member's rights pursuant to the Rules of this Committee.

LEDERER HEARING EXHIBIT D

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., March 11, 1981.

HON. RAYMOND F. LEDERER,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE LEDERER: This is to inform you that on March 11, 1981, the House Committee on Standards of Official Conduct ("the Committee") decided to treat Mr. Binns's letter of March 3, 1981, as a formal motion to defer a preliminary inquiry in your case until Judge Pratt decides whether your due process rights have been violated. The Committee then voted to deny Mr. Binns' motion. The Committee also passed the attached Resolution authorizing a preliminary inquiry into the matters for which you were convicted in the United States District Court for the Eastern District of New York on January 9, 1981.

Pursuant to Rule 11 of the Committee's Rules, you have the right to present an oral or written statement to the Committee during its preliminary inquiry. A complete set of the Committee's Rules is attached for your information.

If you wish to present a written statement, it must be received by the undersigned by 5:00 PM, March 16, 1981. If you wish to appear before the Committee to present oral testimony under oath, you must so inform the undersigned within three days of the date of this letter, and a Committee hearing will be scheduled for 10:00 AM on March 17, 1981, for the purpose of receiving that testimony. As you know, the Committee originally had considered scheduling such a meeting for March 18, 1981, but it was rescheduled for March 17, 1981, at your counsel's request. Failure to respond within these time limits will be deemed a waiver of your rights to present a statement during the preliminary inquiry.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.,
Special Counsel.

LEDERER HEARING EXHIBIT E

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., March 11, 1981.

Re Congressman Raymond F. Lederer.

JAMES J. BINNS, Esq.,
Philadelphia, Pa.

DEAR JIM: I understand that you will be representing Congressman Raymond F. Lederer in connection with the proceedings initiated today by the House Committee on Standards of Official Conduct. I am enclosing for your information a letter which has just been sent to Congressman Lederer concerning this matter.

In connection with the report of Special Council at the conclusion of the preliminary inquiry, as provided for by Rule 11(a) of the Committee's Rules, we are currently planning to attach to that re-

port, and to make part of the record in these proceedings, substantial portions of the record of the trial of Congressman Lederer in the United States District Court for the Eastern District of New York. Available in my office for immediate inspection is a copy of the transcript of that trial, in the event you do not have a copy. We intend to delete from the transcript of the trial those portions which we believe irrelevant for the Committee's purposes (*e.g.*, bench conferences concerning peripheral legal arguments). Those portions of the transcript which we intend to delete from the version submitted to the Committee are as follows:

Pages 1 through 391, Line 5;
Pages 399, Line 18 through Page 403, Line 11;
Pages 762 through 778;
Page 907, Line 14 through Page 911, Line 10;
Page 1004, Line 3 through Page 1015;
Page 1095, Line 1 through Page 1097, Line 11;
Pages 1105 through 1227.

Finally, we intend to introduce the following trial exhibits: 1, 1A, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 9, 9A, 10, 10A, 11, 11A, 12, 12A, 12D, 15, 16, 17, 18, 19 and 20.

If you wish to suggest any additions or deletions to the excerpts of the transcripts and exhibits which we are proposing to submit to the Committee, please inform us specifically of your proposals by Noon, March 16, 1981, so that your suggestions may be appropriately considered. In the event that we are able to agree on the appropriate portions of the trail record for inclusion in the Committee record, I would propose that we enter into a Stipulation, a draft of which is enclosed, providing that those portions of the trial record we have agreed upon are the only parts of the trail record which need be considered by the Committee. The Stipulation would further provide that the copies of trial transcripts and exhibits in the possession of Special Counsel will be deemed true and accurate copies of the original transcript and exhibits. Such a Stipulation would, of course, explicitly state that neither party necessarily concedes that all such trial materials are relevant or material to the Committee's deliberations. If the enclosed draft is acceptable to you and your client, I would appreciate your signing it and returning it to me by Monday, March 16, 1981.

Sincerely yours,

E. BARRETT PRETTYMAN, JR.,
Special Counsel.

Enclosure.

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Representative Raymond F. Lederer—Investigation Pursuant To House Resolution 67.

STIPULATION

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representa-

tives ("the Committee") and counsel for Representative Raymond F. Lederer that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Number 80 Cr. 00253 in the United States District Court for the Eastern District of New York ("the trial"), now in the possession of Special Counsel, shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audiotapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1 through 12D, shall be deemed true and accurate copies of the original tapes, so that a witness need not authenticate the tapes now in the possession of Special Counsel for purposes of admission into the Committee records.

3. The transcripts of videotapes and audiotapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1A through 12A, shall be deemed true and accurate copies of the original trial transcripts, so that certified copies of the original trial transcripts need not be made a part of the Committee records.

4. The copies of trial Exhibits 15 through 20, which are now in the possession of Special Counsel, shall be deemed true and accurate copies of the originals of such exhibits, so that certified copies of the original exhibits need not be made a part of the Committee's records.

5. Those portions of the trial transcript, and the exhibits recited above, which have been designated by Special Counsel and cross-designated by counsel for Congressman Lederer, shall be deemed the only portions of the trial record which will be considered relevant and material to the Committee's investigation, *provided*, however, that by so stipulating, neither Special Counsel nor counsel for Congressman Lederer concedes that all such portions are necessarily relevant and material to such investigation.

E. BARRETT PRETTYMAN, Jr.,
Special Counsel to the Committee.

MARCH 11, 1981.

LEDERER HEARING EXHIBIT F

PHILADELPHIA, PA., *March 12, 1981*

Re Congressman Raymond F. Lederer.

E. BARRETT PRETTYMAN, Jr., Esq.
Special Counsel,
Washington, D.C.

DEAR BARRETT: Enclosed please find the Stipulation in connection with the above-captioned matter, which I have executed as per your request.

Sincerely,

JAMES J. BINNS, PA.

Enclosure.

LEDERER HEARING EXHIBIT G

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Representative Raymond F. Lederer—Investigation Pursuant To House Resolution 67.

STIPULATION

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representatives ("the Committee") and counsel for Representative Raymond F. Lederer that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Number 80 Cr. 00253 in the United States District Court for the Eastern District of New York ("the trial"), now in the possession of Special Counsel, shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audiotapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1 through 12D, shall be deemed true and accurate copies of the original tapes, so that a witness need not authenticate the tapes now in the possession of Special Counsel for purposes of admission into the Committee records.

3. The transcipts of videotapes and audiotapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1A through 12A, shall be deemed true and accurate copies of the original trial transcripts, so that certified copies of the original trial transcripts need not be made a part of the Committee records.

4. The copies of trial Exhibits 15 through 20, which are now in the possession of Special Counsel, shall be deemed true and accurate copies of the originals of such exhibits, so that certified copies of the original exhibits need not be made a part of the Committee's records.

5. Those portions of the trial transcript, and the exhibits recited above, which have been designated by Special Counsel and cross-designated by counsel for Congressman Lederer, shall be deemed the only portions of the trial record which will be considered relevant and material to the Committee's investigation, *provided*, however, that by so stipulating, neither Special Counsel nor counsel for Congressman Lederer concedes that all such portions are necessarily relevant and material to such investigation.

JAMES J. BINNS,
Counsel for Representative Lederer.
E. BARRETT PRETTYMAN, JR.,
Special Counsel to the Committee.

MARCH 11, 1981.

LEDERER HEARING EXHIBIT H

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the matter of Representative Raymond F. Lederer—Investigation of House Resolution 67.

RESOLUTION

Pursuant to Rule 14 of the Committee's Rules, the Committee, having reviewed the evidence relating to the conviction of Representative Raymond F. Lederer in the United States District Court for the Eastern District of New York for the offenses of violating Sections 371, 201(c), 201(g) and 1952 of Title 18 of the United States Code; and upon consideration of the Report of Special Counsel Upon Completion of Preliminary Inquiry filed on March 17, 1981, in the above-captioned matter, and of all relevant evidence, including the exhibits and record herein, now determines that such offenses were committed and constitute violations over which the Committee is given jurisdiction under Clause 4(e) of Rule X of The Rules of the House of Representatives, including House Rule XLIII, Clauses 1–3, and it is hereby:

Resolved, that the Committee shall proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Lederer for these offenses;

And Be It Further Resolved, that Representative Lederer and his counsel shall be promptly advised of this action and informed of the Member's rights pursuant to the Rules of this Committee.

LEDERER HEARING EXHIBIT I

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
*Washington, D.C., April 4, 1981.**

202/331–4685.

Re Representative Raymond F. Lederer—Investigation Pursuant to House Resolution 67.

JAMES J. BINNS, Esq.,
Philadelphia, Pa.

DEAR JIM: This will confirm and supplement our telephone conversation of early this afternoon.

Enclosed is a Resolution which the Committee on Standards of Official Conduct adopted at its meeting this morning by a vote of eleven to one. (The votes are available for inspection at the Committee's offices.)

The Resolution provides that the Committee shall proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose

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*[Date is typographical error—letter was actually sent on April 2, 1981.]

on Representative Lederer for the offenses referred to in the Resolution, and further provides that you and Representative Lederer shall promptly be advised of this action and informed of the Representative's rights pursuant to the Rules of this Committee.

You have already been given a copy of the Committee's Rules. Rules 14, 16, 17 and 18 are particularly relevant to the second phase of the disciplinary hearing that is now beginning. As reflected in the Resolution, the scope and purpose of the second phase of the disciplinary hearing are solely to determine what sanction, if any, to recommend that the House of Representatives adopt in regard to Representative Lederer.

The Chairman has instructed me to tell you that the Committee will hold a second-phase hearing next Thursday, April 9, 1981, at 9:30 AM in Room 2359 of the Rayburn House Office Building. If you intend to call any witnesses to appear and testify on behalf of Representative Lederer, you are required to submit a list of those witnesses to me by next Tuesday, April 7. If the list contains numerous witnesses, the Committee has the option of declining to hear some or all of them (see Rule 16(f)), or of hearing some or all of them prior to next Thursday's hearing. If the list is short, the witnesses will probably all be heard on April 9. If you intend to submit any evidence in writing, this submission must be made by noon, Tuesday, April 7. I have been instructed to tell you that barring extraordinary circumstances, the Committee intends to complete the second phase of its disciplinary hearing next Thursday, April 9. At the end of the hearing, you and I will each be given thirty minutes ot state our respective positions in regard to what sanction, if any, is appropriate under the circumstances.

If you have any questions, please do not hesitate to call or write me.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

LEDERER HEARING EXHIBIT J

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., March 17, 1981.

202/331-4685.
JAMES J. BINNS, Esq.,
Philadelphia, Pa.

DEAR JIM: Enclosed, as I promised at the hearing today, are two copies of my Report, one of which you may wish to send along to Representative Lederer. I am not certain exactly when this will be distributed to the Committee—perhaps when your own material is circulated—but I thought you would want a copy of it.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

LEDERER HEARING EXHIBIT K

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., March 20, 1981.

JAMES J. BINNS, Esq.,
Philadelphia, Pa.

DEAR JIMMY: Enclosed is a copy of the Executive Session held on Tuesday, March 17, 1981.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

LEDERER HEARING EXHIBIT L

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., April 7, 1981.

JAMES J. BINNS, Esq.,
Philadelphia, Pa.

DEAR JIM: Enclosed is a copy of the Executive Session held on Thusday, April 2, 1981.

Sincerely yours,

E. BARRETT PRETTYMAN, Jr.,
Special Counsel.

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA VS. RAYMOND F. LEDERER, ANGELO J. ERRICHETTI, LOUIS C. JOHANSON, HOWARD L. CRIDEN, DEFENDANTS

Criminal No. 80–00253, 18 U.S.C. 201(c), 18 U.S.C. 201(g), 18 U.S.C. 371, 18 U.S.C. 1952, 18 U.S.C. 2

Memorandum in Support of Defendant Raymond F. Lederer's Claim That He Was Deprived of Due Process and That He Was the Victim of Entrapment as a Matter of Law

I. Operation ABSCAM Constitutes Outrageous Conduct on the Part of Government Agents

As early as July 5, 1980 defendant Lederer set forth certain suspected due process violations upon which he based his original Motion to Dismiss the indictment. That Motion was supplemented by a letter to the Honorable George C. Pratt on January 28, 1981, which letter directed the Court to the manner in which defendant Lederer was actually prejudiced by the governmental misconduct. Each of those documents is attached hereto as Exhibits "A" and "B" respectively. The contents thereof are incorporated by reference.

The Court is in possession of the "Blumenthal Report", the "Del Tufo memorandum", the "pre-prosecution memorandum" prepared by the government, as well as numerous F.B.I. and Justice Department files which have not been made available to the defendant. The Court is also in possession of certain F.B.I. and Justice Department files

and memoranda, copies of which have been made available to the defendant. It is the defendant's position that those materials, along with documents produced at the pre-trial, trial and post-trial stages, show that government agents involved in Operation ABSCAM acted in an outrageous manner, well beyond the proper scope of their authority.

In support of this Argument, the Court is respectfully referred to the cases of *U.S.* v. *Russell*, 459 F.2d 671 (19th Cir. 1972), rev'd 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed. 2d 366 (1973); *U.S.* v. *Archer*, 486 F.2d 670, 677 (2nd Cir. 1973); *U.S.* v. *Twigg*, 588, F.2d 373 (1978).

The instances of governmental misconduct that place the instant factual situation within the parameters of the above cited cases are:

a. The *creation* of the "asylum scenario" by Assistant U.S. Attorney Thomas Puccio, F.B.I. agent Anthony Amoroso and government agent Melvin Weinberg.

b. Allowing agents Weinberg and Amoroso to act in an uncontrolled fashion with respect to:

1. Placing words into targets mouths;

2. Coaching prospective targets as to how they should act before the television cameras;

3. Suggesting illegal schemes to "middleman"; "pumping-up" middlemen;

4. Engaging in illegal enterprises of their own;

5. Lying to United States attorneys when questioned concerning their tactics;

6. Making photographs and tapes in furtherance of their own financial objectives;

7. Destroying audiotapes so as to conceal their impropriety;

8. Destroying camera films so as to conceal their impropriety;

9. Suggesting that drugs, barbiturates, alcohol and/or other stimulants or depressants be administered to targets;

10. Solicitation of gifts in furtherance of their own financial objectives;

11. Testifying under oath in such a manner as to withhold the truth of their actions from their superiors, from the jury which tried the case, from the Judge who supervised both the pre-trial, trial and post-trial stages of Operation ABSCAM;

c. Manufacturing jurisdiction over the targets;

d. Selecting a venue which would obviate the necessity to explaining away violations of *U.S.* v. *Twigg* (supra);

e. Providing incentives for agent Weinberg to continue the scam and the asylum scenario which he created by means of:

1. Providing him with monthly payments;

2. Offering him bonuses based upon the number and stature of the targets which he lured into the net;

3. Promising him lump sum payments;

4. Providing him with tax free income;

5. Allowing him to negotiate for books and movie rights with respect to his role in Operation ABSCAM;

6. Allowing him to curry favor with the F.B.I. and certain federal judges who held the power of sentencing over him.

f. Appealing to the civic duty of the targets in an effort to involve them in operation ABSCAM;

g. Engaging middlemen to lure unsuspecting targets into meetings wherein they would be enticed into criminal conversations;

h. Attempting to mislead the trial judge and the jury as to how, when, where and by whom the "asylum scenario" was created;

i. Providing the incentive for federal agents and prosecutors to continue Operation ABSCAM in an effort to secure their own financial objectives by:

1. Allowing F.B.I. agent Neal Welch to contract for the writing of a book;

2. Allowing Assistant U.S. Attorney Thomas Puccio to contract for the writing of a book; and

3. Allowing Agent Melvin Weinberg to contract for the writing of a book;

j. Failing to adequately safeguard against the possibility of entrapment and intentionally failing to instruct the various operatives on the law of entrapment, and by intentionally failing to institute proper methods of supervision over the agents and operatives, and failing to follow customary F.B.I. and Justice Department directives with respect to record keeping;

k. Trapping defendant Lederer into giving a false statement to an F.B.I. agent who had knowledge of all the essentail details of defendant Lederer's activities in connection with Operation ABSCAM but still asked him questions in an effort to "test his morality", thereby prohibiting him from testifying at his trial.

l. Intentionally withholding the entire criminal record of agent Melvin Weinberg from counsel for the defendant;

m. Intentionally leaking untruthful stories to the Press in an effort to confuse, harass and prevent the various co-defendants from collaborating in the preparation of their defense;

n. Intentionally violating the Jenks Act by destroying audiotapes and written memoranda of govenrment witnesses so as not to make them available at trial for use by defense counsel;

o. Violating the *Jenks Act* by intentionally withholding prior written and recorded statements of witnesses Amoroso and Weinberg.

p. Violating the doctrine set forth in *Brady* v. *Maryland*, 373 U.S. 83 (1963) and *U.S.* v. *Agurs*, 427, U.S. 97 (1976), by:

1. Withholding the fact of government criticism of the "coaching" incidents;

2. Withholding the overall criticisms of Operation ABSCAM by the Newark U.S. Attorney's office;

3. Withholding the *Naythan*, *Heymann* and *Puccio* memoranda which were created prior to the trial of defendant Lederer;

4. "Springing" the *Heymann* letter on defendant's counsel during the course of the trial, and objecting to the full use of it by trial counsel;

5. Resisting defense counsel's requests that all audio and visual tapes be made available to the defendant;

6. Failing to advice that certain tapes had been eradicated by government agents;

7. Failing to reveal that a policy of "not taping pre-meeting talks" was in effect;

8. Intentionally failing to reveal the existence of the "coaching incidents" prior to trial;

q. Instructing agents to "pepper" their testimony throughout the trial and due process hearings with the answer, "I don't know" and "I don't recall."

In addition to the cases cited above, the Court is respectfully directed to the Opinion of the Honorable John P. Fullam in *U.S.* v. *Jannotti*, 501, F. Supp, 1182 (E.D. Pa. 1980).

II. The Defendant Lederer was Entrapped As a Matter of Law

In support of the position that he was a victim of entrapment, defendant Lederer relies upon the cases of *Sorrells* v. *U.S.*, 287 U.S. 435 (1932); *Sherman* v. *U.S.*, 356 U.S. 369 (1958); *U.S.* v. *Hampton*, 507 F.2d 832 (8th Cir. 1974) *Aff'd.*, 96 S. Ct. 1646 (1976); *U.S.* v. *Russell* (supra.) and their progeny.

At his trial defendant Lederer raised the entrapment defense. The issue of inducements was decided in favor of the defendant, thereby leaving *only* the question of "actual predisposition" on the part of defendant Lederer. Evidence concerning the nature of the inducements is relevant only with respect to whether or not the defendant was in fact predisposed. For the record, it should be noted that there was no evidence of:

a. Previous engagements in criminal activity of the nature charged;

b. Any negotiations leading up to the bribe;

c. Subsequent evidence which could have shed light on the bribe;

d. Proof as to past allegations of crimes;

e. Defendant Lederer's reputation for criminality;

f. Prior convictions of the defendant.

In addition to affirmative character witness testimony concerning the lack of "predisposition" on the part of defendant Lederer it should be noted that even agent Amoroso was not certain as to whether defendant Lederer would accept the package until he handed it to him. The fact that Amoroso secreted the money in a briefcase, spoke in terms of legitimate investments in America, provided the idea of "cover investments" and appealed to the "civic duty" of defendant Lederer are all relevant in ascertaining the lack of defendant Lederer's predisposition.

The fact that Lederer may have had a personal weakness is not indicative of predisposition. The issue of predisposition must be established beyond a reasonable doubt. The government fell short of its burden. The only evidence presented in this case was the fact that defendant Lederer accepted a bag during a forty-five minute meeting on September 11, 1979. To say that such conduct constituted evidence of predisposition flagrantly "begs the question."

The touchstone cases decided by the Supreme Court on the issue of entrapment are instructive with respect to a general guideline of what does and does not constitute entrapment. Judge Fullam's Opinion in *U.S.* v. *Jannotti* (supra) interprets those guidelines with respect to the factual setting uncovered at the pre-trial, trial and post-trial stages of Operation ABSCAM. He decided that entrapment exists in Operation ABSCAM *as a matter of law*. By focusing upon the question as to defendant Lederer's predisposition, it is readily apparent that entrapment existed as a matter of law.

> . . . What the government succeeded in proving was . . . not that the defendants were corrupt . . . but that, exposed to strong temptation, they could be rendered corrupt. In short, the evidence establishes entrapment as a matter of law." *U.S.* v. *Jannotti* (supra).

Lack of predisposition on the part of defendant Lederer was proven through the testimony of substantial character witnesses called by him. In not one instance was their testimony challenged, nor was there any evidence to the contrary introduced on the part of the government.

The proper role of the F.B.I. and the Justice Department should have been the detection of persons who were already involved in criminality. If they properly focused their attention on individuals actually engaged in the selling of their office, there may not have been an entrapment claim available to the defendant. However, from the sum total of the evidence in this case, it is apparent that no such limitation was placed on the agents' conduct. Here, the crime and the intent to commit the crime *originated* with the government agents and not defendant Lederer. Therefore, even if the defendant Lederer engaged in the conduct prescribed by the statutes in question, he is entitled to an acquittal. Absent the temptation offered by the government agents, Lederer might not have committed the crime.

There is no evidence whatsoever that defendant Lederer was, prior to the intervention of government agents. ready and willing to commit the type of crimes for which he was indicted. The very factual setting with which we are now presented is that which caused the federal courts to recognize the defense of entrapment. It was a recognition of the impropriety of inducing the commission of a crime by persons not already engaged in a criminal enterprise that led to the formulation of the doctrine of entrapment.

Neither *U.S.* v. *Payner*, 48 Law Week 4829 (1980) ; nor *U.S.* v. *Morrison*, 49 Law Week 4087 (1981) in any way diminishes the position of defendant Lederer with regard to the due process and/or entrapment arguments. Here, unlike *Payner* and/or *Morrison*, there was a direct cause and effect relationship between the conduct of the government agents and the resulting harm to defendant Lederer. He has "standing" and the conduct of the government agents did impact upon him directly.

Respectfully submitted,

JAMES J. BINNS.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA V. RAYMOND F. LEDERER, ANGELO J. ERRICHETTI, LOUIS C. JOHANSON, HOWARD L. CRIDEN, DEFENDANTS

Criminal No. 80–00253, 18 U.S.C. 201(c), 18 U.S.C. 201(g), 18 U.S.C. 371, 18 U.S.C. 1952, 18 U.S.C. 2

Motion to dismiss indictment for violations of the due process clause of the Fifth Amendment and under the supervisory power of federal courts to regulate outrageous misconduct by agents of the Federal Government

Defendant, Raymond F. Lederer, respectfully requests an evidenti-

ary hearing prior to trial and moves for an Order dismissing the indictment against him on the following grounds:

1. The alleged criminal activities described in the above-captioned indictments were the result of a scheme which was conceived, contrived and perpetrated by agents of the Department of Justice and the Federal Bureau of Investigation in conspiracy with at least one convicted felon.

2. As a part of the scheme, the conspirators contrived to lie and involve themselves in criminal acts in order to lure government officials and others into meetings and conversations during which attempts were made to bribe such persons. The intent of such outrageous conduct was to cause new crimes to be committed for the purpose of obstaining criminal indictments.

3. The scheme consisted of, but was not limited to, the following outrageous conduct on the part of the conspirators:

(a) Manufacturing a criminal enterprise;

(b) The arbitrary and capricious selection of targets;

(c) Fraudulently manufacturing jurisdiction over said targets;

(d) Luring said targets to meetings by virtue of lies and promises of legitimate transactions;

(e) Intentionally misleading said targets as to the nature and purpose of said meetings;

(f) Encouraging said targets to remain at the meetings and participate in conversations the government agents knew might tend to incriminate them;

(g) Engaging in invidious and slanderous comments concerning public officials, public persons and acquaintances of the targets;

(h) Causing the bribery of certain public officials;

(i) Encouraging the targets to lure other unwitting individuals into like situations;

(j) Engaging in meetings and telephonic communications which were surreptitiously recorded, during the course of which, the targets were invited to incriminate themselves by virtue of statements made in response to carefully calculated questions and fabricated situations, all of which were conceived by the conspirators;

(k) Improper counseling and coaching during the course of such meetings by Federal attorneys and agents to undercover agents as to ways and means of eliciting incriminating statements from the targets;

(l) Illegally recording the conversations and meetings aforesaid;

(m) Creating fraudulent bank accounts;

(n) Portraying themselves as agents of non-existent persons and entities;

(o) Violating state and federal laws;

(p) Violating internal regulations and policies of the Federal Bureau of Investigation;

(q) Violating internal policies and regulations of the United States Department of Justice;

(r) Intentionally divulging the existence of the scheme with the specific purpose of, but not limited to, severely prejudicing

the defendant, abruptly halting the investigation, and for other illegal purposes;

(s) Selecting as targets those political figures who were predisposed to vote against the President of the United States;

(t) Engaging in ongoing conduct to cover up the behavior previously alleged;

(u) Encouraging the targets to make misstatements to federal officials;

(v) Improperly manipulating the grand jury which was impaneled to investigate the allegations of impropriety, so as to obtain a predetermined result;

(w) Vindictively prosecuting said individuals; and,

(x) Engaging in other illegal conduct, the purpose and nature of which will be shown at the hearing to be held in connection with this Motion.

WHEREFORE, defendant moves that the Court schedule a hearing on the instant Motion after which an Order dismissing the indictment should be entered.

Respectfully submitted,

JAMES J. BINNS.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA V. RAYMOND F. LEDERER, ANGELO J. ERRICHETTI, LOUIS C. JOHANSON, HOWARD L. CRIDEN, DEFENDANTS

Criminal No. 80–00253, 18 U.S.C. 201(c), 18 U.S.C. 201(g), 18 U.S.C. 371, 18 U.S.C. 1952, 18 U.S.C. 2

Memorandum in Support of Motion to Dismiss Indictment for Violations of the Due Process Clause of the Fifth Amendment and Under the Supervisory Power of Federal Courts to Regulate Outrageous Misconduct by Agents of the Federal Government

The defendant moves for an Order dismissing the indictment. This Motion is made pursuant to F.R.Crim. P. 12(b). A hearing is requested so that evidence may be adduced which will establish defendant's entitlement to such an Order. Such Motion is timely and should be heard prior to trial inasmuch as the merits thereof are capable of determination prior to the trial of the general issue. *U.S.* v. *Graves*, 556 F.2d 1319, (5th Cir. 1977).

On a date as yet unknown to defendant, certain individuals employed by the Federal Government of the United States of America, the identity of whom is as yet unknown to defendant, conspired to embark upon a scheme/scam so thoroughly outrageous that it violated the defendant's right to fundamental fairness. In addition, it made a mockery of the integrity of the United States governmental system as a whole.

As a first step in the above-mentioned scheme/scam, agents of the United States Department of Justice and Agents of the Federal Bureau of Investigation enlisted the aid of an individual whom they *knew* to be corrupt. The extent of the moral depravity of that individual is as yet unknown to the defendant. However, suffice it to say that

his name is Mel Weinberg and that he is an admitted "con-man" with alleged ties to organized crime. He has been convicted of at least one felony.[48]

In conspiracy with Mel Weinberg, the agents of the United States Department of Justice and the agents of the Federal Bureau of Investigation created a criminal enterprise which they, by their own admission, facetiously labelled "Operation Abscam". At times and places known only to the government agents and the felon (the conspirators), a complete scenario of proposed conduct was designed, authorized and approved by persons in the highest levels of the United States Government! The blueprint for this illegal scheme/scam appears to have taken its earliest shape sometime in 1978. At that time Mel Weinberg (whose actions from that time forward bore the imprimatur of the Chief Executive of the Federal Bureau of Investigation as well as the Attorney General of the United States) arranged for a meeting between himself and Camden, New Jersey Mayor Angelo Errichetti (the "mark"). The purpose of that meeting was to solicit the commission of a crimes(s), which crime(s) was to take the form (according to the government's blueprint) of the purchasing of legislative influence from individuals who occupied positions of prominence in the executive and legislative branches of local. State and Federal government.

Initially. the United States Government authorized its agent, the convicted con man, to enlist additional agents, be they witting or otherwise, as his accomplices. Sometime in 1979, the government agent, Mel Weinberg, made his first "pitch".[49] That "pitch" triggered a course of action which erupted into a mindless, juggernaut like dragnet, eventually sweeping into it hapless, innocent victims of the government's illegal and outrageous conduct.

Weinberg, at the direction of and in conspiracy with agents of the United States Government, suggested to Mayor Angelo Errichetti that if he followed the suggestion of the conspirators, he could legally reap vast profits. At the outset, they disarmed Errichetti and others by talking in terms of investment, profit motive, jobs for constituents, commissions, economic incentives and legitimate fees to be earned (the "bait"). It was not until the interest of Errichetti had been piqued by discussions of enormous wealth and the existence of a supposed "sheik", that the conversations took a turn toward unlawful activity. Once having excited the interests of Errichetti and others with the discussions of money, jobs, investments in titanium mines, coal mines, hotels, gambling casinos, land, ships, shipbuilding companies, and untold wealth, Weinberg commenced to reel in "the fish" by means of conversation that shifted from legitimate topics to unethical topics and finally to unlawful activity. It was conceived that once Weinberg obtained the confidence of Errichetti, that Errichetti would lure additional political targets. It was hoped that some evidence of corruption would surface. Through the use of interstate facilities (which the

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[48] Attached hereto and marked Exhibit "A" is the criminal record of Mel Weinberg.

[49] This recital of events is in large measure hampered by the refusal of the government to divulge audio and/or visual tapes and written transcripts which are in their possession and that contain the chronological history of events. This, coupled with the government claim of "grand jury secrecy" in the context of an ongoing investigation, has severely hampered the defendant in his ability to verbalize the chronology of events. The defendant is severely prejudiced in his ability to collect information and to piece together the entire government scheme in order to elaborate on the many events of overreaching and outrageous conduct.

government would see to the use of), these hoped for incidents of corruption would be transformed into federal crimes. Toward that end, the use of telephones, interstate travel, as well as federal and state bribery statutes were mandated. In addition, the targets were lured out of their home districts so as to deprive them of any * * * with their home jurisdictions.

No checking was to be done into the target's background nor was there to be any reasonable cause to believe that the target was disposed to committing a crime. Knowledge of illegal predisposition or the lack of it would especially be lacking with respect to the political targets.

Once having solicited the services of Errichetti, the conspirators facilitated the recruitment by him of additional "marks". Errichetti was directed to solicit political figures to assist him in securing entry into the United States for the fictitious "sheik". In addition, he was directed to advise the hapless political figures that the "sheik" would invest fabulous sums of money in the United States of America, especially in their legislative districts.[50] The figure which the conspirators bandied about as being available for investment amounted to over $400,000,000.00. It was made to appear that the sheik maintained such a sum in the Chase Manhattan Bank in New York City.

Shortly after the first encounter with Errichetti, undercover conspirators commenced targeting certain local and state legislators and members of Congress. Interestingly, there existed no reliable or specific criminal allegations against said targets as of the time of their selection. Once having established contact through Errichetti and/or other witting or unwitting undercover agents, the "marks" were requested to provide possible legislative help on a variety of matters. In return for said "help", both the legislators and middlemen were promised extraordinary investment incentives in their districts designed to motivate them to involve themselves in matters that they might not otherwise be disposed to engage in.

In furtherance of the scheme/scam, the government conspirators couched their proposals in such felicitous terms so as not to make it immediately apparent that * * * Howard Criden as their attorney with directions to him to contact selected targets or their agents in an effort to arrange a meeting at which legitimate topics of conversation such as investments, political contributions, etc., were to be discussed.[51] Once having entered into the conversation, be it by telephone or in person, the government conspirators directed that the conversation be invidiously shifted from talk of legal matters to matters quasi-legal until finally, in some cases, downright illegal. If, during the course of any conversations with a "mark" it seemed that the government conspirators were falling short of ensnaring the "mark" in a criminal conversation, a government lawyer and/or FBI agent would provide the necessary counselling and prompting by means of an on the spot telephone call to the government agent engaged in the discussion.[52]

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[50] A taped conversation which took place on Aug. 7, 1979 reveals that Mel Weinberg told Howard Criden that during any meetings between legislators and representatives of the sheik that the legislators were to "come on strong . . ., the stronger the better."

[51] Attached hereto and marked Exhibit "B" is an excerpt from the Congressional Record dated June 18, 1980 which relates an experience of the Honorable Jim Mattox, a Congressman from Texas, who was a target. This excerpt provides insight into the method by which the conspirators approached their targets.

[52] The audio and visual recordings which have been disclosed to counsel for the defendant are replete with instances of telephone calls interrupting the meetings at which the targets were present. After such calls, the conversations invariably took a turn toward eliciting incriminating statements.

The aforesaid scenario continued over at least a one year period. During that time, the undercover government agents sought meetings with and surreptitiously gained access to a number of people. In some instances, they were successful in having the individuals appear to have incriminated themselves during the conversation. In other instances, politicians rejected outright the overtures of the conspirators. A review of the scheme points to the unerring conclusion that the conspirators sought out specific victims as targets and ignored others.[53]

During the existence of the scheme/scam referred to, the government agents knowingly allowed and encouraged undercover informants to defraud innocent people through the use of "Operation Abscam" as a cover. For example, Mel Weinberg promoted the idea of using phony letters of credit for investment purposes. He is heard to have engaged in conversations criticizing the revenue laws of the United States of America. He advocated the idea of introducing a bill in order to have a New York judge practice law in New Jersey. He stated that he "put out" money to get a casino license. He advocated the bribing of the Chairman of the Gaming Commission. He professed intimate knowledge of the interworkings of the Mafia families in America. He slandered an individual who is currently making application for a casino license. He slandered the wife of a well known restaurateur, characterizing her as the "Queen of the abortionist in New York." Government agents provided that cover both passively and actively in thwarting prosecutions and intentionally delaying civil court proceedings.[54]

As an additional highlight to the government's scheme, they intentionally leaked selected details of the operation to the media. Whether

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[53] In a taped conversation which took place on Aug. 7, 1979, agents of the Federal Bureau of Investigation were advised by Howard Criden that he had a rich client who was a "loan shark", and who lent hundreds of thousands of dollars each week. His identity was not sought nor was there any follow-up by the agents even though they were advised that the "loan shark" had already been convicted of a crime.

As early as Aug. 28, 1979, Weinberg was heard to have asked specifically for the name of a legislator, presumably, the defendant. From the content of the conversation it is obvious that Weinberg was reaching for a name of an individual who he had no reason, whatsoever to believe might be disposed to corruption.

On Sept. 18, 1979, Weinberg advised Criden that he had advised his people that there would be at least ten more legislators, and maybe more, thereby authorizing Criden to reach out for such a number without any cause whatsoever to believe in their corruptability In that same conversation Weinberg requested "some Republicans".

A tape of a conversation between Howard Criden and Mel Weinberg on Nov. 6, 1979 evidences a request by Mel Weinberg to Howard Criden for a meeting with Philadelphia Mayor-Elect William J. Green. In spite of repeated assurances by Criden that Mayor-Elect Green would not take money, Mel Weinberg repeatedly asked that a conference be set up and that Criden go further in trying to arrange a discussion of City contracts.

On January 18, 1980, F.B.I. agent Michael Wade advised that his people were only interested in municipal leaders with titles. Thereafter, on Jan. 24, 1980, agent Wade specifically requested a conference with G. Fred DiBona, Jr., head of the Port Authority of Philadelphia. There was at that time, and remains today, absolutely no evidence of any predisposition toward corruption on the part of Mr. DiBona.

Kenneth Gibson, Mayor of Newark, was secretly filmed handing a business card to an F.B.I. operative. Instead of there being a follow-up investigation, the Justice Department refused authorization to proceed with the investigation. This refusal reportedly followed his endorsement of President Jimmy Carter for re-election.

In a tape of a conversation which took place on Feb. 2, 1980, Howard Criden advised that "Murtha is ready to go". In that same conversation, Howard Criden related that he had an additional five Congressmen to deliver. Curiously, those leads were not followed up. To the contrary, that is the date the government chose to advise Mr. Criden that the enterprise in which he was then involved was a scam.

Attached hereto and marked Exhibit "C" are Articles authored by nationally syndicated columnist Jack Anderson which discuss the selective nature of the operation and purports to quote the government informant Mel Weinberg.

[54] Defendant is informed that of at least one instance where government agents and attorneys filed false affidavits with a Federal Judge sitting in the Eastern District of Brooklyn, New York. The false affidavits were filed in an effort to cover up the government's participation in "Operation Abscam" and to delay the exposure of their informant agent, Mel Weinberg.

the leaks were caused by the fact that (1) the dragnet was drawing into it individuals who high officials in the United States government did not want exposed,[55] or (2) because certain agents of the government had become disenchanted with cover-up activities, or (3) because the wandering dragnet was on the verge of toppling the American Democratic process, or (4) because the conspirators wished to severely prejudice and disgrace the victims of the scheme/scam, is unclear.

The misconduct then proceeded to the grand jury phase where in the government attorneys selectively and vindictively presented indictments against certain defendants.[56] The trials of those defendants are scheduled to commence in New York, then Philadelphia and thereafter in New York, in such a fashion to effectively deprive them of preparation time. The government has caused certain of the defendants to be scheduled for trial at two or more locations at the same time.

The defendant seeks dismissal of the indictment against him based upon two separate legal concepts.

The conduct of the government as set forth above places before this Court a situation so outrageous that due process principles bar the government from invoking judicial process to obtain a conviction. Here, the government's conduct violated that "fundamental fairness, shocking to the universal sense of justice," mandated by the Due Process Clause of the Fifth Amendment. That is, the conduct is so repugnant that due process principles bar prosecution. *U.S.* v. *Russell*, 459 F.2d 671 (9th Cir. 1972), rev'd 411 U.S. 423, 93 S.Ct. 1637. 36 L.Ed. 2d 366 (1973).

In *Russell*, as is *not* the case here, the defendant was an active participant in an illegal enterprise. However, the Court found that the encouragement of the defendant by government agents was so repugnant to the fairness dictated by the Fifth Amendment that the indictment should have been dismissed. Afortiori, when the criminal enterprise was concocted by the government with a view toward inviting the defendant to participate therein, for the sole purpose of convicting him, the prosecution fails the rigors of the Fifth Amendment.

As the oft-quoted dissent of Mr. Justice Brandeis so brilliantly stated in *Olmstead* v. *U.S.* (277 U.S. 435, 485) :

> Decency, security and liberty alike demand that government officials shall be subjected to the same rule of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Gov-

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[55] Weinberg and the agents are quoted as being frustrated and bewildered at a series of preventative orders from the Justice Department even though the leads came from intermediaries who had already successfully "delivered" other Congressmen.

[56] It is noteworthy that the government lawyers who were present during the prompting and cajoling of the various targets into criminal conversations are the very same Assistant United States Attorneys charged with prosecution of the indictments. These same federal attorneys witnessed the F.B.I. agents' instructions to the con man and federal agents on how to limit the constitutional defenses which would normally be available to these targets. Moreover, these very same government lawyers presented the evidence to the grand jurors who indicted the defendant!

> ernment may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

What is involved here is not merely an oversight on the part of the government agents but rather a continuing course of prosecutorial misconduct over a lengthy time span so egregious that the defendant should never be brought to trial. There is no question but that the requirements of due process in a given case extend to pre-trial conduct of law enforcement operatives. Those requirements may be invoked to bar prosecution altogether where crimes result from illegal law enforcement practice. *U.S.* v. *Toscanino*, 500 F.2d, 267, 273.

There have been a number of cases which have considered the instant principle of law with respect to the right of an accused to secure dismissal of an indictment. The factual situations have of course varied with each case.[57]

However, the cases are uniform in holding that if the egregious conduct on the part of government agents generated new crimes by the defendant merely for the sake of pressing criminal charges against him when, as far as the record reveals, he was lawfully and peacefully minding his own affairs, that fundamental fairness does not permit the Court to countenance such actions by law enforcement officials. Consequently, prosecution for a crime so fomented by them will be barred. Here, the government investigation was not concerned with the existing enterprise, *U.S.* v. *Russell*, *supra;* the * * * *U.S.* v. *Leja*, *supra.* Viewing all of the circumstances of this case, it is obvious that fundamental fairness has been denied. *Hampton* v. *U.S.*, *supra*, 425, U.S. at 494–95, N.6, 96 S.Ct. 1652, N.6 (Powell, J., concurring). There must be a limit to allowing governmental involvement in crime. It is unthinkable to permit government agents to instigate illegal enterprise scams merely to gather evidence to convict participants therein. *U.S.* v. *Archer*, supra, 486, F.2d 670, 676–77, 2nd Cir. 1973 (Friendly, J.).

Over and above the "Due Process" violations, the defendant herein relies upon this Federal Court to exercise its supervisory powers in dismissing the indictment. See generally, not "The Supervisory Power of the Federal Courts", 79 Harvard L. Rev. 1656 (1963); Note, "The Judge-Made Supervisory Power of the Federal Courts", 53 Geo. L. Rev. 1050 (1965). In fact, "The Federal Judicial system contemplates supervision by the Federal District Courts of the nation over the government attorneys and enforcement officers acting within their districts, a supervisory jurisdiction possessed in turn on review by the several courts of appeals and ultimately by the Supreme Court." *Smith* v. *Katzenbach*, 351 F.2d 810, 816 (D.C. Cir. 1965). These supervisory powers ensure the even-handed administration of justice in the Federal system. In the case at bar, this court should assume the responsibility of ensuring that government agents do not overreach. The power of this Court over the administration of federal criminal justice

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[57] See *Greene* v. *U.S.*, 454, F.2d 783 (9th Cir. 1971); *U.S.* v. *West*, 511 F.2d 2083 (3rd Cir. 1975); *U.S* v. *Graves*, supra; *U S.* v. *Johnson*, 565, F.2d at 181; *U.S.* v. *Leja*, 563 F.2d 244 (6th Cir. 1977); *Sherman* v. *U.S.*, 356, U.S. 369, 78 S.Ct 819, 2 L.Ed. 2d 848; *U.S.* v. *Archer*, 486 F.2d 670, 677 (2nd Cir. 1973); *U.S.* v. *Smith*, 538 F.2d, 1359 (9th Cir. 1976); *U S.* v. *Quinn*, 543, F.2d 640 (8th Cir, 1976); *U.S.* v. *Twigg*, 588 F.2d 373 (1978)

has few limitations. There is no specific or general legislation which prohibits or prevents the district court from correcting inequities or unfair procedures within its jurisdiction.

Because this power to supervise the administration of federal criminal justice is not based on constitutional grounds, the Court has great freedom to exercise its supervisory powers. *Sturdivant* v. *New Jersey*, 289 F.2d 846, 848 (3rd Cir.), cert. denied, 368 U.S. 864 (1961). This federal district court should impose its own notions of fair play over and above the constitutional requirements of due process. This is so even if the inequities do not rise to constitutional proportions. *Hayton* v. *Epler*, 555 F.2d 599, 694 (5th Cir. 1977).

Not only should this court require the government agents to adhere to constitutional mandates but should also require that the methods employed be in keeping with sound judicial practice although in no wise commanded by the constitution. *Cupp* v. *Nauahten*, 414, U.S. 141, 146, (1973). After all, the interest of the United States in a criminal prosecution" . . . is not that it shall win the case, but that justice shall be done." *Berger* v. *U.S.* 295, U.S. 78 (1934).

The district Court's supervisory power in this case is no different than that which exists regarding the supervision and granting relief from unreasonable and oppressive grand jury process. *Robert Hawthorne, Inc.* v. *Director of Internal Revenue*, 406 F. Supp., 1098, 1115 (E.D. Pa. 1976).

It has been observed that:

> Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by the observance of those minimal historic safeguards for securing trial by reason which are summarized as "due process" and below which we reach what is really a trial by force. *McNabb* v. *United States*, 318 U.S. 332 (1942).

The supervisory power called upon here is no different than that which is exercised by a federal court over the conduct of federal prosecutors during the actual conduct of a trial. Just as a federal prosecutor may not secure a perjurious conviction by questioning an individual concerning facts which he is already in possession of and shields from the individual, *U.S.* v. *Slawik*, 548 F.2d 75 (3rd Cir. 1977), no sound public policy can or will be advanced by a conviction for the crimes alleged in the instant indictment since they were the product of governmental misconduct.

This court has complete control over federal personnel insofar as its notions on fundamental fairness are concerned. *U.S.* v. *Jacobs*, 547 F.2d 772 (2nd Cir. 1976). The Second Circuit courts have traditionally exercised their supervisory powers to exert uniform practice within that jurisdiction.

The facts of the instant case establish a high level of purposeful misconduct. Operation Abscam was initiated by the federal government in order to generate unlawful activity among local, state and federal legislators. This investigation was supervised by the Attorney General of the United States as well as the Chief Executive of the Federal Bureau of Investigation. It was they who, in conjunction with a convicted felon, conceived the invidious capers about which the in-

vestigators concerned themselves. By virtue of the type of audio and visual evidence which has been gathered it is obvious that the government agents discussed in detail, among themselves on several occasions, the mechanics of the operation.

The United States, through its agents, Messrs. Weinberg, Civiletti, Welch, Hayman, as well as a score of additional agents and attorneys. knowingly and wilfully participated in the unlawful activities of Abscam. Moreover, they encouraged the informant, Mel Weinberg, to arrange for meetings, without first having made the slightest determination as to whether or not the targets were willing and active participants to the crimes alleged. In so doing, the United States was an active participant in the admittedly criminal conduct dreamed up by Mel Weinberg. The inescapable conclusion is that they knowingly and purposely, and in bad faith, violated the rights of the defendant. Inasmuch as they have schemed and acted in contravention to the United States Constitution, their conduct must be deemed outrageous. The relief sought here is not the suppression of any evidence gathered as a result of those outrageous activities, but rather the outright dismissal of the indictment. This is the appropriate case for the Court to exert its supervisory power.

Respectfully submitted,

JAMES J. BINNS,
Attorney for Defendant Raymond F. Lederer.

PHILADELPHIA, PA., *January 28, 1981.*

Re United States of America *vs.* Raymond F. Lederer, et al. Criminal No. 80–00253.

Hon. GEORGE C. PRATT,
U.S. District Judge,
Brooklyn, N.Y.

DEAR JUDGE PRATT: This letter, in part, sets forth the manner in which defendant Raymond F. Lederer was prejudiced as the result of government misconduct in Operation Abscam.

At his trial defendant Lederer relied on the defense entrapment. In addition, he moved that the government misconduct resulted in the deprivation of his right to "due process" under the Constitution of the United States.

The fact that agents of the United States government manufactured a criminal enterprise has been admitted by the government agents. Moreover, it has been established that the selection of targets was not based upon any evidence of their prior misconduct or rumored violations of the law, but rather resulted from the mere mention of their names by "middlemen". The middlemen received their impetus to implicate the targets by promises of untold wealth and lucrative ventures in conjunction with representatives of the "sheik". Those promises are well documented in the audiotapes and transcripts as well as the testimony of government agents throughout the trials and due process hearings held thus far.

Jurisdiction and venue was "manufactured" over the targets by having them travel across interstate lines to receive their "bribes"

at pre-arranged places designated by the government agents. Once lured into the meeting, the targets were intentionally misled as to the nature and purpose of the meeting and were invited and subtly coerced into conversations which tended to incriminate them.

The subject of impropriety was first proferred by the government agents as was the possibility of remuneration, both proper and improper. In fact, there was no limit set on the amount of inducements which were capable of being offered to a target. In the instance of defendant Lederer, the improper inducements were mingled with appeals to his civic duty and the possibility of financial opportunity for the City of Philadelphia.

There was no control over the type of inducement which the middlemen were offered, nor was there any control over what inducements the middlemen were enabled to dangle before the targets. This situation existed because the government in reality had no control over the operations in the ABSCAM investigation. Thus, the inducements and urgings of Louis Johanson and Angelo Errichetti are directly chargeable to the government.

There exists evidence that Melvin Weinberg was accused early on of "putting words into people's mouths." The tape of September 11, 1979 reflects the fact that F.B.I. agent Anthony Amoroso did just that during the meeting with Congressman Lederer.

The conduct of the government in denying defense counsel access to Brady material was a direct violation of the Constitutional rights of Raymond F. Lederer. Two weeks before his trial a memorandum was created by Assistant United States Attorney Thomas Puccio, wherein he recommended that certain material be given to defense counsel. It was not until the second day of the Lederer trial that the exculpatory material was in part delivered to defense counsel in the form of a memorandum from Assistant United States Attorney Edwin Naythan. Both the timing and the manner of the surrender of the Naythan memorandum were such that it improperly deprived defendant Lederer's counsel of a chance to adequately prepare his case or to make use of the contents of the memorandum.

In view of what has occurred with respect to the testimony of Assistant United States Attorney Edward Plaza, it now appears that not all of the Jenks Act material has been delivered to defense counsel. That is, all of the statements of Messrs. Weinberg and Amoroso were not delivered. They were important government witnesses during the trial of Congressman Lederer. This conduct is but another example of the ongoing governmental misconduct.

During the trial of Congressman Lederer, his statement was read to the jury by an F.B.I. agent. That statement was procured from Congressman Lederer on February 2, 1980 with the express purpose of prejudicing the jury which would ultimately try the Lederer case. F.B.I. agent Cyril Gamber testified that he only questioned Congressman Lederer to see if he would tell the truth. He did not question him to ascertain any new facts, as he had seen the entire videotape of the meeting of September 11, 1979 prior to visiting Congressman Raymond F. Lederer!

In addition to the reasons set forth in this letter, defendant Lederer incorporates and refers to the allegations contained in the Motion to Dismiss the Indictment for Violations of the Due Process Clause of

the Fifth Amendment, which was filed on July 5, 1980. It is the position of defendant Lederer that he was the victim of entrapment as a matter of law, and that the instances of governmental misconduct prejudiced him directly and resulted in denying him due process of law.

Respectfully,

JAMES J. BINNS, PA.

MEMORANDUM, APRIL 29, 1981

To: Hon. Louis Stokes, Chairman, Committee on Standards of Official Conduct.

From: E. Barrett Prettyman, Jr., Special Counsel, Allen R. Snyder.

Re: Constitutional Power of the House To Expel a Member for Misconduct.

During the course of the current proceedings involving Representatives Raymond F. Lederer, a question has been raised concerning the Constitutional power of the House to expel a Member for misconduct. You requested yesterday that we prepare by this afternoon a Memorandum for the Committee's use on this mater. While the time available has precluded a comprehensive review, we are setting forth below a summary and analysis of the principal questions and precedents that may be pertinent to the Committee's consideration of this issue.

SUMMARY AND CONCLUSIONS

The Constitution explicitly provides that each House shall have the power, by a two-thirds vote, to expel a Member. No court ever has had occasion to review Congress' exercise of this power, but it appears to be virtually unlimited by Constitutional restraints.

Some House precedents have suggested that expulsion may be improper where the offending conduct occurred prior to the Member's election to the current Congress, and thus the exercise of the House's disciplinary power may be inconsistent with the right of the electorate, with full knowledge of the Member's misconduct, to choose nevertheless to return him to office. This Committee's Report in the last Congress concerning the *Diggs* matter cast considerable doubt on that approach, although neither the Congress nor the courts have definitively resolved the question. In any event, this issue would appear to be irrelevant to the case of Congressman Lederer, since he was indicted after his primary election and his conviction occurred well after the general election. Thus, the voters did not have full knowledge of the offenses he committed at the time they reelected him, and there appears to be no Constitutional impediment to the Congressional expulsion power under such circumstances.

DISCUSSION

The Constitution explicitly provides in Article I, Section 5, Clause 2, that each House of Congress has the power to expel one of its own Members:

> 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 language is clear on its face in providing each House with the power of expulsion.

The House has exercised the power of expulsion on four occasions.[58] The Senate has expelled many more Members. See Bowman & Bowman, Article I. Section 5: Congress' Power to Expel—An Exercise in Self-Restraint, 29 Syracuse L. Rev. 1071 n.2 (1978); McLaughlin, Congressional Self-Discipline: The Power To Expel, To Exclude and To Punish, 41 Fordham L. Rev. 43, 52 & n.50 (1972).[59] In none of these instances has there been a judicial challenge to Congress' power to expel a Member, and thus there simply are no judicial precedents on the point.

In *Powell* v. *McCormack*, 395 U.S. 486 (1969), an exclusion (not expulsion) case, the Court in dictum seems to have assumed Congress' broad power to expel. See id. at 506. Indeed, in a separate concurring opinion, Mr. Justice Douglas stated clearly that in his view the House could have expelled Representative Powell without its actions even being subject to judicial review:

> By Art. I, § 5, the House may "expel a Member" by a vote of two-thirds. And if this were an expulsion case I would think that no justiciable controversy would be presented, the vote of the House being two-thirds or more. [395 U.S. at 553.]

Although there have been no judicial decisions, or even challenges, regarding Congress' general power to expel, several arguable limitations on the expulsion power have been considered and reviewed by legal scholars. It has been suggested, for example, that Congress' expulsion power might be limited to cases of "disorderly behavior," or criminal offenses, or misconduct in office (as opposed to private misconduct), or instances not involving a Member's expression of opinion on political issues. *See* Bowman & Bowman, *supra*, 29 Syracuse L. Rev. at 1092–1102; McLaughlin, *supra*, 41 Fordham L. Rev. at 48–51. There is little precedent supporting these possible limitations on Congress' expulsion power. *See id.* Even more importantly, however, it must be emphasized that none of these possible issues appears relevant in any way to Congressman Lederer's case. Based upon the record reviewed and the conclusions already reached by the Committee, it appears clear that the conduct which the Committee has found Congressman Lederer to have committed would constitute "disorderly behavior" under virtually any definition of that admittedly ambiguous phrase. His actions have been found to constitute criminal offenses. Representative Lederer's actions were taken in connection with his office, rather than in a purely private, non-Congressional capacity. Finally, there is no issue here with regard to the Committee's proceeding against Congressman Lederer based upon his expression of political views, or otherwise in violation of any First Amendment considerations.

It has also been argued that Congress may not discipline a Member for conduct which occurred prior to his election.[60] There has been

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[58] Representatives John Clark, John Reid, and Henry Burnett all were expelled in 1861; Representative Michael J. Myers was expelled in 1980.

[59] All but one of the expulsions in each House occurred during the Civil War. *See* McLaughlin, *supra*, 41 Fordham L. Rev. at 52–53.

[60] The Supreme Court in *Powell* v. *McCormack*, *supra*, indicated in *dictum* that it understood that Congress had serious doubt concerning its power to punish in such cases. The Court stated, however, that it was expressing "no view" on this issue, 395 U.S. at 508–509, 510 n. 30.

extensive House consideration of this issue over the years. We are setting forth below a summary of the key House precedents on the question. While a review of these precedents demonstrates that the House has been inconsistent in its approach to this general issue, as we will discuss below these precedents simply do not apply to the particular facts of the Lederer matter.

1. Matthew Lyons—5th Congress (1799)

Congressman Lyons was convicted of violating State Sedition laws while a Member of Congress. Following conviction, he was reelected to the House. A resolution of expulsion was introduced during the 5th Congress. The opponents of the resolution argued that the Member's constituency had full knowledge of his conviction and nevertheless reelected him. The supporters of the resolution argued that the House had unlimited power ot expel a Member for acts done during a prior Congress. The House vote, 49 to 45 in favor of the resolution, indicates that a majority of the voting Members concluded that the House had power to punish a Member for conduct committed prior to the Member's last election. The Member was not expelled, however, because the resolution of expulsion did not receive the necessary two-thirds vote.

2. Orsamus B. Matteson—35th Congress (1958)

During the 34th Congress, a committee appointed to investigate the charges against Congressman Matteson recommended that he be expelled for alleged corruption in connection with legislation. Congressman Matteson resigned before the House's consideration of the resolution. He was reelected to the 35th Congress, and a new resolution of expulsion was introduced. The matter was referred to a Special Committee which noted that it was "not called upon to expel Mr. Matteson for any cause arising during his present Congressional term, but to expel him for causes alleged to have taken place in the 34th Congress." [61] In a statement supporting the supremacy of the rights of a Member's constituency over the rights of Congress, the Committee stated:

> The powers and privileges of this House are defined by the Constitution formed by the people. The exercise of power in this case is but a violation of their rights. The assertion of power in this case is but entering upon a fearful contest with the American people to deprive them of their rights and privileges. To exert it would be a flagrant usurpation of powers never granted to this body, and would ultimately annihilate the power of the people in the choice of their representatives. It is a question of usurpation upon the other side, and American freedom upon the other.
>
> While this House should scrupulously guard and protect its own privileges and purity, it should be equally cautious not to invade the privileges of the people. Can any reasonable doubt be entertained as to the power claimed, it should be permitted to remain with the people, who, wisely under our sys-

[61] H.R. Rep. No 179, 35th Cong., 1st Sess. 2 (1858).

tem of government, are confided with the duty of selecting their representatives every two years.[62]

The resolution of expulsion was tabled by a vote of 96 to 69. A minority opinion was also filed which concluded that the House had jurisdiction to expel Congressman Matteson for his prior conduct.

3. Oakes Ames and James Brooks—42d Congress (1873)

Resolutions of expulsion were offered against these Members for alleged bribery during a prior Congress. Their conduct was part of the Credit Mobilier scandal. The Select Committee appointed to investigate the charges made the following conclusions as to its power to expel Members for prior misconduct:

> The committee has no occasion in this report to discuss the question as to the power or duty of the House in a case where a constituency, with a full knowledge of the objectionable character of a man, have selected him to be their representative. It is hardly a case to be supposed that any constituency, with a full knowledge that a man had been guilty of an offense involving moral turpitude, would elect him. The majority of the committee are not prepared to concede such a man could be forced upon the House, and would not consider the expulsion of such a man any violation of the right of the electors, for while the electors have rights that should be respected, the House as a body has rights also that should be protected and preserved. But that in such case the judgment of the constituency would be entitled to the greatest consideration, and that this should form an important element in its determination, is readily admitted.
>
> It is universally conceded, as we believe, that the House has ample jurisdiction to punish or expel a Member for an offense committed during his term as Member, though committed during a vacation of Congress and in no way connected with his duties as a Member. Upon what principle is it that such a jurisdiction can be maintained? It must be upon one or both of the following: That the offense shows him to be an unworthy and improper man to be a Member, or that his conduct brings odium and reproach upon the body * * *.[63]

The Committee then analogized its power to expel to the power of impeachment:

> It has never been contended that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such offense before his appointment should not be subject upon detection and exposure to be convicted and removed from office. Every consideration of justice and sound policy would seem to require that the public interests be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution has attached.

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[62] *Id.* at 4–5.
[63] H.R. Rep. No. 77, 42d Cong., 3d Sess. XVI–XVII (1873).

> If this be so in regard to other civil officers, under institutions which rest upon the intelligence and virtue of the people, can it well be claimed that the law-making Representative may be vile and criminal with impunity, provided the evidences of his corruption are found to antedate his election.[64]

Following this report, the Judiciary Committee issued its own report opposing the views expressed by the Special Committee and concluding that "the power of expelling a Member for some alleged crime, committed, it may be, years before his election, is not within the Constitutional prerogatives of the House."[65] That Committee stated:

> [T]his is a government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their representatives, whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that "the House of Representatives shall be composed of Members chosen every second year by the people of the States," not by Representatives chosen for them at the will and caprice of Members of Congress from other States according to the notions of the "necessities of self-preservation and self-purification," which might suggest themselves to the reason or the caprice of the Members from other States in any process of purgation or purification which two-thirds of the Members of either House may "deem necessary" to prevent bringing "the body into contempt and disgrace." * * * [O]ur opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency, and not that of the representative, and, so long as he does nothing which is disorderly or renders him unfit to be in the House while a Member thereof, that, except for the safety of the House, or the Members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the Members.[66]

After considering both reports, the House adopted a substitute resolution of censure. This resolution contained a preamble stating that two elections had intervened since the misconduct and expressing "grave doubts" as to the rightful exercise of the House's power to expel a Member "for offenses committed by such Member before his election thereto, and not connected with such election." The House voted 132 to 36 and 174 to 32 to censure the Members, but the preamble was disapproved by a vote of 113 to 98. That vote suggests that at least a majority of the voting Members were not willing to concede that the House lacked power to expel a Member for misconduct during a prior Congress.

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[64] *Id.* at XVII.
[65] H.R. Rep. No 81, 42d Cong., 3d Sess. 8 (1873).
[66] *Id.*

4. William S. King and John G. Schumaker—44th Congress (1876)

During the 43d Congress, the House Ways and Means Committee investigation into allegations that legislation had been procured by bribery was obstructed by Congressmen King and Schumaker. The Committee report on the obstruction was not sent to the Clerk until the 44th Congress, where it was referred to the Judiciary Committee. That Committee concluded that it lacked jurisdiction to recommend punishment for misconduct which occurred prior to the Member's reelection. The Committee stated that Article I, Section 5, of the Constitution "cannot vest in Congress a jurisdiction to try a Member for an offense committed before his election." [67] The Committee's statement, which refers to the House's power to impose any sanctions, is of questionable precedential value since the House took no action on the report,[68] and this same argument was asserted by this Committee during the Ames-Brooks controversy during the 42d Congress, and was rejected by the House.

5. William P. Kellogg—48th Congress (1884)

Congressman Kellogg asked the Committee on Expenditures to investigate certain accusations of misconduct charged against him. The Speaker of the House, John G. Carlisle, in rendering a ruling on whether a question of privilege was involved, stated:

> The Chair has intimated heretofore that this House has no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected as a Member of the House. That has been so frequently decided in the House that it is no longer a matter of dispute.[69]

The resolution was referred to the Committee on the Judiciary, but no report was subsequently issued.

The Speaker's broad statement must be considered in light of the peculiar facts involved. The alleged improper conduct by Congressman Kellogg appears to have occurred while he was a Member of the Senate.[70] Given the deference accorded each House to the other, it is understandable that the Speaker declined to recognize jurisdiction to punish a Member for conduct which occurred while the Member was in the Senate.

6. Brigham H. Roberts—56th Congress (1899–1900)

Representative-elect Roberts was convicted for practicing polygamy. He was subsequently elected to the 56th Congress. Based on his prior conviction, the House voted to exclude him by a vote of 268 to 50.[71] In its report, the Special Committee considered it had the power to expel, but not exclude him, but rejected the former on the grounds that:

> [N]either House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such.
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> * * * * *

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[67] H.R. Rep. No. 815, 44th Cong., 1st Sess. 2 (1876).

[68] *See* Cong. Research Serv., *House of Representatives Exclusion, Censure & Expulsion Cases from 1789–1973*, 93d Cong., 1st Sess. 122 (1973).

[69] Cong. Rec., May 23, 1884, pp. 4432–39.

[70] Congressman Kellogg served in the Senate from 1877–1883.

[71] After *Powell* v. *McCormack*, *supra*, the House's actions in excluding Mr. Roberts would be deemed unconstitutional.

> Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right as such, or because it was committed prior to his election.[72]

This language also must be considered in the context of the facts of the *Roberts* case, which involved conduct by a Member-elect while a private citizen, which occurred prior to his initial election.

7. William B. Cockran—58th Congress (1904)

Congressman Cockran requested an investigation into allegations that he was involved in election irregularities prior to his initial election to Congress. Speaker Joseph G. Cannon, after examining the House precedents, concluded that the House may not punish a Member for that which he did in his capacity as a citizen before his election as a Member. He stated that:

> In view of the high constitutional importance of this question, the Chair on yesterday declined to rule until he had examined the precedents thoroughly. He finds that the question has often arisen, and that while there has been some diversity of opinion, there is in the main a well-defined line of decisions indicating that the House may not take such action.[73]

The rulings in the *Roberts* and *Cockran* cases recognize that the House may lack jurisdiction to punish a Member for misconduct which occurs prior to the Member's initial election. However, other precedents such as the *Whaley* case, discussed below, suggest the opposite conclusion.

8. Richard S. Whaley—63d Congress (1913)

Congressman Whaley was charged with violating the Corrupt Practices Act during his election campaign. While the Committee on Elections determined that the charges should be dismissed for lack of evidence, it concluded that the House's power to expel a Member for such conduct "seems to be unlimited":

> He [the Member] may commit a crime or may be disloyal or do many things that would render him ineligible as a Member. The precedents are numerous that in cases like these the power to expel a Member is invaluable. This power may be exercised for misconduct on the part of a Member committed in any place and either before or after conviction in a court of law. From a careful survey of the precedents of the House and Senate, its extent seems to be unlimited.
>
> It seems to be a matter purely of discretion to be exercised by a two-thirds vote. Of course, this unlimited power must be fairly, intelligently, and conscientiously made with due regard to the propriety, honor and integrity of the House and the rights of the individual Member affected. For an abuse of this discretion there is no appeal.[74]

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[72] H.R. Rep. No. 85, 56th Cong., 1st Sess. 4 (1900).
[73] Cong. Rec. 5750–51 (1904).
[74] H.R. Rep. No. 158, 63rd Cong., 2d Sess. 3 (1913).

9. Investigation of Lobbying Activities—63d Congress (1914)

During the 63d Congress, the Committee on the Judiciary investigated various lobbying activities and whether Members of Congress and others had been improperly influenced by lobbyists. In its report, the Committee discussed the question of "whether or not the House had the power to expel or punish a Member for misconduct in a preceding or former Congress of which he was also a Member." [75] The Committee in an apparent reversal of its position in the *Ames/Brooks* and *King/Schumaker* cases stated that:

> In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.
>
> 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 are dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals with the standards and ideals of the constituency of the Member who had deliberately chosen him to be their representative.[76]

This report, which emphasizes the distinction between Constitutional power, on the one hand, and Congressional policy judgment, on the other hand, suggests that Congress' power to punish is only in doubt when Congress seeks to expel a Member reelected by a constituency with full knowledge of the misconduct.

10. John W. Langley—68th and 69th Congresses (1924–1926)

Congressman Langley was convicted of conspiracy during the 68th Congress. While his appeal was pending, he was reelected to the House. When his credentials were presented, the matter was referred to the Select Committee which issued its recommendation that the matter be deferred until the completion of the pending appeal. The Committee expressed its view that:

> Without an expression of the individual opinions of the members of the committee, it must be said that with practical

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[75] H.R. Rep. No. 570, 63rd Cong., 2d Sess. 3 (1914).
[76] H.R. Rep. No 570, 63d Cong., 2d Sess. 4–5 (1914).

> uniformity the precedents in such cases are to the effect that House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense.[77]

A further statement by the Committee suggests that the House has jurisdiction to take other action against the Member.

> The committee, however, are just as strongly of the opinion that the circumstances require action on the part of the House at the appropriate time * * * and the Committee reserves the right to submit a report if occasion requires.[78]

11. Adam Clayton Powell—90th and 91st Congresses (1967–1969)

During the 90th Congress, a Select Committee was appointed to investigate whether Congressman Powell engaged in official misconduct during the prior Congress. In its report, the Select Committee concluded that:

> [T]he power of the House of Representatives upon majority vote to censure and to impose punishments other than expulsion is full and plenary and may be enforced by summary proceedings * * *. This Select Committee is of the opinion that the broad power of the House to censure and punish Members short of expulsion extends to acts occurring during a prior Congress.[79]

During the 91st Congress, and following the decision in *Powell* v. *McCormack*, *supra*, the Committee's recommendation that Congressman Powell be fined and his seniority removed was adopted by the House.[80]

12. House Report 92–1039, 92d Congress (1972)

During the 92d Congress, Ethics Committee considered a resolution expressing the sense of the House that a Member convicted of a crime for which a sentence of two or more years imprisonment may be imposed should refrain from participating in the business of the House or its committees until his presumption of innocence is restored or "until he is re-elected to the House after the date of such conviction." [81] In its report, the Committee stated:

> Precedents, without known exception, hold that the House will not act in any way against a Member for any actions of which his electorate had full knowledge at the time of his election. The committee feels that these precedents are proper and should in no way be altered.[82]

While the House never acted on this report, similar resolutions and reports with substantially identical language were submitted during the 93rd [83] and 94th [84] Congresses, and adopted.

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[77] H.R. Rep. No. 30, 69th Cong., 1st Sess. 1–2 (1925).
[78] 6 Cannon's Precedents § 238 at 407. The reference to the "appropriate time" in the above quotation relates to the Committee's acquiescence to the Member's request that no action be taken pending completion of his criminal appeals. The Member also promised to resign if his appeals were unsuccessful.
[79] H.R. Rep. No. 27, 90th Cong., 1st Sess. 29 (1967).
[80] Cong. Rec. 29, 34 (1969).
[81] H.R. Rep. No. 92–1039, 92d Cong., 2d Sess. (1972).
[82] *Id.* at 4.
[83] H.R. Rep. No. 93–616, 93rd Cong., 1st Sess. 4 (1973).
[84] H.R. Rep. No. 94–76, 94th Cong., 1st Sess. 4 (1975).

13. Michael Harrington—94th Congress (1975)

Congressman Harrington allegedly violated rules of the House during the 93rd Congress. A resolution of expulsion was introduced during the 94th Congress and referred to the Ethics Committee. Congressman Harrington filed a preliminary motion arguing that the Committee lacked jurisdiction because the alleged misconduct occurred during the prior Congress. The Committee denied the motion, recognizing the Committee's jurisdiction to investigate a Member's conduct committed prior to his last election. Ultimately, the Committee found no disciplinary violation and dismissed the complaint.

14. Robert L. F. Sikes—94th Congress (1976)

Congressman Sikes was accused of a conflict of interest arising in connection with his stock holdings. After an investigation, the Ethics Committee recommended that he be reprimanded for having failed to report ownership of certain stock during the years 1968 through 1974. The House adopted the Committee's recommendation and voted to reprimand Congressman Sikes for misconduct. While the Committee did not recommend punishment for misconduct which occurred some 15 years earlier. it noted:

> If such activity had occurred within a relatively recent time frame and had just now become a matter of public knowledge, the recommendation of some form of punishment would be a matter for consideration by the Committee.[85]

15. Edward R. Roybal—95th Congress (1978)

During the Korean investigation, Congressman Roybal was accused of, *inter alia*, failing to report a 1974 campaign contribution and giving false testimony. Counsel for Congressman Roybal filed a motion seeking to dismiss the changes for lack of jurisdiction because the conduct occurred during a prior Congress. The Ethics Committee denied the motion. The House subsequently voted 219 to 170 to reprimand Congressman Roybal.

16. Charles C. Diggs, Jr.—95th Congress (1979)

A month after Congressman Diggs was convicted of 29 counts of a criminal indictment for, *inter alia*, a payroll kickback scheme involving his Congressional employees, he was reelected to Congress. The matter was referred to the Ethics Committee where the Member argued, by motion, that his reelection by his constituency following his conviction resulted in a conflict between the powers of Congress to expel a Member and the powers and privileges of a Member's constituency to elect and have the Member serve as their representative—a conflict which, he argued, must be resolved in the Member's favor. After considering the extensive briefs on this issue filed by counsel for Congressman Diggs and by the Committee's Special Counsel, the Committee rejected this motion, concluded that it had jurisdiction

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[85] H.R. Rep. No. 94–1364, 94th Cong., 2d Sess. 4–5 (1976).

over Members for misconduct during a prior Congress, and recommended that the House censure Representative Diggs:

> After hearing oral argument from both counsel, the Committee unanimously denied the Member's motion, ruling that jurisdiction to proceed was clearly conferred by Article I, Section 5, of the Constitution.
>
> To have reached a contrary result concerning the jurisdiction of this Committee or the House in this matter would have required it to overrule or ignore many well reasoned precedents, including very recent opinions of the Committee. Virtually identical claims of lack of jurisdiction were raised but rejected by the Committee in proceedings involving Representative Roybal (95th Congress) and Representative Harrington (94th Congress). Similarly, the House took disciplinary action with respect to conduct occurring prior to the Member's last election in the cases of Representative Sikes (94th Congress) and Representative Powell (90th Congress). In recent years, the Senate has also disciplined with respect to prior misconduct in the cases of Senator Dodd (90th Congress) and Senator McCarthy (83d Congress). These precedents are consistent with earlier precedents involving punishment for prior misconduct, e.g., Matthew Lyon, 5th Congress (1799);[86] Oakes Ames and James Brooks, 42d Congress (1873) and Senator William Blount, 5th Congress 1797).[87] The proceedings cited are all discussed in Special Counsel's memorandum.
>
> An excellent discussion of the purpose and scope of the disciplinary power conferred on the House by Article I, Section 5, of the Constitution is found in the report of the Committee on the Judiciary, 63d Congress (1914),[88] from which we quote:
>
> "*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.*
>
> "*In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or for-*

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[86] A motion to expel failed 49–45. Though lacking the two-thirds required for expulsion, it indicates a majority of the House, acting only ten years following adoption of the Constitution, were of the opinion that the power to punish extended to conduct committed prior to the Member's election.

[87] Senator Blount was expelled by a vote of 25–1.

[88] The Committee was investigating allegations that a Member had been improperly influenced by lobbying activities. The Committee determined the evidence did not warrant expulsion, but did warrant censure. The Member resigned prior to consideration of the report by the House.

mer Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.

"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.*" (Emphasis supplied) (H.R. Rept. No. 570, 63d Cong., 2d sess. (1914).)

The report proceeds to state that the House, as a matter of policy, should exercise its "extraordinary prerogative only in extreme cases, always with great caution and after due circumspection," particularly when the Member's conduct was known to his electorate at the time of his last election. However, as the report emphasizes, power is not to be confused with policy or discretion, and it was the power of Congress which the Member's motion to dismiss for lack of jurisdiction challenged. * * * The Committee and the House cannot overlook entirely the reelection of Rep. Diggs following his conviction and due respect for that decision by his constituents is a proper element in the consideration of this case. [H.R. Rep. No. 96–351, 96th Cong., 1st Sess., vol. I, at 3–5 (1979).]

Representative F. James Sensenbrenner, Jr., filed supplemental views supporting the Committee's determination in *Diggs*, stating:

> There is substantial precedent that Congress cannot discipline a Member for acts committed during a previous Congress about which the Member's constituents had knowledge before his re-election. In effect, this doctrine implies that reelection constitutes forgiveness.
>
> If this proceeding accomplishes nothing else, it overrules the apparent precedents which indicate that Congress will not inquire into acts committed prior to a Member's last reelection. [*Id.* at 21.]

* * * * *

A review of the foregoing precedents makes clear that over the years the House has been less than consistent with regard to its views concerning punishing a Member for conduct occurring prior to his last election. To the extent a recent trend may be emerging, it would appear to be summarized by the Committee last Congress in the *Diggs* Report, where it suggested that the issue ultimately is one of Congressional policy, and not Constitutional power. It cannot be said, however, that this issue has been definitively resolved, particularly where the sanction of expulsion is sought.

The most important point to emphasize with regard to the Lederer matter, however, is that virtually without exception all these prec-

edents—whether supporting or opposing Congressional power to discipline for prior misconduct—speak of this issue as arising only when the Member has been elected by a constituency which was fully aware of his misconduct. Thus, in the *Diggs* case, for example, the Committee, in stating the issue for decision, indicated that it arises where the "alleged misconduct was known to [the Member's] constituency prior to his reelection." H.R. Rep. No. 96–351, 96th Cong., 1st Sess., vol. I, at 3 (1979). *See also* Bowman & Bowman, *supra*, 29 Syracuse L. Rev. at 1103–05 nn. 140, 142. Indeed, the House precedents against punishment for prior misconduct have sometimes been characterized as constituting a doctrine of "forgiveness," resting on the assumption that the electorate, knowing full well of the Member's misconduct, has consciously chosen to forgive those acts and return him to the House.[89]

In the Lederer matter, the facts do not support an argument that the electorate made such a knowing choice. Congressman Lederer won his primary on April 22, 1980, more than a month prior to his May 28 indictment on these charges. He was reelected on November 4, 1980, approximately two months prior to the jury's January 9, 1981, guilty verdict. Thus, throughout Representative Lederer's campaign, he told his constituents— and properly so—that he was entitled to a presumption of innocence. Under such circumstances, there is little basis for application of the doctrine of "forgiveness," or the assumption that the electorate deliberately chose to ignore his misconduct, since the voters had not yet received any reliable information concerning the matter.[90]

Accordingly, the decision concerning what, if any, sanctions to apply to Congressman Lederer for his conduct during the prior Congress—which conduct resulted in his conviction after the last election—would appear to rest solely within the power and discretion of the House, free from any Constitutional restraints.

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[89] *See* H.R. Rep. No. 96–351, 96th Cong., 1st Sess., vol. I, at 21 (1979) (supplementary views of Representative Sensenbrenner). *See also* pp. 8, 18, 20, *supra*.

[90] There were, of course, unfortunate leaks to the press in early 1980 of allegations concerning Representative Lederer's involvement in Abscam. Such unproven and, in many cases, unreliable press accounts, however, provide little basis for any assumption that the voters assumed Representative Lederer to be guilty, and yet chose to ignore that criminal conduct and return him to office.

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