

IN THE MATTER OF
REPRESENTATIVE MARIO BIAGGI

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

[To accompany H. Res. 380]



FEBRUARY 18, 1988.—Referred to the House Calendar and ordered to be printed

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LETTER OF SUBMITTAL

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
*Washington, DC, February 18, 1988.***

**Hon. JIM WRIGHT,
*Speaker, House of Representatives,
Washington, DC.***

DEAR MR. SPEAKER: By direction of the Committee on Standards of Official Conduct, I herewith submit the attached report, "In The Matter of Representative Mario Biaggi."

Sincerely,

**JULIAN C. DIXON,
*Chairman.***

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IN THE MATTER OF REPRESENTATIVE MARIO BIAGGI

FEBRUARY 18, 1988.—Referred to the House Calendar and ordered to be printed

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

REPORT

[To accompany H. Res. 380]

The House Committee on Standards of Official Conduct submits this Report to summarize the proceedings in the Committee's investigation of Representative Mario Biaggi and to provide an explanation of its recommendation to the House of Representatives pursuant to Article I, Section 5, clause 2, of the United States Constitution, and Rules 14, 16, and 17 of the Committee's Rules that Representative Biaggi be expelled from the House of Representatives.

I. PROCEDURAL HISTORY

On March 16, 1987, Representative Mario Biaggi and Meade Esposito were indicted by a Federal grand jury in the Eastern District of New York. While they were charged in different counts, in total, the seven count indictment charged Representative Biaggi and Meade Esposito with bribery, offering and accepting illegal gratuities, conspiracy, illegal trafficking, and obstruction of justice.

On September 22, 1987, Representative Biaggi was found guilty by a jury of having accepted illegal gratuities in violation of 18 U.S.C. § 201(g); illegal trafficking in violation of 18 U.S.C. § 1952; and obstruction of justice in violation of 18 U.S.C. § 1503. Meade Esposito was also found guilty of violating the gratuities statute and illegal trafficking.

Following the verdict, on September 23, 1987, and pursuant to Rule 14 of the Rules of Procedure of the Committee on Standards of Official Conduct, this Committee initiated a Preliminary Inquiry into whether any of the offenses for which Representative Biaggi was convicted constituted a violation(s) over which the Committee

has jurisdiction.¹ The Committee informed Representative Biaggi of its action by letter dated September 23, 1987, and invited the Congressman to submit a written statement of his position to the Committee as well as to notify the Committee if he desired to make an oral presentation in connection with the Rule 14 proceeding.

Subsequently, on October 19, 1987, counsel for Representative Biaggi submitted a written presentation in connection with the Committee's Rule 14 proceeding. (App. A.) Because Representative Biaggi did not respond to the initial invitation to appear before the Committee, he was notified that he could do so at a Committee meeting scheduled for October 28, 1987. Representative Biaggi declined this invitation. At a meeting on October 31, 1987, Committee counsel and attorneys for Representative Biaggi met for the purpose of designating those portions of the trial transcript that would be considered relevant to the Committee's Preliminary Inquiry. At that time, Representative Biaggi was, once again, invited to appear before the Committee for the purpose of making an oral presentation at a Committee meeting scheduled for November 4, 1987. By letter dated November 2, 1987, Representative Biaggi declined the Committee's third invitation to meet with the Committee.

At the Committee's meeting of November 4, 1987, Committee counsel presented a report upon completion of the Rule 14 Preliminary Inquiry. (Exhibit 1.)

In a Preliminary Inquiry undertaken pursuant to Committee Rule 14, the Committee is required to determine whether "the evidence of such offense[s]" of which Representative Biaggi was convicted, constitute violations "over which the Committee is given jurisdiction". The Rules of the House of Representatives expressly state that this Committee's jurisdiction embraces any alleged violation by a 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." House Rule X, clause 4(e). In this regard it should be kept in mind that while a conviction triggers application of a Committee Rule 14 proceeding, the Committee's (and the House's) actions are wholly independent of the judicial process. Thus, while a conviction may be appealed, such a course of action and its outcome have no bearing on either the timing or the nature of the decision reached by the House of Representatives.

Pursuant to Committee Rules 11(a) and 14, and consistent with the approach undertaken by the Committee *In the Matter of Representative George V. Hansen*, H. Rept. 98-891, Vol. I, p. 323, at foot-

¹ Rule 14 of the Committee's Rules provides as follows: If a Member, officer, or employee of the House is convicted in a Federal, State, or local court of a criminal offense for which a sentence of a term of imprisonment of at least one year may be imposed, the Committee shall conduct, in accordance with rule 11(a) of the Committee rules, a preliminary inquiry to review the evidence of such offense and to determine whether it constitutes a violation over which the Committee is given jurisdiction under clause 4(e) of Rule X of the Rules of the House of Representatives. If on the basis of the report of the Committee staff on the preliminary inquiry the Committee determines that an offense was committed over which the Committee has jurisdiction under such clause, the Committee shall notify the Member, officer, or employee of its determination and shall hold a disciplinary hearing for the sole purpose of determining what action to recommend to the House respecting such offense. Such hearing shall be held in accordance with the requirements of rule 16 of the Committee rules applicable to the second phase of a disciplinary hearing and any recommendation made by the Committee shall be made in accordance with rule 17 of the Committee rules.

note 12, the Committee reviewed the trial evidence for violations of standards of conduct applicable to the actions of Representative Biaggi. In sum, Rule 14, by virtue of its use of the word "evidence", involves a Preliminary Inquiry which considers not only those Rules which are analogous to the statutes for which Representative Biaggi was ultimately convicted, but also those Rules

which are so fundamentally related to the principal offense that they are almost central to it * * * and should be considered * * * when the conduct prescribed by those related Rules was put in issue at the trial and addressed by both the prosecution and the defense. (H. Rept. 98-891, Vol. I, p. 324.)

Thus, considered were the trial transcript, transcripts of recorded telephone conversations and oral intercepts, and submissions from Congressman Biaggi's counsel. In determining the "relevancy" of evidence, the Committee focused on those portions of the trial transcript and other evidence giving rise to three offenses for which Representative Biaggi was convicted.

II. ANALYSIS AND DISCUSSION

The following analysis will address the evidence, relevant House Rules, laws, and standards of conduct applicable to Representative Biaggi which provide the basis for the Committee's view that the matters raised are within the Committee's jurisdiction and that violations of House Rules and law are indicated. Before proceeding with this analysis, however, the Committee offers the following summary of critical relationships and facts adduced from the trial proceedings.

A. ESPOSITO'S INTEREST IN S.V.R.

In March 1984, Meade Esposito was a principal and officer of the insurance brokerage firm of Serres, Visone and Rice, Inc./S.V.R. Brokerage, Inc. ("S.V.R."). S.V.R. derived income by selecting insurance companies to provide insurance needed by S.V.R.'s clients. That is, in return for brokering a client's insurance needs, S.V.R. received a commission. S.V.R. was a successor organization to a company called Grand Brokerage. Grand Brokerage had two principals, Meade Esposito and Lester Zerin. In approximately 1980, Grand Brokerage changed its name to Serres, Visone & Rice. The principals were still Esposito and Zerin. Esposito was a senior advisor and chief salesman although he did not have an insurance license. Later, Zerin left and a Joseph Martuscello succeeded to Zerin's interest.

B. ESPOSITO'S INTEREST IN BEAUMONT

Beaumont Offset Corporation (Beaumont) was engaged in the printing business. Beaumont had three initial stockholders: Ms. Phyllis Zito, Mr. Harry Dickran and Mr. James Leone. Ms. Zito's father is Meade Esposito. For a period of years until 1984, Esposito was a director of Beaumont. While Esposito did not bring in customers to Beaumont, he, nevertheless, received a salary. Beaumont

owned a villa in St. Maarten called "Villa Beaumont" which could be rented for \$2-3,000 per week.

C. ESPOSITO'S INTEREST IN COASTAL

Coastal Dry Dock and Repair Corporation (Coastal) was a New York company involved with the overhaul, repair, refurbishment, and conversion of large naval ships. Coastal was the second largest account serviced by S.V.R. in 1983 and provided a substantial amount of income to S.V.R. Coastal owed S.V.R. a significant amount of money for premiums S.V.R. had paid out of its own funds to insurance companies on behalf of Coastal. In effect, S.V.R. covered Coastal's cash-flow problems by advancing the insurance payments from its own resources. In fact, Coastal owed S.V.R. \$280,000 for such premium payments.

D. COASTAL'S FINANCIAL DIFFICULTIES

During the period 1982 through 1986, as a result of contract disputes with the United States Navy, Coastal had outstanding claims of many millions of dollars against that branch of the service. At about the same time, Coastal, which leased space from the Brooklyn Navy Yard Development Corporation (Navy Yard), was also engaged in continuous discussions with the Navy Yard regarding utility rates and other lease charges considered to be excessive. The Navy Yard had serious problems collecting rent and utility payments from Coastal. Up until the summer of 1984, Coastal's rent payments to the Navy Yard could be up to half a million dollars in arrears.

With the above-described relationships in mind, the Committee reviewed the evidence presented at trial. In sum, the evidence may be summarized as follows:

1. At all times material to the subject Rule 14 proceeding, Mario Biaggi was a Member of the United States House of Representatives and subject to all House Rules and standards of conduct applicable to a Member.

2. Coastal, which was situated in the former Brooklyn Navy Yard, Brooklyn, New York, repaired and refurbished vessels of the United States Navy and other departments and agencies of the United States.

3. S.V.R. and Meade Esposito derived substantial financial benefits, including insurance commissions, from Coastal, which was one of S.V.R.'s largest clients.

4. Coastal had substantial outstanding claims for money against the United States Navy and other departments and agencies of the United States for work that Coastal performed on vessels of the United States.

5. Coastal was involved in a dispute with its landlord, the Brooklyn Navy Yard Development Corporation, a New York City municipal development corporation, and with the City of New York, concerning its utility rates and other charges.

6. In or about March 1984, Meade Esposito caused the payment of Representative Biaggi's round trip air fare to St. Maarten.

7. In or about March 1984, Meade Esposito caused the Beaumont Offset Corporation to furnish lodging to Representative Biaggi at the Corporation's villa in St. Maarten.

8. On or about June 28, 1984, Representative Biaggi caused a letter to be sent to the Mayor of the City of New York regarding Coastal.

9. On or about September 17, 1984, Representative Biaggi caused a letter to be sent to the Mayor of the City of New York regarding Coastal.

10. On or about September 18, 1984, Representative Biaggi caused a letter to be sent to an officer of the Coastal.

11. On or about December 17, 1984 Meade Esposito gave information to a secretary in James LaRossa's New York City law firm to enable her to make spa reservations and payment arrangements at the Bonaventure Hotel and Spa in Florida for Representative Biaggi and another person, Barbara Barlow.

12. On or about and between December 27, 1984 and January 2, 1985, Representative Biaggi and Ms. Barlow used spa facilities and received other goods and services at the Bonaventure Hotel and Spa in Florida.

13. On or about and between February 8, 1985 and February 11, 1985, Meade Esposito caused Beaumont to issue to James LaRossa's law firm, a check which included an amount charged by the Bonaventure Hotel and Spa in Florida to LaRossa's credit card relating to goods and services furnished to Representative Biaggi and Ms. Barlow.

14. On May 15, 1985, Representative Biaggi filed an Ethics in Government Act Financial Disclosure Statement for calendar year 1984 with the United States House of Representatives which did not disclose his receipt of trips to St. Maarten and Florida.

15. On or about November 22, 1985, Meade Esposito, in a telephone conversation, asked an officer of Coastal to meet with Representative Biaggi and him on that day.

16. On or about November 22, 1985, Meade Esposito and Representative Biaggi met with an officer of Coastal in New York.

17. On or about December 3, 1985, Representative Biaggi and an officer of Coastal met with Senator D'Amato in Washington, D.C.

18. On or about December 17, 1985, Representative Biaggi spoke to Meade Esposito and gave him information including the dates that Representative Biaggi and Ms. Barlow would be participating in spa activities in Florida.

19. On or about December 17, 1985, Meade Esposito again asked attorney LaRossa, to make spa reservations for Representative Biaggi at the Bonaventure Hotel and Spa and to make payment arrangements by charging the expenses to LaRossa and then charging Beaumont.

20. On or about December 17, 1985, Meade Esposito gave information to a secretary in the law firm of Mr. LaRossa to enable her to make spa reservations and payment arrangements at the Bonaventure Hotel and Spa in Florida for Representative Biaggi and Ms. Barlow.

21. On or about December 26, 1985, Representative Biaggi flew from New York to Florida to join Ms. Barlow who had been using the Bonaventure spa facilities since December 23, 1985.

22. During the period December 27, 1985 and January 3, 1986, Representative Biaggi and Ms. Barlow used spa facilities and received other goods and services at the Bonaventure Hotel and Spa in Florida.

23. During the period April 7, 1986 and May 12, 1986, Representative Biaggi had telephone conversations with the Deputy Mayor of New York City regarding Coastal.

24. During the period March 12, 1986 and May 30, 1986, Representative Biaggi had a telephone conversation with the Commandant of the United States Coast Guard regarding Coastal.

25. On May 15, 1986, Representative Biaggi filed an Ethics in Government Act Financial Disclosure Statement for calendar year 1985 with the United States House of Representatives which did not disclose his receipt of spa facilities at the Bonaventure Hotel in Florida.

26. On or about June 2, 1986, Representative Biaggi, after being interviewed by Special Agents of the Federal Bureau of Investigation, engaged in a telephone conversation with Meade Esposito at which time Representative Biaggi induced Meade Esposito to adhere to a story misrepresenting Representative Biaggi's actions on behalf of Coastal and the circumstances underlying his receipt of the St. Maarten and Florida trips.

III. LEGAL ANALYSIS

A. THE 18 U.S.C. § 201 (g) VIOLATION

The gratuities statute, 18 U.S.C. § 201(g) states:

Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him;

* * * * *

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

While, standing alone, the evidence would not necessarily indicate improper activity on the part of Representative Biaggi by his acceptance of the trips, the Committee's analysis and review of other trial evidence—numerous telephone intercepts of conversations between Representative Biaggi and Meade Esposito—clearly indicate that the propriety of the subject trips was a matter of paramount concern to Representative Biaggi. Indeed, the telephone intercepts (particularly that occurring on June 2, 1986) establish that Representative Biaggi was intent on obtaining Meade Esposito's agreement that, should either gentleman be questioned on the matter, the trips would be described as "manifestations of love" by Esposito for Biaggi. Moreover, the telephone intercepts also establish Representative Biaggi's desire to avoid full disclosure of the facts and circumstances giving rise to those events which the trial

jury determined was obstruction of justice in violation of 18 U.S.C. § 1503.

In sum and substance, analysis of the evidence clearly established that Messrs. Biaggi and Esposito attempted to prevent investigators from gaining full knowledge of the facts giving rise to Representative Biaggi's three trips in the context of the congressman's efforts on behalf of Coastal. In the Committee's view, the evidence established that Meade Esposito arranged for Representative Biaggi to receive three trips in appreciation for the congressman's actions on behalf of Coastal. As such, it is the Committee's view that the jury's verdict on the gratuities violation was well founded and that Representative Biaggi violated 18 U.S.C. § 201(g).

B. HOUSE RULES IMPLICATED

1. House Rule XLIII, clauses 1 and 2

Based upon this threshold determination, the Committee concluded that two House Rules and one statute were implicated by Representative Biaggi's actions. The first Rule, House Rule XLIII, clauses 1 and 2, states:

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

The Committee is of the view that Representative Biaggi's acceptance of a gratuity on three occasions constituted actions which discredited the House of Representatives as an institution. Thus, not only did Representative Biaggi violate House Rule XLIII, clause 1, quoted above, but it certainly can be stated that he violated the "spirit" of clause 1 and, therefore, violated House Rule XLIII, clause 2.

Further, in the Committee's view, Meade Esposito can and should be considered a person or organization deemed to have a "direct or indirect interest in legislation." As noted, Meade Esposito had a clear interest in Coastal's financial well being due to the fact that the company was in arrears with respect to its insurance premium payments to S.V.R. In this connection, there can be no doubt that Coastal was an organization with an interest in legislation, setting it apart from the general public. See, Select Committee on Ethics, Advisory Opinion No. 10. Specifically, the company was an organization whose primary business was in obtaining government contracts. Given that Mr. Esposito shared an identity of interest with Coastal in its successful acquisition of government contracts and resolution of disputed claims with the Federal government (and the City of New York) to enable it to meet its obligations to S.V.R., the Committee believes that Meade Esposito should be accorded status equivalent to that of Coastal as a person or organization with a direct or indirect interest in legislation. Were this not the case, Meade Esposito would clearly not have expended

considerable time and effort in soliciting assistance to mitigate Coastal's financial difficulties. This conclusion is buttressed by evidence indicating Esposito's interest in certain legislation that would have a potential beneficial effect on Coastal.

2. House Rule XLIII, clause 4

In this connection, House Rule XLIII, clause 4, at all times relevant to the actions here involved, provided:

A member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of \$35 or less) in any calendar year aggregating \$100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

In the light of the foregoing, Representative Biaggi's acceptance of gifts of the trips to St. Maarten and use of the spa facilities in Florida from Meade Esposito implicated House Rule XLIII, clause 4. The Committee concluded that the congressman's acceptance of such gratuities in St. Maarten and Florida established *per se* violations of the gift rule since those events, both individually and in the aggregate, far exceeded the \$100 limit imposed by the Rule.

3. House Rule XLIV (Ethics in Government Act of 1978)

Section 102(a)(2)(A) of the Ethics in Government Act of 1978 (EIGA), 2 U.S.C. 702(a)(2)(A), states that filers must report—

The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph.

Evidence was introduced at trial specifically addressing the congressman's annual Financial Disclosure Statements under EIGA. It was clearly established that Representative Biaggi did not, for calendar years 1984 and 1985, disclose his acceptance of gifts of lodging and entertainment provided under the auspices of Meade Esposito.

In terms of specific evidence, it was established that Beaumont provided Representative Biaggi's 1984 stay at Villa Beaumont in St. Maarten, a trip arranged by Meade Esposito. Moreover, Beaumont paid for Representative Biaggi's Florida spa visit in 1984, an-

other Esposito-sponsored trip. And, finally, as to Representative Biaggi's 1985 Florida spa visit, this gift was arranged by Meade Esposito.

Regarding Representative Biaggi's non-disclosure of the gifts, the evidence established that such was the case and that Representative Biaggi told Meade Esposito he did not do so.

The Committee concluded that the three trips to St. Maarten and Florida were gifts (i.e., gratuities) arranged by Meade Esposito implicating 18 U.S.C. § 201(g). It follows that the gifts were events subject to mandatory disclosure under EIGA.

In light of the foregoing, the Committee concluded that Representative Biaggi violated the above-quoted provision of EIGA, which is incorporated by reference into House Rule XLIV, by his failure to report same.

C. CODE OF ETHICS FOR GOVERNMENT SERVICE

Finally, Clause 5 of the Code of Ethics for Government Service says that public employees should:

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

The Committee believes that the circumstances giving rise to Representative Biaggi's acceptance of gifts from Meade Esposito clearly and convincingly establish that his efforts on behalf of Coastal were received under circumstances "which might be construed by reasonable persons as influencing the performance of his governmental duties." While the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence or because of Esposito's gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, the Committee concluded that such improper appearance supports a determination that Representative Biaggi violated Clause 5 of the Code of Ethics for Government Service.

IV. COMMITTEE CONCLUSIONS

A. CONCLUSIONS WITH RESPECT TO GRATUITIES EVIDENCE

The Committee concludes that, based upon review of the evidence at trial and submissions from Representative Biaggi that the congressman, through his acceptance of gratuities under the auspices of Meade Esposito, by clear and convincing evidence, violated the gratuities statute, 18 U.S.C. § 201(g); House Rule XLIII, clauses 1 and 2, concerning actions which bring discredit to the House of Representatives; House Rule XLIII, clause 4, regarding the acceptance of an impermissible gift from a person with an interest in legislation since its value was in excess of \$100; House Rule XLIV, as well as section 102(a)(2)(A) of EIGA, as a result of his failure to disclose the acceptance of gifts on the appropriate Financial Disclo-

sure Statements for calendar years 1984 and 1985; and Clause 5 of the Code of Ethics for Government Service.

B. CONCLUSIONS WITH RESPECT TO ILLEGAL TRAFFICKING

The so-called Travel Act, 18 U.S.C. § 1952, states:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent of—

(1) distribute the proceeds of any unlawful activity;

or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter, performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

The Committee reviewed the evidence underlying Representative Biaggi's conviction for illegal trafficking. The statute here involved, 18 U.S.C. § 1952, makes it unlawful to engage in interstate commerce with the intent to, among other things, promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity. While the statute describes "unlawful activity" to mean, as here relevant, extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, the Committee is aware that, in post-trial motions, the Court ruled that a violation of 18 U.S.C. § 201(g), the gratuity statute, is a sufficient predicate to a violation of 18 U.S.C. § 1952.

The Committee, however, is mindful of the fact that, when Representative Biaggi traveled to Florida in connection with his acceptance of gratuities provided by Meade Esposito, two of the trips were undertaken at least in part in connection with his official responsibilities as a Member of Congress. In this regard, the evidence established that Representative Biaggi met with representatives of a Health Maintenance Organization (HMO) and other groups while in Florida during his 1984 and 1985 trips. Not sufficiently clear from the evidence reviewed is whether those trips were arranged prior to or after the Esposito-sponsored spa visits. Thus, in the Com-

mittee's view, it cannot be said that clear and convincing evidence was adduced that Representative Biaggi engaged in interstate commerce (travel) solely to promote, manage, establish or carry on improper activity. While it may well be that the official activities of Representative Biaggi were arranged after the trips were organized as a facade to give credibility to his travel, the converse may also be the case. In other words, having already arranged official transportation, the spa visits were scheduled to coincide with the dates of such official business. Thus, while the Committee does not conclude that Representative Biaggi's conviction on 18 U.S.C. § 1952 was not well founded, it is the Committee's view that an independent review of the evidence does not compel such a conclusion *vis* the interstate travel.

On the other hand, there is ample evidence establishing that Representative Biaggi participated in numerous telephone conversations across state lines as part of his endeavors to aid Coastal and to arrange his spa visits. Indeed, the Court specifically addressed such interstate telephone communications as being within the statute if the purpose of such calls was to further unlawful activity. The Committee agrees with this interpretation of the Travel Act. Thus, the Committee concludes that the evidence clearly and convincingly established a violation of the Travel Act, 18 U.S.C. § 1952.

As with the case of the violation of the gratuities prohibition, the Committee concluded such acts also constituted violations of House Rules XLIII, clauses 1 and 2 as discrediting the House of Representatives.

C. CONCLUSIONS WITH RESPECT TO OBSTRUCTION OF JUSTICE

The obstruction of justice statute, 18 U.S.C. § 1503, provides:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

The committee concluded that review and analysis of the evidence at trial, and particularly the telephone intercepts, clearly established an intention by Representative Biaggi to impede a lawful Federal investigation.

On June 2, 1986, Representative Biaggi was interviewed by two FBI agents. He was questioned about who paid for his trips to Florida, why they did so, whether there was any relationship between the trips and anything he had done for the sponsor, and whether he had reported his trips on his Financial Disclosure Statements.

After the visit, Representative Biaggi called Meade Esposito. The Committee's review of the transcript of this Biaggi/Esposito telephone call established that Representative Biaggi induced Meade Esposito to adhere to the following story by asking Esposito questions and providing his (Biaggi's) own answers to such questions:

That they have known each other for a long time and are very dear friends;

That Esposito is concerned about Biaggi's health and heart trouble, and that's why Esposito invited Biaggi to the spa in Florida;

That Esposito knew Barbara Barlow before;

That the trips were not a gift, but, rather, a token of friendship and love;

That they spoke frequently, but only about New York politics;

That the two never did any business in relation to Biaggi's congressional services.

That Esposito never had done anything for Biaggi.

That Esposito not mention Biaggi's 1984 trip to St. Maarten, since he wasn't asked about it by the FBI.

That Biaggi asks Esposito what businesss Esposito has with Coastal and he then induced Esposito to say that Esposito contacted Biaggi about Coastal after Addabbo died.

Early in this critical conversation, when Representative Biaggi was beginning to prompt Esposito on the story, the following exchange occurred:

Esposito: It sounds like a [expletive deleted] grand jury.

Biaggi: That's, that's what I'm talking about.

Esposito: Go ahead.

Esposito then called Frank Brasco and Harry Dickran to check on the financial arrangements that had been made for Representative Biaggi's travel. He reported to Brasco that he got a call from Representative Biaggi telling of the FBI visit and asking him to tell the above story. Dickran said he could not talk because there were about 14 FBI people there searching the place.

In light of the above, the Committee concluded that Representative Biaggi enlisted Meade Esposito's concurrence in describing the events leading up to his trips as nothing more than manifestations of Meade Esposito's concern and love for the congressman. Moreover, the conversations make clear that the facade sought to be established was designed to present a misleading picture to (what both gentlemen perceived was) a grand jury investigation. In particular, Representative Biaggi, soon after having been interviewed by the FBI, telephoned Meade Esposito to tell him of the interview and to obtain Esposito's agreement in the concoction of a story explaining the trips. In the light of such compelling evidence, the

Committee concluded that Representative Biaggi clearly and convincingly attempted to obstruct justice in violation of 18 U.S.C. § 1503.

Implicated by his obstructing justice, Representative Biaggi, in the Committee's view, again, violated House Rules XLIII, clauses 1 and 2. As noted above, his actions, in fact and in spirit, brought discredit upon the House of Representatives.

In view of the foregoing analysis of the evidence presented at trial, on November 4, 1987, the Committee adopted, by a vote of 12 to 0, the following Resolution.

RESOLUTION IN THE MATTER OF REPRESENTATIVE MARIO
BIAGGI

November 4, 1987

Pursuant to Rule 14 of the Committee's Rules, the Committee, having reviewed the evidence relating to the conviction of Representative Mario Biaggi in the United States District Court for the Eastern District of New York for the offenses of violating section 201(g), 1952, and 1503 of Title 18 of the United States Code; and upon consideration of the Report of Committee Counsel Upon Completion of Preliminary Inquiry dated November 3, 1987, in the above-described matter, and of all relevant evidence, now determines that 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, 2, and 4; House Rule XLIV (Ethics in Government Act of 1978); and Clause 5 of the Code of Ethics for Government Service; 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 Biaggi for these offenses and violations; and that it be further

Resolved, That Representative Biaggi and his counsel shall be promptly informed of this action and of the Member's rights pursuant to the Rules of this Committee, and that it be further

Resolved, That the Committee Counsels' report in this matter be made public after service upon Representative Biaggi and his counsel.

Representative Biaggi and his counsel were informed that day of the Committee's action and the fact that a disciplinary hearing would be scheduled as soon as possible. Under Committee Rules, the sole purpose of such a disciplinary hearing was to determine what sanction, if any, to recommend to the House. On December 4, 1987, counsel for Representative Biaggi submitted their recommendation that the appropriate sanction to be applied in the instant case was reprimand. (App. B.) On December 15, 1987, Committee counsel submitted a recommendation as to the sanction the Committee should recommend to the House. (Exhibit 2.) The Committee

met on December 17, 1987, and held the disciplinary hearing contemplated by Rule 16(f) of the Committee's Rules of Procedure. At that time, the Committee heard from both Representative Biaggi and his counsel regarding the matter of the sanction to be recommended to the House. The Committee also received an oral presentation by the Committee's Chief Counsel on the matter of sanction. The transcript of the December 17, 1987, hearing appears in Exhibit 3.

V. RECOMMENDATION

Based upon the Committee's independent review of the evidence (as reflected in the above-quoted Resolution), the Committee concluded that Representative Biaggi did accept illegal gratuities, engage in illegal trafficking, and obstruct justice. Moreover, the Committee's independent review of the facts led the Committee to conclude that, on the basis of clear and convincing evidence, Representative Biaggi also committed violations of House Rule XLIII, clauses 1 and 2 (discrediting the House of Representatives); House Rule XLIII, clause 4 (acceptance of impermissible gifts from a person or organization with a direct or indirect interest in legislation); House Rule XLIV and the Ethics in Government Act of 1978 (failure to disclose gifts of \$250 or more in a calendar year on annual Financial Disclosure Statements); and paragraph 5 of the Code of Ethics for Government Service (accepting favors or benefits under circumstances which might be construed as influencing the performance of governmental duties).

Pursuant to Rule 17 of the Committee's Rules, the Committee has specified the sanctions which may be imposed "with respect to any violation with which a Member was charged." The range of sanctions which may be recommended by the Committee include: (1) expulsion; (2) censure; (3) reprimand; (4) fine; (5) denial or limitation of any right, power, privilege or immunity available to Members; and (6) any other appropriate sanctions. *See*, Committee Rule 17(b)(1)(A-F).

In terms of guidance, Committee Rule 17 states that:

[R]eprimand is appropriate for serious violations; censure is appropriate for more serious violations; and expulsion of a Member * * * is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such right, power, privilege, or immunity.

The source of the power of the Committee to recommend and of the House to impose any of the above sanctions is the United States Constitution, which specifically provides that each House may "punish its Members for disorderly behavior, and, with the concurrence of two thirds, expel a Member." Art. 1, sec. 5, cl. 2.

Based upon the Committee's analysis of the facts adduced at trial in connection with Representative Biaggi's convictions, as well as

the Committee's independent review of trial evidence in the context of other standards of conduct, the Committee found that the offenses for which Representative Biaggi was convicted involved criminal conduct of a most serious nature going to the heart of his representational responsibilities.

The facts and circumstances giving rise to the violations, being of the most serious nature, warrant the imposition of the most stringent sanction available to the House of Representatives.

Accordingly, the Committee submits that expulsion is the only sanction appropriate to the violations committed by Representative Biaggi. The Committee recommends that the House adopt a Resolution in the following form.

HOUSE RESOLUTION

Resolved, That, pursuant to Article I, Section 5, clause 2, of the United States Constitution, Representative Mario Biaggi be, and he hereby is, expelled from the United States House of Representatives.

This report was approved by the Committee on Standards of Official Conduct on February 17, 1988, by a vote of 12 to 0.

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

The Committee makes no special oversight findings in this report.

EXHIBIT 1
REPORT OF COMMITTEE STAFF
UPON COMPLETION OF RULE 14 PRELIMINARY INQUIRY
IN THE MATTER OF REPRESENTATIVE MARIO BIAGGI

On September 23, 1987, pursuant to Rule 14 of the Rules of Procedure of the Committee on Standards of Official Conduct (Committee), the Committee initiated a Preliminary Inquiry into whether any of the offenses for which Representative Mario Biaggi was convicted on September 22, 1987, constituted a violation(s) over which the Committee has jurisdiction.

I. THE INDICTMENT

On March 16, 1987, Representative Mario Biaggi and Meade Esposito were indicted by a Federal grand jury in the Eastern District of New York. While they were charged in different counts, in total, the seven-count indictment charged Representative Biaggi and Meade Esposito with bribery, offering and accepting gratuities, conspiracy, illegal trafficking, and obstruction of justice. The corresponding provisions of Federal law involved were: 18 U.S.C. §§201(b), (c), (f), and (g), 371, 1503, and 1952.¹

At trial, the Federal prosecutor observed that the charges in the indictment were of two basic types: (1) official corruption, or crimes of corrupt influence, and (2) cover-up

¹ Extracts of the above-cited statutes are included in an Appendix to this report.

crimes, that is, the obstructing, impeding, and deceiving of Federal investigators.²

The corrupt influence crimes -- Counts 1 through 6 of the indictment -- involved bribery, conspiracy, gratuities, and a violation of the Travel Act. Specifically, Meade Esposito was charged in Count 1 to have conspired with Representative Biaggi to commit violations of the bribery, gratuities, and Travel Act statutes. Count 2 charged Meade Esposito with the bribery of Representative Biaggi. Count 3 charged Representative Biaggi with accepting Esposito's bribe; the congressman was charged with asking for, receiving, and agreeing to receive from Meade Esposito the payment of spa expenses at the Bonaventure Health Spa in Florida in return for being influenced in the performance of his official duties on behalf of a company called Coastal Dry Dock and Repair Corporation (Coastal).

Counts 4 and 5 related to the same actions by Meade Esposito and Representative Biaggi as Counts 2 and 3 but charged a lesser offense -- a violation of the gratuities prohibition contained at 18 U.S.C. §201(g). In particular, Count 4 charged that Esposito paid and promised to pay Representative Biaggi's spa expenses for and because of official acts that Representative Biaggi had performed for Coastal and would perform in the future.

Count 5 charged Representative Biaggi with violating the gratuities statute; to wit, that he asked for, received, and

² Committee counsel submits that the Federal prosecutor's description of the indictment (Tr. 30-35) is a concise and accurate summation of the Federal grand jury's charges against Representative Biaggi and Meade Esposito. ("Tr." refers to the trial transcript in this report.)

agreed to receive from Meade Esposito the payment of the spa expenses for and because of official acts that he performed and would perform for Coastal.

Count 6 charged a violation of the Travel Act, 18 U.S.C. §1952. In essence, this count charged that Meade Esposito and Representative Biaggi utilized interstate travel and interstate facilities, such as the telephone, to engage in criminal activity.

Finally, Count 7 charged only Representative Biaggi. The grand jury charged that Representative Biaggi endeavored to obstruct and impede a grand jury investigation by eliciting Meade Esposito's agreement to furnish misleading information in connection with the Federal investigation into Representative Biaggi's activities on behalf of Coastal and the congressman's receipt of trips arranged by Meade Esposito. A second aspect of the cover-up charge in Count 7 implicated Count 1, the conspiracy count. Specifically, it was charged that Meade Esposito and Representative Biaggi conspired to cheat or defraud the United States out of its right to have grand juries, the Federal Bureau of Investigation, and the United States Department of Justice, conduct official investigations free of fraud, deceit, dishonesty, and corruption.

II. THE CONVICTION

On September 22, 1987, Representative Biaggi was found guilty by the jury of having accepted illegal gratuities in violation of 18 U.S.C. §201(g) (Count 5); illegal trafficking in violation of 18 U.S.C. §1952 (Count 6); and obstruction of

justice, a violation of 18 U.S.C. §1503 (Count 7). Meade Esposito was also found guilty of violating the gratuities statute and the Travel Act.

III. SUMMARY OF THE EVIDENCE

Pursuant to Committee Rules 11(a) and 14, and consistent with the approach undertaken by the Committee In the Matter of Representative George V. Hansen, H. Rept. 98-891, Vol. I, p. 323, at footnote 12, Committee counsel reviewed the trial evidence for violations of standards of conduct applicable to the actions of Representative Biaggi. In sum, Rule 14, by virtue of its use of the word "evidence", involves a Preliminary Inquiry which considers not only those Rules which are analgous to the statutes for which Representative Biaggi was ultimately convicted, but also those Rules

"which are so fundamentally related to the principal offense that they are almost central to it * * * and should be considered * * * when the conduct prescribed by those related Rules was put in issue at the trial and addressed by both the prosecution and the defense."

Thus, considered in the preparation of this report were the trial transcript, transcripts of recorded telephone conversations and oral intercepts, and submissions from Congressman Biaggi's counsel. In determining the "relevancy" of evidence, Committee counsel identified those portions of the trial transcript and other evidence giving rise to three offenses for which Representative Biaggi was convicted. In addition, Committee counsel met with and received from counsel for Representative

Biaggi, proposed designations of trial evidence considered appropriate for the Rule 14 proceeding.

There follows a discussion of the evidence organized on the basis of the primary relationships and activities giving rise to Representative Biaggi's conviction.

A. The Gratuities and Travel Act Violations

1. Significant Relationships

a. Esposito's Interest in S.V.R.

In March 1984, Meade Esposito was a principal and officer of the insurance brokerage firm of Serres, Visone and Rice, Inc./S.V.R. Brokerage, Inc. ("S.V.R."). [Tr. 116, 137.] S.V.R. derived income by selecting insurance companies to provide insurance needed by S.V.R.'s clients. That is, in return for brokering a client's insurance needs, S.V.R. received a commission. [Tr. 197, 206.] S.V.R. was a successor organization to a company called Grand Brokerage. [Tr. 114]. Grand Brokerage had two principals, Meade Esposito and Lester Zerin. [Tr. 115]. In approximately 1980, Grand Brokerage changed its name to Serres, Visone & Rice. [Tr. 116]. The principals were still Esposito and Zerin. Esposito was a senior advisor and chief salesman [Tr. 117] although he did not have an insurance license. Later, Zerin left and a Joseph Martuscello succeeded to Zerin's interest. [Tr. 118].

b. Esposito's Interest in Beaumont

Beaumont Offset Corporation (Beaumont) was engaged in the printing business. Beaumont had three initial stockholders: Ms. Phyllis Zito, Mr. Harry Dickran and Mr. James Leone [Tr. 100].

Ms. Zito's father is Meade Esposito. [Tr. 100]. For a period of years until 1984, Esposito was a director of Beaumont [Tr. 107-108]. While Esposito did not bring in customers to Beaumont, he, nevertheless, received a salary [Tr. 110]. Beaumont owned a villa in St. Maarten (Tr. 111) called "Villa Beaumont" which could be rented for \$2-3,000 per week. [Tr. 112].

c. Esposito's Interest in Coastal

Coastal Dry Dock and Repair Corporation (Coastal) was a New York company involved with the overhaul, repair, refurbishment, and conversion of large naval ships. [Tr. 399.] Coastal was the second largest account serviced by S.V.R. in 1983 [Tr. 202] and provided a substantial amount of income to S.V.R.. [Tr. 206.] Coastal owed S.V.R. a significant amount of money for premiums S.V.R. had paid out of its own funds to insurance companies on behalf of Coastal. In effect, S.V.R. covered Coastal's cash-flow problems by advancing the insurance payments from its own resources. In fact, Coastal owed S.V.R. \$280,000 for such premium payments.

d. Coastal's Financial Difficulties

During the period 1982 through 1986, as a result of contract disputes with the United States Navy [Tr. 411], Coastal had outstanding claims of many millions of dollars against that branch of the service. [Tr. 411]. At about the same time, Coastal, which leased space from the Brooklyn Navy Yard Development Corporation (Navy Yard), was also engaged in continuous discussions with the Navy Yard regarding utility rates and other lease charges considered to be excessive. [Tr. 236.]

The Navy Yard had serious problems collecting rent and utility payments from Coastal. [Tr. 253.] Up until the summer of 1984, Coastal's rent payments to the Navy Yard could be up to half a million dollars in arrears.

2. Activities Representative Biaggi Undertook for Coastal

As noted, Representative Biaggi was convicted, in part, of accepting gratuities from Meade Esposito. Also noted was the fact that Meade Esposito had a clear financial interest in Coastal's economic well-being since Coastal owed S.V.R. \$280,000 in back insurance premiums and Esposito had an ownership interest in S.V.R. In this connection, Representative Biaggi was also interested in maintaining Coastal's self-sufficiency since Coastal was a major employer in the New York City area, portions of which Representative Biaggi represented.

In this section, Counsel presents a detailed summary of the activities Representative Biaggi undertook for Coastal in an effort to ease the company's financial difficulties with its creditors.

While as far back as March 17, 1982, Representative Biaggi expressed interest on behalf of Coastal in a letter to the Secretary of the Navy [Tr. 1307-1309, 1421]. It was in the Spring of 1984 that Representative Biaggi's efforts increased: At that time, New York Deputy Mayor Kenneth Lipper received a call from Representative Biaggi concerning overcharging Coastal for electricity and the company's inability to compete with out-of-town businesses due to the costs of its leases and utility

bills. [Tr. 352, 381].

Representative Biaggi also initiated correspondence on behalf of Coastal. For example, on June 28, 1984, Biaggi sent a letter, on congressional stationery, to Mayor Ed Koch. [Tr. 1227-1231]. On July 30, 1984, Mayor Koch responded to Representative Biaggi's letter of June 28, 1984, regarding Coastal. [Tr. 1238-1239, 1393-1394] On August 20, 1984, Representative Biaggi sent a copy of the Mayor's July 30 response to Vincent Montanti, Coastal's vice president and the son of Coastal's president, Charles Montanti. [Tr. 1239-1241] On September 4, 1984, Vincent Montanti also sent Representative Biaggi a letter following up on previous correspondence regarding Coastal. [Tr., 1242-1243] On September 17, 1984, Biaggi again sent a letter to Mayor Koch on congressional stationery regarding Coastal's problems. [Tr. 1244] He also, on November 2, 1984, corresponded with the U.S. Maritime Administration on behalf of Coastal. [Tr. 1385].

Representative Biaggi participated in and arranged meetings on behalf of Coastal. During the period January - June 1985, Anthony Perillo, a Coastal employee, met with Representative Biaggi at Coastal's offices. Biaggi met with Bernard Ehrlich, Representative Biaggi's former law partner, Perillo, the Montantis (Coastal's owners), and Mario Marino from Wedtech. [Tr. 436-440]. On one specific occasion, February 11, 1985, there was a meeting with Esposito, Montanti, and Representative Biaggi [Tr. 1521]. It was during this period (Mid-1985), that Charles Montanti told Representative Biaggi that Coastal could

not carry its utility charges. [Tr. 455].

On July 17, 1985, New York Deputy Mayor Alair Townsend had a phone conversation with Representative Biaggi regarding Coastal. [Tr. 520]. And on August 26, 1985, Biaggi sent a letter to the Secretary of Transportation about Coast Guard procurement and provided a copy of the letter to Coastal. [Tr. 1316-1317]. Shortly thereafter, on September 19, 1985, New York Deputy Mayor Townsend again had a phone conversation with Representative Biaggi regarding Coastal. [Tr. 522].

The evidence established that in late 1985, Representative Biaggi was actively engaged in activities such as meetings and telephone calls on behalf of Coastal. Specifically, in late November December 1985, the trial evidence chronicled that the following occurred:

November 22, 1985

Meade Esposito tells Vincent Montanti (of Coastal) of date with Representative Biaggi and Charles Gargano, a civil engineer, for lunch at 12:30 and asked Montanti to join them. [Tape 7(a)].³

December 1, 1985

In a telephone call, Esposito tells Joseph Martuscello, a partner of Esposito in S.V.R., that Montanti was going to Washington on Tuesday. [Tape 8(a)].

December 2, 1985

Esposito tells Martuscello that he just had lunch with Charles Montanti of Coastal (Vincent's father) and Representative Biaggi. [Tape 9(a)].

³ "Tape" refers to Court-authorized recordings of telephone and oral intercepts used at Representative Biaggi's trial as part of the government's evidence.

December 3, 1985

At his request, Representative Biaggi and Vincent Montanti, Executive VP of Coastal, met with Senator D'Amato regarding Coastal's problems with outstanding claims and unfair treatment. [Tr. 781, 787].

December 4, 1985

Representative Biaggi reports to Esposito on meeting with Senator D'Amato regarding Coastal, and actions that will follow. Esposito tells Biaggi he is working on \$10 million line of credit for Coastal. [Tape 10(a)].

Vincent Montanti tells Joseph Martuscello about contacting another person who might be helpful; says people are afraid to help because Coastal is under investigation. Says the meeting with D'Amato was fruitful, "beyond the normal." [Tape 12(a)].

Meade Esposito tells Charles Montanti that Representative Biaggi and Senator D'Amato set up a meeting for December 5, 1985, with the Secretary of the Navy. [Tape 14(a)].

December 9, 1985

Esposito and Martuscello discuss help by Representative Biaggi and Senator D'Amato for Coastal. Say more needs to be done. [Tape 15(a)].

December 10, 1985

Representative Biaggi called Senator D'Amato to find out about meeting with Assistant Secretary of the Navy regarding Coastal. [Tr. 796].

December 11, 1985

Representative Biaggi again called Senator D'Amato to find out about meeting with Assistant Secretary of the Navy regarding Coastal. [Tr. 796].

December 13, 1985

New York City Deputy Mayor Townsend sent a message to Senator D'Amato about her conversation with Representative Biaggi. She

says she worked with Biaggi to get Coastal "to help themselves." Townsend said: "...Congressman was trying to lean on us to help Coastal..." [Tr. 522-523]

December 16, 1985

Esposito tells Charles Montanti that he thinks Senator D'Amato and Representative Biaggi are going to help, that they are working on helping Coastal. [Tape 17(a)].

December 17, 1985

Representative Biaggi again called Senator D'Amato to find out about meeting with Assistant Secretary of the Navy regarding Coastal. [Tr. 796, 797].

Right after he tells Esposito of arrangements for Barbara Barlow's (Representative Biaggi's travel companion) travel to Florida, Biaggi says: "By the way, we've been doing wonders for Montanti." Also says that he got Coastal \$1.2 million, and that he is "bird-dogging" it. [Tape 19(a)].

Esposito tells Charles Montanti that he just spoke to Washington and he got him \$1.2 million; Esposito also says, "Mario is doing his best." [Call occurs after others making arrangements for Representative Biaggi's and Barlow's travel to Florida.] [Tape 22(a)].

Representative Biaggi left message for Deputy Mayor Townsend at 5 p.m.; requests call be returned the next day. [Tr. 523].

December 19, 1985

Representative Biaggi tried to reach Deputy Mayor Townsend by telephone. He left a message about negotiations with Coastal regarding a proposal that Coastal relinquish some of its leased property from the Navy Yard. [Tr. 523-524].

Esposito's nephew, Dennis Petito, tells Esposito that he's getting \$12 million for Coastal from two banks. Esposito says that he got them \$1.2 million from the Government. [Tape 26(a)].

Esposito tells Joseph Martuscello of bank money and money that Representative Biaggi and Senator D'Amato got for Coastal. [Tape

27(a)].

December 20, 1985

Esposito talks to Martuscello about money for Coastal. Mentions Representative Biaggi's visit to the Bonaventure spa in Florida. Says: "Hey, that's good money invested." [Tape 28(a)].

Senator D'Amato had a phone message indicating Esposito knew of Representative Biaggi's calls to the Senator regarding Coastal. [Tr. 797].

January 29, 1986

Representative Biaggi tells Esposito of a bill he will be introducing to set aside \$800 million on small crafts (presumably for Coastal). [Tape 36(a)].

February 10, 1986

Esposito tells Representative Biaggi that he is trying to get an appointment with Representative Joe Addabbo, Charles Montanti, and a Fred DeMatteis (description unknown). Talked about how Esposito could fix things without seeming to be personally involved. [Tape 37(a)]

March 6, 1986

Esposito talks with Representative Biaggi about fundraiser for the congressman. Esposito asks about Montanti. Biaggi says they are trying to put him together with George Steinbrenner, who has a Tampa shipyard. Esposito asks about small boats (Biaggi bill). [Tape 38(a)].

March 12, 1986

Representative Biaggi tells Esposito that Vince Montanti of Coastal came to see him; that the Navy gave Coastal \$5 million; that he (Biaggi) is working with the City on utility costs; and that he will try to get

some Coast Guard work for Coastal. [Tape 40(a)].

Representative Biaggi's efforts on behalf of Coastal continued well into 1986. Again, there follows a summary of Representative Biaggi's activities adduced from the evidence at trial.

Spring 1986

James Gracey, Commandant of the U.S. Coast Guard, received a call from Representative Biaggi inquiring whether the Coast Guard had any work for some of his constituents in the shipyard business. [Tr. 1168-1169].

April 1986

Representative Biaggi and Charles Montanti meet with Senator D'Amato at Biaggi's request to discuss D'Amato and Biaggi meeting with the U.S. Navy for Coastal. [Tr. 802, 803].

May 1, 1986

Esposito tells Charles Montanti that he will be talking to Representative Biaggi about help. [Tape 45(a)].

May 12, 1986

New York City Deputy Mayor Townsend sent a letter to Representative Biaggi stating New York City's position on the utility overcharge issue. [Tr. 1385].

Townsend sent letter to Representative Biaggi responding to a call from Representative Biaggi to the Mayor regarding overcharges to Coastal. [Tr. 525-527].

May 20, 1986

Senator D'Amato had appointment with Vincent Montanti and Representative Biaggi but could not recall if meeting took place. [Tr. 805].

June 2, 1986

Representative Biaggi told FBI Agent George Bolds that he started helping Coastal after Representative Joe Addabbo became ill and was requested to help Coastal by the Montantis.

Representative Biaggi denied any connection between the Florida trips to the Bonaventure spa and Coastal. [Tr. 1541-1544].

Representative Biaggi told the FBI that Montanti asked him to direct business to them. [Tr. 1563]

Representative Biaggi told the FBI that he had helped Coastal with New York City, but had not been successful with the U.S. Navy, so he called Senator D'Amato. [Tr. 1564-5].

After Representative Biaggi called Esposito to tell him of being questioned by FBI, Esposito asks an individual identified as Frank Brasco, "How much have we got in . . . Mario Biaggi." Brasco answers "10-2." [Tape 49(a)].

Esposito asks Harry Dickran about payments made by Beaumont for the Biaggi trip. Dickran responds that there are 14 FBI people there searching the office. [Tape 50(a)].

June 1986

Representative Biaggi and Deputy Mayor Townsend spoke on the telephone about 7 times after June 2nd. [Tr. 525].

In addition to the specific events summarized above, the trial evidence disclosed other activities Representative Biaggi undertook for Coastal. However, these action, listed below, were not precisely identified as to when they took place.

- ° Representative Biaggi called Deputy Mayor Townsend first about Coastal. [Tr. 607].
- ° Representative Biaggi asked Senator D'Amato's help for Coastal regarding utility overcharges. [Tr. 799].
- ° Senator D'Amato was not asked by anyone other than Representative Biaggi and the Montantis to help Coastal. [Tr. 806].
- ° Deputy Mayor Townsend sent letters to Representative Biaggi and Senator D'Amato regarding New York City's help for Coastal and Coastal's problems with the U.S. Navy. [Tr. 532-533].

- During the period which Representative Biaggi and Deputy Mayor Townsend held conversations, there were 11 or 12 phone calls and some letters. [Tr. 573].
- During several phone conversations, Deputy Mayor Townsend told Representative Biaggi there were no options open to Montanti. [Tr. 590-591].
- Conversations between Representative Biaggi and Deputy Mayor Townsend never suggested any quid pro quo. Townsend called Representative Biaggi's office to keep him up-to-date regarding Coastal. [Tr. 592].
- Coastal went into bankruptcy when the Brooklyn Navy Yard told them the electricity would be shut off. [Tr. 464].
- Following Coastal's bankruptcy, Representative Biaggi continued to talk with Deputy Mayor Townsend about Coastal. Townsend discussed no other business with Representative Biaggi. [Tr. 529-530].
- Coastal owed S.V.R. \$280,000 at the time of its bankruptcy. The \$280,000 represents a premium owed to an insurance company. [Tr. 458-459, 465].
- 35% to 40% of Coastal's insurance was handled by S.V.R. [Tr. 464].

In light of the above summary, it is manifestly clear that Representative Biaggi devoted considerable time and effort to resolving Coastal's problems.

Committee counsel next lists the discussions, events, and activities that took place in connection with Representative Biaggi's trips to St. Maarten and visits to a Florida hotel and spa arranged by Meade Esposito.

3. Representative Biaggi's Trips to St. Maarten and Florida

As discussed earlier, the trial jury determined that Representative Biaggi accepted, in violation of 18 U.S.C.

\$201(g), illegal gratuities in the form of free trips to Florida from Meade Esposito because of the congressman's official acts performed or to be performed by him in aid of Coastal. In this section, Committee counsel summarizes the extracts of key trial evidence relevant to such gratuities. While not charged in the indictment, Representative Biaggi also accepted an Esposito-arranged trip to St. Maarten in March 1984. This trip was included in Committee counsel's review.

a. Representative Biaggi's St. Maarten
Trip on March 26-31, 1984

- ° George Shore, accountant for Beaumont and S.V.R. testified that Beaumont owns the villa in which Biaggi stayed at St. Maarten. [Tr. 111-114].
- ° Prosecution and defense counsel stipulate that Dolphin Travel Agency would testify that, on March 12, 1984, Meade Esposito was issued five round-trip tickets, first class to St. Maarten, for March 26-31, 1984, at a cost of \$644 each, including one for Representative Biaggi. [Tr. 1504-1506].
- ° Robert Blancato, Legislative Director to Representative Biaggi and Staff Director for the Subcommittee on Human Services of the House Committee on Aging, confirmed in testimony, a memo of March 13, 1984, which shows the flight times for the congressman's trip to St. Maarten. [Tr. 1222].
- ° Prosecution and defense counsel stipulate that Pan American Airlines would testify that Biaggi used the St. Maarten ticket. [Tr. 1506-7].
- ° Prosecution and defense counsel stipulate that American Express bill for the airline tickets was issued to Meade H. Esposito at S.V.R. Insurance, which was paid June 15, 1984. [Tr. 1507-8].
- ° Tom Hansson, accounting executive for SVR, was questioned about connections between SVR/Coastal dealings and the trip to St. Maarten. He stated that he had known Esposito was going to St. Maarten with

Representative Biaggi, but did not know the date. [Tr. 221].

- Prosecution and defense counsel stipulate that a check from an account with the Bank of Butterfield in Bermuda paid Esposito's American Express bill for Representative Biaggi's trip to St. Maarten. The check was from the K. M. Henry account, an extension of SVR in Bermuda. [Tr. 1472-1473].

b. Representative Biaggi's First Florida Trip - December 26, 1984 to January 1, 1985

- Barbara Barlow, Representative Biaggi's friend, said Biaggi arranged the 1984 trip through Meade Esposito. [Tr. 896].
- Stella Paone, secretary to James LaRossa, an attorney whom Esposito knows and who is a member of the Bonaventure spa, makes reservations for Representative Biaggi and Ms. Barlow at the Bonaventure Spa, Fort Lauderdale, Florida, for December 26, 1984 to January 5, 1985. Lodging paid by LaRossa, then charged to Beaumont Offset. Cost is about \$3,200 (\$3,228.64 dated December 26, 1984 from American Express voucher). [Tr. 697-702].
- Robert Blancato testified that the Committee on Aging paid for Biaggi's airfare to Florida. Blancato said Representative Biaggi had a fact-finding visit to an agency on aging in Broward County, Florida.. [Tr. 1196].
- Robert Blancato testified that he set up Biaggi's fact-finding trip two weeks before the trip was taken. He did not know whether this fact-finding visit was set up before or after Representative Biaggi made plans to go to the Bonaventure spa in Florida. [Tr. 1197-99].
- Ms. Barlow said she flew from New York to Florida in 1984, followed by Representative Biaggi. [Tr. 898-899].
- Prosecution and defense counsel stipulate that Eastern Air Lines had a reservation for Representative Biaggi to fly from New York to Ft. Lauderdale on December 26, 1984, and this reservation was used. [Tr. 1520].

- Ms. Barlow said Representative Biaggi met Esposito in Florida in 1984 and that she knew of no congressional business Biaggi performed in Florida in 1984. [Tr. 903-904].
- Sidney Caspersen, FBI agent, testified based on the Federal investigation, that Representative Biaggi and Ms. Barlow stayed at a friend's house on this trip to Florida. He also testified that James LaRossa paid the bills for their activities in Florida. [Tr. 1123-24].
- Ms. Barlow said she flew back from Florida in January 1985. [Tr. 905].
- Robert Blancato testified that he was aware of Representative Biaggi's trip to Florida in December of 1984, and also that the spa expenses were paid for in that month. [Tr. 1315].
- A February 4, 1985, check was issued by James LaRossa account for \$3,228.64 to American Express. [Tr. 707].
- On approximately February 8, 1985, a bill for \$3,228.64 was sent from LaRossa's law firm to Beaumont. [Tr. 707].
- On approximately February 8, 1985, Beaumont responds to bill from LaRossa's law firm and issues a check to the LaRossa firm in payment of the bill. [Tr. 708].
- On approximately February 15, 1985, LaRossa law firm receives check. [Tr. 708].
- George Shore, accountant for Beaumont and S.V.R., testified that Beaumont paid \$3,200 in expenses on behalf of Representative Biaggi. Esposito told Shore this in October or November of 1986. [Tr. 141, 151].

c. Representative Biaggi's Second Trip
To Florida - December 27, 1985 to
January 3, 1986

- In early December 1985, Robert Blancato testified that he made arrangements for Representative Biaggi to visit a Health Maintenance Organization (HMO) in Florida. These arrangements were made ten to fourteen days before Representative Biaggi's trip. Blancato did not know whether this visit to a HMO was set up before or after Biaggi made

plans to visit the Bonaventure spa in Florida. [Tr. 1197-99].

- ° In mid-December 1985, Ms. Judy Nicholas, reservation manager, Bonaventure Hotel, Ft. Lauderdale, discussed over the telephone lodging rate information and package plans with a person identifying himself as Representative Biaggi. [Tr. 737-740].
- ° Esposito tells LaRossa's secretary, Stella Paone, to make reservations for Barbara Barlow at the spa from December 22 to January 3; for Biaggi from December 27 to January 3; and to bill Beaumont for the costs. [Tape 21(a)].
- ° On or December 17, 1985, Stella Paone, secretary to James LaRossa, makes reservations for Representative Biaggi and Ms. Barlow at Bonaventure Spa for December 26, 1985 to January 5, 1986. Confirmation shows Ms. Barlow's reservation December 22, 1985 to January 3, 1986; Representative Biaggi December 27, 1985 to January 3, 1986 for a total of \$3,515. Amount to be charged to LaRossa's American Express card and later charged to the Beaumont account. [Tr. 702-706, 727].
- ° Representative Biaggi gives information to Esposito on Barlow's and his travel, including dates, to Florida. [Tape 19(a)].
- ° Esposito tells James LaRossa that he wants to make the same arrangement for Representative Biaggi at the Bonaventure as last year; charge it to Beaumont Printing. [Tape 20(a)].
- ° Esposito tells Stella Paone that Representative Biaggi and Ms. Barlow do not need a house like last year. [Tape 23(a)].
- ° Esposito tells Representative Biaggi that the Florida reservations are all set. [Tape 25(a)].
- ° Judy Nicholas, Bonaventure reservation manager, describes reservation form dated December 21, 1985 showing Representative Biaggi and Ms. Barlow scheduled to arrive December 27, 1985 and December 22, 1985, respectively. Reservation for one bedroom suite. [Tr. 742-745].

- Judy Nicholas described the hotel check-in form for Ms. Barlow to reflect 50% room rate discount and Representative Biaggi American Express card stamp on back. [Tr. 747-748].
- Representative Biaggi asks Esposito his telephone numbers in Florida; says will meet him there. [Tape 30(a)].
- December 26, 1985, Judy Nicholas has phone conversation with person identifying himself as Representative Biaggi, changing arrival date to same day (12/26/85) and changing plan for room and spa. Biaggi gets VIP treatment by hotel on approval by hotel general manager. [Tr. 746-746].
- Prosecution and defense counsel stipulate that Delta Airlines will testify that Ms. Barlow surrendered tickets to their personnel on a December 22, 1985 flight to Ft. Lauderdale, and a January 4, 1986 return flight to New York. [Tr. 1518-1519].
- Prosecution and defense counsel stipulate that Eastern Air Lines reservations were made for Representative Biaggi to go to Miami on December 26, 1985 and back to New York on January 4, 1986. They were later changed to Ft. Lauderdale for the same dates and used. [Tr. 1517-18].
- Ms. Barlow said she and Representative Biaggi saw Esposito and Mortimer Matz, a member of Representative Biaggi's staff, in Florida in 1985. [Tr. 912] Ms. Barlow said Representative Biaggi did some congressional business regarding HMOs on this trip. [Tr. 913] Ms. Barlow said someone besides Representative Biaggi paid for the spa part of the trip in 1985-6. [Tr. 915].
- Robert Blancato testified that the amount of time Representative Biaggi spent working while on the trip was at least a day and perhaps more. He received phone calls on the fact-finding visit from Biaggi, calls from Florida to Washington. [Tr. 1200].
- Sidney Caspersen, FBI agent, testified that on this trip to Florida, Representative Biaggi and Ms. Barlow stayed at a hotel. In addition, he said that the bill for the spa and the hotel were paid for by the firm of Biaggi and Ehrlich. [Tr. 1123-24].

- Louis DiNapolie, Assistant Front Office Manager at the Bonaventure Hotel and Spa, said there were 2 accounts at the complex for Representative Biaggi; on January 3, 1986, \$844.58 was transferred from hotel account to Spa account at request of Barbara Barlow. [Tr. 860-862].
- Tammy McClung, Front Office Clerk, Bonaventure Hotel and Spa, said that \$157.55 in charges were moved from the hotel account to the spa account by Representative Biaggi on January 4, 1986, and that he only paid the hotel account that day. [Tr. 864-868].
- Susan Lord, Assistant Credit Manager at Bonaventure, said that Representative Biaggi's spa and laundry accounts were not paid as of January 7, 1986, after Biaggi had left, so she added them to Biaggi's American Express bill. [Tr. 871-873].
- Ms. Lord said the address on the spa bill was c/o James LaRossa, 46 Madison Avenue, 34th Floor, N.Y., N.Y. [Tr. 876-877].
- The law firm of Biaggi & Ehrlich paid American Express bill for \$3,877.16, dated February 13, 1986. This was a bill for Representative Biaggi's expenses in Florida. Gina Tenaglia (secretary for Biaggi & Ehrlich) confirms this. [1289-1290] Ms. Tenaglia again confirms that the firm paid the bill of \$3,877.16. She did not know if this was applied to what the firm owed Biaggi for the buyout.⁴ [Tr. 1294-1295].
- Ms. Tenaglia states that a Biaggi & Ehrlich credit card paid for Barbara Barlow's airfare. [Tr. 1299-1300].
- Representative Biaggi starts to thank Esposito during a telephone conversation. Esposito says to forget it. "If we can help each other, that's what counts." [Tape 33(a)].
- Prosecution and defense stipulate that Representative Biaggi has American Express voucher and check from Biaggi & Ehrlich for \$399. Also has ticket confirmation for B.

⁴ Representative Biaggi sold his interest in the law firm of Biaggi and Ehrlich and was to receive periodic payments representing his equity in the law firm.

Barlow, LaGuardia-Ft. Lauderdale-LaGuardia, 12/20/85, for \$399. [Tr. 1861].

- ° June 2, 1986, FBI agent George Bolds interviewed Representative Biaggi, mainly in regard to this second trip, but also the first. According to Bolds, Representative Biaggi said either he or Ms. Barlow paid for her ticket on the second trip. Initially, he declined to say who invited him or paid for the spa, but finally said it was Esposito for both trips. Representative Biaggi also said that he paid for the hotel with his credit card, and that he saw his host on the second trip. Representative Biaggi said the second trip was on congressional business and that his friend (at this point unnamed) suggested he go to the spa since he had business down there. Representative Biaggi later called the FBI to tell them his son's law firm paid for the spa on the second trip. [Tr. 1534-1555].

B. Evidence Giving Rise to the Obstruction of Justice Conviction

On June 2, 1986, Representative Biaggi was interviewed by two FBI agents. He was questioned about who paid for his trips to Florida, why they did so, whether there was any relationship between the trips and anything he had done for the sponsor, and whether he had reported his trips on his Financial Disclosure Statements. (Tr. 1534-1575)

After the visit, Representative Biaggi called Meade Esposito. (Tape 48, Tr. 935). Committee Counsel's review of the transcript of this Biaggi/Esposito telephone call establishes that Representative Biaggi induced Meade Esposito to adhere to the following story by asking Esposito questions and providing his (Biaggi's) own answers to such questions:

- ° That they have known each other for a long time and are very dear friends;
- ° That Esposito is concerned about Biaggi's health and heart trouble, and that's why Esposito invited Biaggi to the spa in Florida;

- That Esposito knew Barbara Barlow before;
- That the trips were not a gift, but, rather, a token of friendship and love;
- That they spoke frequently, but only about New York politics;
- That the two never did any business in relation to Biaggi's congressional services.
- That Esposito never had done anything for Biaggi.
- That Esposito not mention Biaggi's 1984 trip to St. Maarten, since he wasn't asked about it by the FBI.
- That Biaggi asks Esposito what business Esposito has with Coastal and he then induced Esposito to say that Esposito contacted Biaggi about Coastal after Addabbo died.

Early in this critical conversation, when Representative Biaggi was beginning to prompt Esposito on the story, the following exchange occurred:

Esposito: It sounds like a fuckin' grand jury.

Biaggi: That's, that's what I'm talking about.

Esposito: Go ahead.

Esposito then called Frank Brasco and Harry Dickran to check on the financial arrangements that had been made for Representative Biaggi's travel. He reported to Brasco (Tape 49(a)), that he got a call from Representative Biaggi telling of the FBI visit and asking him to tell the above story. Dickran said he could not talk because there were about 14 FBI people there searching the place. (Tape 50(a))

IV. COMMITTEE COUNSEL'S ANALYSIS

In this Preliminary Inquiry, the Committee is required to determine whether "the evidence of such offense[s]" of which Representative Biaggi was convicted, constitute violations "over which the Committee is given jurisdiction". The Rules of the House of Representatives expressly state that this Committee's jurisdiction embraces any alleged violation by a 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." House Rule X, clause 4(e). In the opinion of Committee counsel, review of the evidence at the trial reveals the violation of various House Rules and Federal statutes applicable to Representative Biaggi's conduct as a Member of the U.S. House of Representatives.

This analysis will address the evidence as summarized above, relevant House Rules, laws, and standards of conduct applicable to Representative Biaggi which provide the basis for Committee counsel's view that the matters raised are within the Committee's jurisdiction and that violations of House Rules and law are indicated. Before proceeding with this analysis, however, Counsel, offers the following summary of critical facts.⁵

1. At all times material to the instant Rule 14 proceeding, Mario Biaggi was a Member of the United States House of Representatives and subject to all House Rules and standards of conduct applicable to a Member.

⁵ As expressed or referred to in the grand jury indictment.

2. Coastal, which was situated in the former Brooklyn Navy Yard, Brooklyn, New York, repaired and refurbished vessels of the United States Navy and other departments and agencies of the United States.

3. S.V.R. and Meade Esposito derived substantial financial benefits, including insurance commissions, from Coastal, which was one of S.V.R.'s largest clients.

4. Coastal had substantial outstanding claims for money against the United States Navy and other departments and agencies of the United States for work that Coastal performed on vessels of the United States.

5. Coastal was involved in a dispute with its landlord, the Brooklyn Navy Yard Development Corporation, a New York City municipal development corporation, and with the City of New York, concerning its utility rates and other charges.

6. In or about March 1984, Meade Esposito caused the payment of Representative Biaggi's round trip airfare to St. Maarten.

7. In or about March 1984, Meade Esposito caused the Beaumont Offset Corporation to furnish lodging to Representative Biaggi at the corporation's villa in St. Maarten.

8. On or about June 28, 1984, Representative Biaggi caused a letter to be sent to the Mayor of the City of New York regarding Coastal.

9. On or about September 17, 1984, Representative Biaggi caused a letter to be sent to the Mayor of the City of New York regarding Coastal.

10. On or about September 18, 1984, Representative Biaggi

caused a letter to be sent to an officer of the Coastal.

11. On or about December 17, 1984 Meade Esposito gave information to a secretary in James LaRossa's New York City law firm to enable her to make spa reservations and payment arrangements at the Bonaventure Hotel and Spa in Florida for Representative Biaggi and another person, Barbara Barlow.

12. On or about and between December 27, 1984 and January 2, 1985, Representative Biaggi and Ms. Barlow used spa facilities and received other goods and services at the Bonaventure Hotel and Spa in Florida.

13. On or about and between February 8, 1985 and February 11, 1985, Meade Esposito caused Beaumont to issue to James LaRossa's law firm, a check which included an amount charged by the Bonaventure Hotel and Spa in Florida to LaRossa's credit card relating to goods and services furnished to Representative Biaggi and Ms. Barlow.

14. On May 15, 1985, Representative Biaggi filed an Ethics in Government Act Financial Disclosure Statement for calendar year 1984 with the United States House of Representatives which did not disclose his receipt of trips to St. Maarten and Florida.

15. On or about November 22, 1985, Meade Esposito, in a telephone conversation, asked an officer of Coastal to meet with Representative Biaggi and him on that day.

16. On or about November 22, 1985, Meade Esposito and Representative Biaggi met with an officer of Coastal in New York.

17. On or about December 3, 1985, Representative Biaggi and an officer of Coastal met with Senator D'Amato in Washington, D.C.

18. On or about December 17, 1985, Representative Biaggi spoke to Meade Esposito and gave him information including the dates that Representative Biaggi and Ms. Barlow would be participating in spa activities in Florida.

19. On or about December 17, 1985, Meade Esposito again asked attorney LaRossa, to make spa reservations for Representative Biaggi at the Bonaventure Hotel and Spa and to make payment arrangements by charging the expenses to LaRossa and then charging Beaumont.

20. On or about December 17, 1985, Meade Esposito gave information to a secretary in the law firm of Mr. LaRossa to enable her to make spa reservations and payment arrangements at the Bonaventure Hotel and Spa in Florida for Representative Biaggi and Ms. Barlow.

21. On or about December 26, 1985, Representative Biaggi flew from New York to Florida to join Ms. Barlow who had been using the Bonaventure spa facilities since December 23, 1985.

22. During the period December 27, 1985 and January 3, 1986, Representative Biaggi and Ms. Barlow used spa facilities and received other goods and services at the Bonaventure Hotel and Spa in Florida.

23. During the period April 7, 1986 and May 12, 1986, Representative Biaggi had telephone conversations with the Deputy Mayor of New York City regarding Coastal.

24. During the period March 12, 1986 and May 30, 1986, Representative Biaggi had a telephone conversation with the Commandant of the United States Coast Guard regarding Coastal.

25. On May 15, 1986, Representative Biaggi filed an Ethics in Government Act Financial Disclosure Statement for calendar year 1985 with the United States House of Representatives which did not disclose his receipt of spa facilities at the Bonaventure Hotel in Florida.

26. On or about June 2, 1986, Representative Biaggi, after being interviewed by Special Agents of the Federal Bureau of Investigation, engaged in a telephone conversation with Meade Esposito at which time Representative Biaggi induced Meade Esposito to adhere to a story misrepresenting Representative Biaggi's actions on behalf of Coastal and the circumstances underlying his receipt of the St. Maarten and Florida trips.

A. Analysis of the Gratuities Conviction and Related Violations

1. The 18 U.S.C. §201(g) Violation

The gratuities statute, 18 U.S.C. §201(g) states:

Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him;

* * *

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

While, standing alone, the evidence would not necessarily indicate improper activity on the part of Representative Biaggi by his acceptance of the trips, Committee counsel's analysis and review of other trial evidence -- numerous telephone intercepts of conversations between Representative Biaggi and Meade Esposito

-- clearly indicate that the propriety of the subject trips was a matter of paramount concern to Representative Biaggi. Indeed, the telephone intercepts (particularly that occurring on June 2, 1986) establish that Representative Biaggi was intent on obtaining Meade Esposito's agreement that, should either gentleman be questioned on the matter, the trips would be described as "manifestations of love" by Esposito for Biaggi. Moreover, the telephone intercepts also establish Representative Biaggi's desire to avoid full disclosure of the facts and circumstances giving rise to those events which the trial jury determined was obstruction of justice in violation of 18 U.S.C. §1503.

In sum and substance, analysis of the evidence clearly establishes that Messrs. Biaggi and Esposito attempted to prevent investigators from gaining full knowledge of the facts giving rise to Representative Biaggi's three trips in the context of the congressman's efforts on behalf of Coastal. In counsel's view, the evidence established that Meade Esposito arranged for Representative Biaggi to receive three trips in appreciation for the congressman's actions on behalf of Coastal. As such, it is counsel's view that the jury's verdict on the gratuities violation was well founded and that Representative Biaggi violated 18 U.S.C. §201(g).⁶

2. House Rules Implicated

a. House Rule XLIII, clauses 1 and 2

⁶ Not only did the jury reach this conclusion "beyond a reasonable doubt", but counsel reaches this conclusion on the basis of the lesser standard of proof here involved -- "clear and convincing" evidence.

Based upon this threshold determination, Committee counsel submits that two House Rules and one statute were implicated by Representative Biaggi's actions. The first Rule, House Rule XLIII, clauses 1 and 2, states:

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

Committee Counsel submits that Representative Biaggi's acceptance of a gratuity on three occasions constituted actions which discredited the House of Representative as an institution. Thus, not only did Representative Biaggi violate House Rule XLIII, clause 1, quoted above, but it certainly can be stated that he violated the "spirit" of clause 1 and, therefore, violated House Rule XLIII, clause 2.

Further, in Committee counsel's view, Meade Esposito can and should be considered a person or organization deemed to have a "direct or indirect interest in legislation." As noted, Meade Esposito had a clear interest in Coastal's financial well being due to the fact that the company was in arrears with respect to its insurance premium payments to S.V.R. In this connection, there can be no doubt that Coastal was an organization with an interest in legislation, setting it apart from the general public. See, Select Committee on Ethics, Advisory Opinion No. 10.⁷ Specifically, the company was an organization whose primary

⁷ The Select Committee determined that persons or organizations having a "direct interest in legislation" includes "any

business was in obtaining government contracts. Given that Mr. Esposito shared an identity of interest with Coastal in its successful acquisition of government contracts and resolution of disputed claims with the Federal government (and the City of New York) to enable it to meet its obligations to S.V.R., counsel believes that Meade Esposito should be accorded status equivalent to that of Coastal as a person or organization with a direct or indirect interest in legislation. Were this not the case, Meade Esposito would clearly not have expended considerable time and effort in soliciting assistance to mitigate Coastal's financial difficulties. This conclusion is buttressed by evidence indicating this was the case at Tr. 1137-39, and Tapes 33(a) and 36(a) demonstrating Esposito's interest in certain legislation that would have a potential beneficial effect on Coastal.

b. House Rule XLIII, clause 4

In this connection, House Rule XLIII, clause 4, at all times relevant to the actions here involved, provided:

A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of \$35 or less) in any calendar year aggregating \$100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of

individual or organization that the Member knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public."

influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

In the light of the foregoing, Representative Biaggi's acceptance of gifts of the trips to St. Maarten and use of the spa facilities in Florida from Meade Esposito implicated House Rule XLIII, clause 4. Counsel submits that the congressman's acceptance of such gratuities in St. Maarten and Florida established per se violations of the gift rule since those events, both individually and in the aggregate, far exceeded the \$100 limit imposed by the Rule.

c. House Rule XLIV (Ethics in Government Act)

Section 102(a)(2)(A) of the Ethics in Government Act of 1978 (EIGA), 2 U.S.C. 702(a)(2)(A), states that filers must report --

The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph.

Evidence was introduced at trial specifically addressing the congressman's annual Financial Disclosure Statements under EIGA. It was clearly established that Representative Biaggi did not, for calendar years 1984 and 1985, disclose his acceptance of gifts of lodging and entertainment provided under the auspices of Meade Esposito.

In terms of specific evidence, it was established that Beaumont provided Representative Biaggi's 1984 stay at Villa Beaumont in St. Maarten, a trip arranged by Meade Esposito (Tr.

111, 1472). Moreover, Beaumont paid for Representative Biaggi's Florida spa visit in 1984, another Esposito-sponsored trip (Tr. 697, 698, 700-702, 1124; Tape 21(a)). And, finally, as to Representative Biaggi's 1985 Florida spa visit, this gift was arranged by Meade Esposito. (Tr. 702, 704-705).

Regarding Representative Biaggi's non-disclosure of the gifts, the evidence established that such was the case. (Tr. 1249-1262) and that Representative Biaggi told Meade Esposito he did not do so (Tape of June 2, 1986 telephone conversation.)⁸

Counsel submits that the three trips to St. Maarten and Florida were gifts (i.e., gratuities) arranged by Meade Esposito implicating 18 U.S.C. §201(g). It follows that the gifts were events subject to mandatory disclosure under EIGA. Again, a potential additional violation might exist if the 1985 costs borne by the Biaggi & Ehrlich law firm were income deemed to be not a part of his buyout arrangement with the law firm.

In light of the foregoing, Committee counsel concludes that Representative Biaggi violated the above-quoted provision of EIGA, which is incorporated by reference into House Rule XLIV, by his failure to report same.

3. Code of Ethics for Government Service

Finally, Clause 5 of the Code of Ethics for Government Service says that public employees should:

⁸ A potential second EIGA violation is implicated by Representative Biaggi's second Florida trip. In that case, the lodging costs (\$5,786) were borne by the Biaggi & Ehrlich law firm. (Tr. 1289-90). If such payment was not a part of Representative Biaggi's buyout arrangement with the firm (Tr. 1295-1300), it too could be a gift or unreported income disclosable under EIGA. (Tr. 1256-62). Trial evidence was inconclusive on this point.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Committee counsel submits that the circumstances giving rise to Representative Biaggi's acceptance of gifts from Meade Esposito clearly and convincingly establish that his efforts on behalf of Coastal were received under circumstances "which might be construed by reasonable persons as influencing the performance of his governmental duties." While counsel does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence or because of Esposito's gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, counsel submits that such improper appearance supports a determination that Representative Biaggi violated Clause 5 of the Code of Ethics for Government Service.

V. COMMITTEE COUNSEL CONCLUSIONS

A. Conclusions with respect to gratuities evidence

Committee counsel submits that, based upon review of the evidence at trial and submissions from Representative Biaggi that the congressman, through his acceptance of gratuities under the auspices of Meade Esposito, by clear and convincing evidence, violated the gratuities statute, 18 U.S.C. §201(g); House Rule XLIII, clauses 1 and 2, concerning actions which bring discredit to the House of Representatives; House Rule XLIII, clause 4, regarding the acceptance of an impermissible gift from a person with an interest in legislation since its value was in excess of

\$100; House Rule XLIV, as well as section 102(a)(2)(A) of EIGA, as a result of his failure to disclose the acceptance of gifts on the appropriate Financial Disclosure Statements for calendar years 1984 and 1985; and Clause 5 of the Code of Ethics for Government Service.

B. Conclusions with respect to Illegal Trafficking

The so-called Travel Act, 18 U.S.C. §1952, states:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to--

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

Committee counsel reviewed the evidence underlying Representative Biaggi's conviction for illegal trafficking. The statute here involved, 18 U.S.C. §1952, makes it unlawful to

engage in interstate commerce with the intent to, among other things, promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity. While the statute describes "unlawful activity" to mean, as here relevant, extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, Committee counsel is aware that, in post-trial motions, the Court ruled that a violation of 18 U.S.C. §201(g), the gratuity statute, is a sufficient predicate to a violation of 18 U.S.C. §1952.

Committee counsel, however, is mindful of the fact that, when Representative Biaggi traveled to Florida in connection with his acceptance of gratuities provided by Meade Esposito, two of the trips were undertaken at least in part in connection with his official responsibilities as a Member of Congress. In this regard, the evidence established that Representative Biaggi met with representatives of a Health Maintenance Organization (HMO) and other groups while in Florida during his 1984 and 1985 trips. Not sufficiently clear from the evidence reviewed is whether those trips were arranged prior to or after the Esposito-sponsored spa visits. Thus, in counsel's view, it cannot be said that clear and convincing evidence was adduced that Representative Biaggi engaged in interstate commerce (travel) solely to promote, manage, establish or carry on improper activity. While it may well be that the official activities of Representative Biaggi were arranged after the trips were organized as a facade to give credibility to his travel, the converse may also be the case. In other words, having already

arranged official transportation, the spa visits were scheduled to coincide with the dates of such official business. Thus, while Committee counsel does not submit that Representative Biaggi's conviction on 18 U.S.C. §1952 was not well founded, it is counsel's view that an independent review of the evidence does not compel such a conclusion vis the gift trips.

On the other hand, there is ample evidence establishing that Representative Biaggi participated in numerous telephone conversations across state lines as part of his endeavors to aid Coastal. Indeed, the Court specifically addressed such interstate telephone communications as being within the statute if the purpose of such calls was to further unlawful activity (Tr. 2606). Committee counsel agrees with this interpretation of the Travel Act. Thus, Committee counsel submits that the evidence clearly and convincingly established a violation of the Travel Act, 18 U.S.C. §1952.

As with the case of the violation of the gratuities prohibition, Committee counsel submits such acts also constituted violations of House Rules XLIII, clauses 1 and 2 as discrediting the House of Representatives.

C. Conclusions with respect to Obstruction of Justice

The obstruction of justice statute, 18 U.S.C. §1503, provides:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit

juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Committee counsel submits that review and analysis of the evidence at trial, and particularly the telephone intercepts, clearly establishes an intention by Representative Biaggi to impede a lawful Federal investigation. There can be no doubt that Representative Biaggi enlisted Meade Esposito's concurrence in describing the events leading up to his trips as nothing more than manifestations of Meade Esposito's concern and love for the congressman. Moreover, the conversations make clear that the facade sought to be established was designed to present a misleading picture to (what both gentlemen perceived was) a grand jury investigation. In particular, Representative Biaggi, soon after having been interviewed by the FBI, telephoned Meade Esposito to tell him of the interview and to obtain Esposito's agreement in the concoction of a story explaining the trips. In the light of such compelling evidence, Committee counsel submits that Representative Biaggi clearly and convincingly attempted to obstruct justice in violation of 18 U.S.C. §1503.



Implicated by his obstructing justice, Representative Biaggi, in Committee counsel's view, again, violated House Rules XLIII, clauses 1 and 2. As noted above, his actions, in fact and in spirit, brought discredit upon the House of Representatives.

VI. RECOMMENDATION

Committee counsel recommends that the Committee conclude (1) that Representative Mario Biaggi has committed violations of law, House Rules, and the Code of Ethics for Government Service; (2) that the Committee has jurisdiction over such violations, and (3) that the Committee should proceed promptly to hold a hearing, pursuant to Rule 16 and 17 of the Committee's Rules of Procedure for the purpose of determining what sanction to recommend to the House of Representatives in this matter.

Respectfully submitted,


Ralph L. Lotkin
Chief Counsel


John F. Davison
Counsel 

November 3, 1987

18 § 201

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him;

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

§ 1503. Influencing or injuring officer or juror generally

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity; or
- (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

EXHIBIT 2**RECOMMENDATION OF COMMITTEE COUNSEL
CONCERNING SANCTION COMMITTEE SHOULD RECOMMEND TO THE HOUSE
IN THE MATTER OF REPRESENTATIVE MARIO BIAGGI****A. STATEMENT OF THE CASE**

On March 16, 1987, Representative Mario Biaggi and Meade Esposito were indicted by a Federal Grand Jury in the Eastern District of New York. While they were charged in different counts, Representative Biaggi and Mr. Esposito were charged, in total, with bribery, conspiracy, offering and accepting illegal gratuities, illegal trafficking, and obstruction of justice.

On September 22, 1987, Representative Biaggi was found guilty by a jury of having accepted illegal gratuities in violation of 18 U.S.C. §201(g); illegal trafficking in violation of 18 U.S.C. §1952; and obstruction of justice in violation of 18 U.S.C. §1503.

As a result of this conviction, on September 23, 1987, pursuant to Rule 14 of the Rules of Procedure of the Committee on Standards of Official Conduct, a Preliminary Inquiry was initiated for the purpose of determining whether any of the offenses for which Representative Biaggi was convicted constituted violations over which the Committee has jurisdiction. In conjunction with this Preliminary Inquiry, counsel for the congressman submitted a statement on October 19, 1987, offering the congressman's views of the facts giving rise to his conviction. On November 3, 1987, Committee counsel, after review of the evidence offered at trial, submitted a report

pursuant to the Rule 14 Preliminary Inquiry.

In sum and substance, Committee counsel concluded that the congressman's convictions on the three referenced statutes were well-founded. In addition, Committee counsel's analysis of the facts giving rise to those convictions also led to the conclusion that Representative Biaggi committed violations of House Rule XLIII, clauses 1, 2, and 4, House Rule XLIV, the Ethics in Government Act of 1978, and paragraph 5 of the Code of Ethics for Government Service. The above-stated provisions involve actions which reflect discredit on the House of Representatives, accepting impermissible gifts from persons or organizations with a direct interest in legislation, failure to disclose the receipt of gifts as required by House rule and statute, and accepting favors and benefits under circumstances which reasonable persons might conclude as affecting the performance of official responsibilities, respectively.

By Resolution of November 4, 1987, the Committee unanimously adopted Committee counsel's independent review of the evidence at trial. As a result, the Committee resolved to conduct a disciplinary hearing, the sole purpose of which is for the determination of the appropriate sanction to be imposed.

To this end, the following analysis and recommendation are offered by Committee counsel.

B. SANCTIONS AVAILABLE TO THE COMMITTEE AND THE HOUSE

Under Rule 17 of the Committee's rules, the sanctions which may be recommended "with respect to any violation with which a Member . . . was charged" include (1) expulsion; (2) censure; (3)

reprimand; (4) fine; (5) denial or limitation of any right, power, privilege or immunity available to Members; and (6) any other appropriate sanction.

Committee Rule 17 also offers general guidelines with respect to the imposition of the above-referenced sanctions. Thus, for example, the rule states that "reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member . . . is appropriate for the most serious violations." The source of the Committee's, and thus the House's, authority to impose any of the above sanctions is the United States Constitution. Article I, section 5, clause 2.

Committee and House Precedents

Presented below is a summary of precedents of the House of Representatives respecting sanctions imposed on Members during the period 1975-1987.

ROBERT L. F. SIKES (1976): Failure to disclose holdings; conflict of interest; use of office for personal gain.

Committee action:
Reprimand recommended
(H. Rept. 94-1364; July 23, 1976);
House reprimanded, July 29, 1976.

ANDREW J. HINSHAW (1976): Acceptance of bribes while Assessor of Orange County, Calif., before becoming Member in January 1973.

Committee action:
Non-committee expulsion resolution rejected
after June 1976 primary loss
(H. Rept. 94-1477, Sept. 7, 1976).

CHARLES H. WILSON, Calif. (1978): Making a false statement to the Committee regarding receipt of funds.

Committee action:

Recommended reprimand
(H. Rept. 95-1741, Oct. 6, 1978);
House reprimanded, Oct. 13, 1978.

JOHN J. McFALL (1978): Failure to report campaign receipt, conversion of campaign funds to personal use, improper receipt of cash and gifts.

Committee action:

Recommended reprimand for improper gift receipt
(H. Rept. 95-1742, Oct. 6, 1978);
House reprimanded, Oct. 13, 1978.

EDWARD R. ROYBAL (1978): Failure to report campaign receipt, conversion of campaign funds to personal use, and making a false statement to the Committee.

Committee action:

Recommended censure
(H. Rept. 95-1743, Oct. 6, 1978);
House reprimanded, Oct. 13, 1978.

CHARLES C. DIGGS, Jr. (1979): Payroll padding, kickbacks.

Committee action:

Recommended censure, restitution
(H. Rept. 96-351, July 19, 1979);
House censured, repayment required
(apology made).

CHARLES H. WILSON, Calif. (1980): Acceptance of gifts from a person with a direct interest in legislation, person on payroll not performing duties commensurate with pay, commingling of campaign and personal funds, personal use of campaign funds.

Committee action:

Recommended censure and denial of chairmanships
(H. Rept. 96-930, May 8, 1980);
House censured, June 6, 1980.

MICHAEL J. MYERS (1980): Bribery, conspiracy, violation of Travel Act (18 U.S.C. §§201(c), 371, 1952) (ABSCAM).

Committee action:

Recommended expulsion
(H. Rept. 96-1387, Sept. 24, 1980);
House expelled, October 2, 1980.

JOHN W. JENRETTE (1980): Bribery, conspiracy (ABSCAM).

Committee action:

Statement of Alleged Violations Nov. 7, 1980;
Member resigned at sanction hearing, Dec. 10, 1980
(H. Rept. 96-1537, Dec. 16, 1980).

RAYMOND F. LEDERER (1981): Bribery, conspiracy,
unlawful gratuity, Travel Act (18 U.S.C. §§201, 371,
1952) (ABSCAM).

Committee action:

Recommended expulsion April 28, 1981;
Member resigned next day
(H. Rept. 97-110, May 20, 1981).

FREDERICK W. RICHMOND (1982): Tax evasion,
supplementing the salary of a federal employee,
possession of marijuana.

Committee action:

Statement of Alleged Violations May 12, 1982;
deferred at request of Justice; not pursued
after Member resigned on August 25, 1982.

GERRY E. STUDDS (1983): Sexual misconduct with a male
page.

Committee action:

Recommended reprimand
(H. Rept. 98-295; July 14, 1983);
House censured, July 20, 1983.

DANIEL B. CRANE (1983): Sexual misconduct with a female
page.

Committee action:

Recommended reprimand
(H. Rept. 98-296; July 14, 1983);
House censured, July 20, 1983.

GEORGE V. HANSEN (1983-84): Filing false Financial
Disclosure Statements under Ethics in Government Act
(EIGA).

Committee action:

Recommended reprimand
(H. Rept. 98-891, July 19, 1984);
House reprimanded, July 31, 1984.

As can be seen, expulsion has been recommended (Michael J.
Myers, H. Rept. 96-1387, Sept. 24, 1980) where the Member was

deemed to have breached his public trust and utilized his office for personal gain. This act of moral turpitude was considered so serious as to warrant expulsion of that Member from the House of Representatives.

Analysis of Respondent's Position

In making a determination of the sanction to be recommended regarding Representative Biaggi, Committee counsel has taken into consideration the Memorandum submitted on behalf of the respondent congressman dated December 4, 1987 (hereinafter Memorandum or Resp. Mem.). The subject document states that "the appropriate sanction in this matter would be reprimand." (Resp. Mem., at p. 15.)

In Committee counsel's view, the December 4 Memorandum, while clearly raising a number of worthwhile and relevant issues for consideration, fails to focus on the cumulative nature of Representative Biaggi's improper activities. For example, a major underpinning of the December 4 Memorandum is an analysis of each of the congressman's violations in a vacuum and not as part of an overall pattern of improper conduct. Utilizing this approach, counsel for the congressman assert that since, viewed independently, each of the congressman's violations (illegal gratuities, obstruction of justice, etc.) merit no more than a reprimand, the total sanction imposed should be limited to reprimand by the House of Representatives.

This approach avoids analysis of the matter in the total environment in which Representative Biaggi was acting. Committee counsel disagrees that a sanction recommendation should rest on

an analysis of each violation separately rather than be the result of a consideration of all violations involved. In sum, counsel for Representative Biaggi suggest that the whole is less than the sum of its parts; Committee counsel, on the other hand, urges the Committee to recognize that the whole must reflect, at a minimum, the sum of such parts. The "parts" here involved are instances of improper conduct, each of which warrant at least reprimand by the House of Representatives.

Counsel for Representative Biaggi also submit for Committee consideration extracts of the sentencing transcript in the Biaggi matter. The extracts are described as being portions which "articulately describe the mitigating factors" in the subject case. In essence, the congressman's counsel wish for this Committee to take into consideration the congressman's ex parte explanations for his criminal conduct as mitigation for any sanction this Committee might recommend to the House, notwithstanding the fact that the congressman did not either testify on his own behalf at trial or appear before the Committee, after repeated invitations to do so, and offer such testimony subject to cross examination. In Committee counsel's view, such a submission of the sentencing transcript should be viewed for what it is--self-serving statements made by or on behalf of a convicted individual with the objective of obtaining some form of leniency by the sentencing judge. As is discussed later, Committee counsel believes that, if any views are to be taken into consideration, such views should be from a person (or source) having clear objectivity in the matter and not offerings

of opinion or explanation from a person clearly predisposed with respect to the transgressions. It is for this reason that Committee counsel will invite the Committee's attention to the comments of Judge Weinstein who presided at Representative Biaggi's trial and sentenced the congressman at the conclusion of those proceedings. The views of the Federal trial judge should be accorded much greater weight than those of a party in interest.

Counsel for Representative Biaggi take pains to remind this Committee of the offenses for which the congressman was acquitted, observing that such factors militate the imposition of a lesser sentence by the House of Representatives. In Committee counsel's view, the "issue on the table" is not those offenses for which the congressman was acquitted but, rather, the offenses for which he was convicted. In this light, while a matter of information for this Committee, the fact that Representative Biaggi was acquitted of other crimes should not be considered as being dispositive of the sanction that this Committee should recommend. The issue before this Committee is what punishment should be meted out to the congressman for what he did.

Counsel for Representative Biaggi devote considerable effort to iterating and reiterating their view that the actions giving rise to the congressman's convictions evolved from his friendly relationship with Meade Esposito and his acceptance of gifts of visits to a health spa from that individual. While, of course, informative as to explaining why the congressman accepted illegal gratuities, this argument again misses the point. Specifically,

the central issue is not the nature of the gratuities here involved but the basic fact that illegal gratuities--regardless of their nature or the recipient's relationship to the offeror--changed hands. Again, it is the gravamen of the offenses that are critical and not whether the illegal gratuities were offered and accepted in an "understandable" context, or whether, for example, obstruction of justice can be "explained away."

In this connection, Committee counsel notes that attorneys for the congressman have made repeated references to the Manual of Offenses and Procedures Korean Influence Investigation (Manual). In referring to this document, the congressman's attorneys have selectively quoted those portions of the Manual which are considered supportive of their recommendation that Representative Biaggi only be reprimanded. By so doing, the congressman's attorneys neglect to reference other passages in the Manual which undermine their sanction recommendation. Thus, for example, in that part of the Manual focusing on the acceptance of illegal gratuities and the sanctions for such a violation, counsel for Representative Biaggi do not quote the Manual where it states--

Since this offense is treated as a serious crime affecting the integrity of the governmental process, a severe sanction could be warranted in an aggravated case. Manual, at p. 12.

Similarly, great reliance is placed on various prior cases which, from the perspective of Representative Biaggi's attorneys, dictate that imposition of a reprimand is appropriate. While it may well be true that in the cases cited by the congressman's

attorneys a reprimand was imposed, most if not all of the cases cited can be easily distinguished from the facts underlying Representative Biaggi's improper conduct. Specifically, the vast majority of the cases relied on involved singular violations of either a statute or other standard of conduct. In stark contrast, however, Representative Biaggi was engaged in multiple violations of statutes or other standards of conduct. Thus, and as stated above, counsel for Representative Biaggi wish for the Committee to ignore the cumulative effects of repeated violations and simply equate the congressman's situation to other cases in which one-time transgressions were involved.

In addition, the December 4 Memorandum emphasizes those precedents which arose out of the so-called "Koreagate" investigation. In Committee counsel's view, such reliance is misplaced. Simply stated, the Koreagate cases primarily focused on the improper receipt and use of campaign contributions, a matter which clearly is not the case in the subject matter. In Committee counsel's view, a more appropriate line of cases exists in the context of the so-called ABSCAM cases, for it was in those instances the Committee confronted and dealt with improprieties related to the official conduct of those Members of Congress involved. The Committee is well aware that in every case, the ABSCAM defendants either resigned their office or were expelled from the House of Representatives.

As noted, counsel for the congressman make repeated references to the Manual of Offenses for purposes of perfecting an argument that reprimand is the appropriate sanction. In this

context, the congressman's attorneys equate the obstruction of justice statute for which Representative Biaggi was convicted (18 U.S.C. §1503) to the obstruction of congressional proceedings statute (18 U.S.C. §1505). While Committee counsel has no conceptual disagreement with this hypothesis, it should be stressed that the Manual emphasizes the element of "knowledge" on the part of a wrongdoer in determining the appropriate sanction. See, for example, the Manual, at page 33, et seq. In this regard, the evidence at Representative Biaggi's trial established beyond a reasonable doubt (hence, the criminal conviction) that the congressman sought to elicit Meade Esposito's misrepresentations concerning the circumstances giving rise to the illegal gratuities. If nothing else, the obstruction of justice conviction clearly stands for the proposition that Representative Biaggi had knowledge of his improper actions (that is, the acceptance of illegal gratuities), for why else would he have sought to misrepresent the situation to Federal investigators? Under these circumstances, Committee counsel submits that the congressman knew his actions (acceptance of illegal gratuities) were unlawful when he attempted to mask those activities. Accordingly, the Committee should have no difficulty in concluding that Representative Biaggi was a knowing and willful malfeasant when he accepted illegal gratuities, violated the Travel Act (18 U.S.C. §1952) and obstructed justice, as well as the other standards of conduct discussed in Committee counsel's November 3, 1987, Memorandum.

In light of the above, Committee counsel is of the view that

Representative Biaggi's actions represent in their clearest form, improper conduct not mitigated by self-serving explanation or limited by prior House or Committee precedents to a particular level of sanction. In order to emphasize the clear merit of this position, Committee counsel next offers a detailed analysis of the cases and assertions contained in the congressman's attorneys December 4, 1987, Memorandum.

Respondent's Memorandum at page 3 cites United States v. Sweig, 316 F. Supp. 1148 (SDNY, 1970) [not 1969 as cited in the brief] as an example of a case in which no sanction was recommended for improper acceptance of fees or gifts. Committee counsel first points out that this specific case citation dealt with pretrial motion determinations and was not the disposition of the case itself. Moreover, this case is easily distinguished from the Biaggi situation. Sweig was charged under different statutes, including 18 U.S.C. §371 (conspiracy), 18 U.S.C §205 (conflict of interest), and perjury, all occurring between 1964 and 1970. He was only convicted of one count of perjury. He was either acquitted or charges were dismissed for all other counts. See United States v. Sweig, 441 F.2d 114 (2d Cir., 1971).

Also on page 3 of the Memorandum, the Roybal case is cited as an example of the imposition of a reprimand for improper acceptance of fees or gifts. However, in Roybal, this Committee recommended censure, but the House only approved reprimand. Further, the Committee found that that Member had failed to report, then converted to personal use, a \$1,000 campaign

contribution from Tongsun Park, in addition to giving a false statement to the Committee. Finally, and in clear distinction from Biaggi, there was no Department of Justice prosecution and conviction of Representative Roybal.

On page 3, footnote 1, the Committee's first Wilson decision is also cited as supporting the imposition of reprimand for the receipt of an improper gift. Even though Representative Wilson was sanctioned for making a false statement to the Committee, the Respondent's Memorandum assumes that "the Committee surely was punishing the underlying conduct sub silentio by its action. . . ." Such an assumption is patently inconsistent with the Committee's recommendation that same day (Oct. 6, 1978) that sanctions be imposed on two other Members (Roybal and McFall) for such violations in addition to making false statements.

On page 4 of the Memorandum, Representative Biaggi's counsel assert that acceptance of constitutionally prohibited gifts is more serious than the acceptance of illegal gratuities under 18 U.S.C. §201(g). This is clearly incorrect. There are only civil penalties for violation of the Foreign Gifts and Decorations Act, as opposed to the criminal nature of the acceptance of illegal gratuities. See, 5 U.S.C. §7342(h).¹ Further, the Committee charged Representative Roybal with violations of provisions of

¹ "The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000." (Emphasis added.)

the Federal Election Campaign Act relating to disclosure of campaign contributions, converting campaign funds to personal use contrary to the Code of Official Conduct, making a false statement (18 U.S.C. §1621), and conduct not reflecting creditably on the House. Gifts from a foreign government were referenced only in the Resolution authorizing the Korean Influence Investigation, H. Res. 252.

The case of United States v. Dowdy is cited on pages 5-6 of the Memorandum as an example of the Committee not acting against a Member after criminal conviction and sentencing. However, Dowdy was a 1973 case which occurred before the February 1979 approval of the Committee's current Rule 14, providing for automatic Committee review of the circumstances of criminal convictions. In this regard, the Respondent's Memorandum is incorrect in suggesting that the basis for a Committee recommendation and House action on sanction is the conviction. As the Committee well knows, the basis for such action is the Committee's independent determination that violations over which the Committee has jurisdiction have, in fact, occurred. See, Committee Rule 14.

Reliance on portions of the Ethics Manual (98th Congress) dealing with the "gift rule" in the Respondent's discussion of the gratuity charges is misplaced. (Resp. Mem., at pp. 6 and 9.) While a House Rule can be more restrictive than a statute, it cannot be construed to permit what a statute prohibits. Thus, a reading of Ethics Manual provisions on bribery and illegal gratuities at pages 67-68 would have clearly indicated that the

statute does not take into consideration whether the source of a gratuity is a person with whom the recipient has a social relationship or an entity with a direct interest in legislation.²

Two cases are referred to on page 7 of the Memorandum. To begin, United States v. Brewster did differentiate between bribery and an illegal gratuity. As the court's decision makes clear, however, while a bribe recipient has a higher degree of criminal knowledge, the recipient of an illegal gratuity still has criminal intent. "Congress obviously wished to prohibit public officials accepting things of value with either degree of criminal intent." United States v. Brewster, 506 F.2d 62 (1974) at 71. Furthermore, footnotes in Brewster implied that requisite intent must be more clearly shown when the case involves an "elected public official" than an appointed official. 506 F.2d 73, n. 26. "Whether a statute provides fair warning of the conduct it seeks to prohibit depends in part on the persons to whom and the setting in which the statute is applicable." Id. at 77, n. 40. In the case of Representative Biaggi, a clearly

² "The two applicable clauses within the bribery statute both require as an element of the offense that the thing of value received or solicited by the official be related in some manner to an official act done or to be done by the officer or employee, that is, either 'in return for being influenced in', or 'for or because of', an official act. This element of the two offenses, that the thing of value received relate to some official act, distinguishes the 'bribe' of subsection (c) or the 'illegal gratuity' of subsection (g) from a mere 'gift' which, as generally defined, is a 'voluntary transfer of personal property . . . made gratuitously, and not upon any consideration. . . .' The receipt of a gift by a Member, therefore, as opposed to a bribe or an illegal gratuity, would not have been received with the requisite connection or relation to any official act done or to be done by the Member." Ethics Manual, at pp. 67-68.

sufficient showing was made to the jury, in addition to this Committee.

The other case on page 7, United States v. Campbell, is cited as standing for the proposition that illegal gratuities are "[p]ayments to a public official for acts that would have been performed in any event. . . ." Committee counsel notes that this quotation is out of context. The full text at 684 F.2d 148 reads:

Payments to a public official for acts that would have been performed in any event--whether before or after those acts have occurred--are probably illegal gratuities rather than bribes.

More telling is an earlier citation, with approval, in Campbell of the Brewster statement that "the official act for which the gratuity is given might have been done without the gratuity, although the gratuity was produced because of the official act." (506 F.2d at 72.) While the defendant in Campbell was a judge rather than a congressman, the court felt that the jury could reasonably determine that the defendant had accepted gifts "with knowledge that the donor was paying him compensation for an official act." (685 F.2d at 150, quoting from United States v. Brewster, 408 U.S. 501, 527 (1972)).

The Committee's Diggs case is cited, on page 8, in support of the proposition that misuse of public monies is more serious than accepting an illegal gratuity. The Committee should keep in mind that Representative Diggs was convicted of mail fraud (18 U.S.C. §1341) and making false statements (18 U.S.C. §1001). Censure was recommended after Representative Diggs admitted

unjust enrichment and violations, agreed to repay funds, apologized to the House, and accepted censure. The Committee obviously also took note of the Congressman's reelection subsequent to his conviction.

On pages 8 and 9 of the Memorandum, the Committee's second Wilson case and Powell v. McCormack are cited for the proposition that a lesser penalty should be meted out when there is no misuse of tax dollars. It is crucial that neither Representatives Wilson nor Powell were convicted of criminal offenses, however. As with Diggs, it has not been established that abuse of public funds is a more serious offense than abuse of the public trust. In fact, accepting a gratuity on account of an official act can easily be deemed more serious because it goes to the heart of the purposes for which a Member of Congress was elected. The last instance of expulsion of a Member, the Myers case, clearly supports this view. In Myers, there was no misuse of public funds, only actions "in violation of the most fundamental standards for Congressional conduct." The Myers case came down to "personal greed being allowed to overcome a Representative's sworn duty." H. Rept. 96-1387, p. 5.

Beginning on page 10 of Respondent's Memorandum, the congressman's attorneys imply the gratuity of a health spa visit is somehow less serious than other forms of gratuities. To this point, Committee counsel simply asks whether, hypothetically, under the same circumstances as here involved, it would make any difference if Representative Biaggi took the value of the gratuities in cash--approximately \$10,000--to defray the costs of

his travels? That the form of the gratuity is irrelevant is underscored by the fact that the jury in Biaggi obviously found that the "vacations" given to the congressman were more than a "goodwill gesture." (Resp. Mem., at p. 10.)

Also on page 10, the Memorandum erroneously suggests that interpretations of the House "gift rule" should control a Federal criminal statute. Obviously, should Congress deem Executive Branch application of a statute too "expansive" and to constitute "interference in the House's internal affairs," the law could be amended. Further, the fact that there is an independent Committee review of the circumstances of the violation assures that any sanction is not based on, or governed by, an outside determination.

The Arthur and Evans cases are cited on page 10 to support the view that gratuities convictions may be predicated on "rather low level amounts." As noted, the approximately \$10,000 in illegal gratuities involved in the present case is substantially greater than the amounts in the two cases cited. Additionally, the Court in Evans made clear that "the unlawful gratuity statute . . . must be broadly construed in order to accomplish the legislative purpose which they manifest. The purpose of these statutes is to reach any situation in which the judgment of a government agent might be clouded because of payments or gifts made to him by reason of this position. . . ." 572 F.2d 455, 480.

On page 11 of the Memorandum, the Committee's Daniel case is cited as an instance of no sanction against a Member who accepted

gifts of transportation. Footnote 5 of the Memorandum also cites repayments by Representative Daniel as the reason why no sanction was recommended. It is noteworthy that Daniel turned on violations of House rules, not violations of criminal statutes. As the Committee report makes clear, repayment was only one of the considerations that went into the decision not to recommend a sanction.

The Memorandum suggests on page 12 that obstruction of a Justice Department investigation is less serious than would be obstruction of a congressional investigation. Both violations, however, are criminal violations which subject the offender to the same penalty. See, 18 U.S.C. §§1503, 1505. Simply stated, what is more central to "preservation of the integrity of the legislative process" than a Member adhering to basic principles of justice? What calls the legislative process into greater question than a Member abusing his position and then obstructing an investigation of such actions, no matter what the investigating body?

The Hansen and Sikes cases are cited on page 13 to support reprimand as the appropriate sanction for disclosure violations. The quote on page 13 references "rules offenses." Representative Hansen was reprimanded for violating House Rule XLIV, although he was convicted of violating 18 U.S.C. §1001. Representative Sikes was reprimanded for violating of House Rule XLIV and the Code of Ethics for Government Service. There was no criminal conviction in Sikes. In the Biaggi case, on the other hand, the Committee has found not only statutory violations but

also violations of House Rule XLIV and other standards of conduct applicable to the Member. Again, the Memorandum treats one aspect of Representative Biaggi's conduct in a vacuum, without considering the additional offenses.

C. RECOMMENDATION

The offenses for which Representative Biaggi was convicted in Federal court involved acts of moral turpitude--i.e., acts of "depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule or right and duty between man and man" or "conduct contrary to justice, honesty, modesty, or good morals." See, Black's Law Dictionary, rev., 4th ed., 1968, p. 1160. Representative Biaggi accepted illegal gratuities as a result of his carrying out his duties as a Member of Congress. The congressman also violated the Travel Act when he utilized interstate facilities--the telephone--in connection with such improper activities, and the congressman clearly departed from expected conduct when he sought to impede the administration of justice by seeking to misrepresent the facts and circumstances underlying his receipt of the gratuities. The concomitant violations of House rules which flow from these violations, while clearly not subsidiary to the statutory violations, are part and parcel of the pattern of improper conduct engaged in by Representative Biaggi.

In Committee counsel's view, the violations of Representative Biaggi represent, in their simplest form, conduct

which goes to the heart of the expectations of the American public when electing individuals as their congressional representatives. Indeed, the most recent expulsion case, In the Matter of Michael J. Myers, H. Rept. No. 96-1387 (1980), involved a Member accepting bribes for actions to be taken in his official capacity. In Committee counsel's view, the distinction between bribery--receipt of value in return for official acts--and gratuities--receipt of value in recognition of official acts--is obliterated when the context of those actions is considered in the present case. Thus, while a bribery "quid pro quo" may not have been established as regards Representative Biaggi, the evidence clearly indicated that he knew his actions were offensive and that he sought to misrepresent that conduct when he committed violations of the obstruction of justice statute.

In sum, Committee counsel views Representative Biaggi's actions to be completely and totally unacceptable and not amenable to mitigation. Significantly, this opinion was expressed by Chief Judge Weinstein, who presided at the congressman's trial. At Representative Biaggi's sentencing, Judge Weinstein stated:

Defendant and his attorney have taken considerable satisfaction in the fact that they say the jury did not find the defendant guilty of corruption. Their view of the word "corruption" is a rather narrow one. "Corruption" is defined in the Oxford Dictionary as "moral deterioration or decay." Webster's Third New International Dictionary says it is, among other things, "impairment [of] virtue or moral principle." A more specific definition is "inducement (as a political official) by means of improper considerations (as bribery)

to commit a violation of duty." It is also defined as a "departure from what is pure or correct."

A public official's violation of the law, as in the case before us, is certainly evidence of corruption in the generic sense. While accepting supplementations of income may not reveal as much corruption as outright bribery, it is corrupt. This action tends to cause a deterioration of the political system. As to obstruction of justice by inducing a potential witness to lie--can anyone doubt that this is corruption clear and simple?

Judge Weinstein sentenced Representative Biaggi to a total sentence of two years six months in prison and a \$500,000 fine.

In Committee counsel's view, the judge's sentencing comments, the sentence imposed, this Committee's independent review of the trial record vis-a-vis violations of House rules and standards of conduct, and House precedent warrant the imposition of the most stringent sanction available. Representative Biaggi's conduct, in the terms of House Rule XLIII, clause 1, represents the most egregious form of discredit to the House of Representatives.

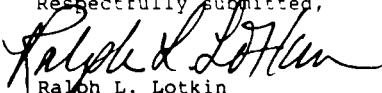
It is for this reason that Committee counsel believes that conduct of the type exhibited by Representative Biaggi is so far afoul of the spectrum of activities Members of the House of Representatives are expected to engage in that he should be expelled from the United States House of Representatives.

Accordingly, Committee counsel recommends that the Committee on Standards of Official Conduct report to the House for adoption a Resolution in the following form:

HOUSE RESOLUTION

RESOLVED, That, pursuant to Article I, Section 5, Clause 2, of the United States Constitution, Representative Mario Biaggi be, and ~~he~~ hereby is, expelled from the United States House of Representatives.

Respectfully submitted,


Ralph L. Lotkin
Chief Counsel

December 15, 1987

EXHIBIT 3

EXECUTIVE SESSION—CONGRESSMAN BIAGGI

THURSDAY, DECEMBER 17, 1987

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC.

The committee met, pursuant to call at 11:00 a.m., in Room 2318, Rayburn House Office Building, Hon. Julian C. Dixon (chairman of the committee) presiding.

Present: Representatives Dixon, Spence, Fazio, Myers, Dwyer, Hansen, Mollohan, Pashayan, Gaydos, Petri, Atkins, and Craig.

Staff present: Ralph L. Lotkin, Chief Counsel; Jan Loughry, Administrative Assistant; Mark J. Davis, Counsel; John F. Davison, Counsel; Elneita Hutchins-Taylor, Counsel, Keith Giese, Counsel; Richard J. Powers, Investigator; Linda Shealy, Secretary; and Stanley M. Brand and Cynthia M. Wilkinson, Counsel for Representative Biaggi.

Also present: Representative Mario Biaggi.

The CHAIRMAN. A quorum is present. The committee will come to order.

This morning we have the matter before us of Mario Biaggi, and we must first take a vote to allow Mr. Biaggi to appear before us today. Before that, we are still in Executive Session pursuant to a motion made by Mr. Spence yesterday.

On November 4, 1987, the committee voted to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Mario Biaggi. This decision followed the committee's determination that offenses for which Congressman Biaggi was convicted in the United States District Court for the Eastern Division of New York were committed and constitute violations over which the committee is given jurisdiction under Clause 4(e) of Rule X.

Representative Biaggi was notified of today's meeting by letter of December 11. He indicated his intention to make a personal appearance before the committee on the issue of sanctions. The chair wishes to remind members we have received written submissions from counsel to the committee and respondent concerning the sanction recommendation. Copies of these documents are before you. The chair would entertain a motion to allow Mr. Biaggi to appear, to give him one-half hour to be used at his discretion, which could include a statement from him and/or his counsel, and we will allow up to one-half hour for our staff attorney to make any presentation if he so desires.

Mr. SPENCE. Mr. Chairman, I so move.

The CHAIRMAN. It has been moved by Mr. Spence and seconded by Mr. Fazio. Any discussion on the motion? All in favor, signify by saying aye; all opposed. The ayes have it. The motion is carried. We can invite Mr. Biaggi in.

Congressman Biaggi, why don't you just sit over there with counsel. Let the record show Congressman Biaggi is present with counsel, Mr. Stan Brand and the young lady if she is counsel, if she would identify herself.

Ms. WILKINSON. Cynthia Wilkinson.

The CHAIRMAN. Mr. Biaggi, on November 4 of 1987, the committee voted to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on you. The decision followed the committee's determination that offenses for which Congressman Biaggi was convicted in the United States Court for the Eastern District of New York were committed and constituted violations over which the committee is given jurisdiction under Clause 4(e) of Rule X. The rules provided for the respondent to appear by a vote of the committee. The committee has voted to allow you to appear and make a statement and further to give you a half-hour time to be used in any way you want. In other words, if Mr. Brand or other counsel would like to make some argument, the chair notes and the committee notes that Mr. Brand has already filed a written document as it relates to the appropriate sanction.

So you would have control of one-half hour. Our counsel, Mr. Lotkin, would have control of one-half hour. Mr. Lotkin would be allowed to close, and I don't know if Mr. Lotkin intends to make any statement this morning.

So, with that, Mr. Biaggi, you have a half-hour to make any presentation that you would like to make at this point.

Mr. BIAGGI. Thank you very much, Mr. Chairman.

Mr. Chairman, my colleagues, thank you for the opportunity to address you on this very serious matter. I will probably take the lion's share of the time allotted and allow Mr. Brand five or ten minutes to make some comments.

First, I would like to—I think it is important to know that Mario Biaggi spent 51 years of his life in public life. I was a letter carrier for five years. I was a police officer for 23 years. I worked in the Rockefeller Administration for three or four years as community relations specialist. I came to Congress in the end of my 19th year.

Why I point that out is over the 51 years of public life, I have an absolutely unblemished record. Never one of those agencies ever found it necessary to bring any disciplinary action. That is not happenstance. That is the nature of this gentleman, to conduct himself in a manner which is proper and appropriate at all times.

You know, I love the work I do, and I love the institution and respect it. I have worked hard and I guess, like all of you, like all of us, we have achieved some success. One of the greatest things is my work in the Irish area. You may not know it, but I was nominated for the Nobel Peace Prize and came out 79 out of thousands.

My record in the Police Department I think most of you may know. When I left, I was the most decorated policeman in New York. I won the Medal of Honor, which is oftentimes awarded

posthumously. I was injured ten times in the line of duty. I retired on disability, started law school at the age of 45, became an attorney at 49. I was jealous of my reputation, very jealous, very careful how I worked, especially during those 23 years.

Let me point out one facet so you understand how terribly careful I was, still am. I never went to Las Vegas in my life until I went maybe three years ago as a member of the Aging Committee overnight. Do you know why I didn't go? Because I was fearful I might be seen with some undesirable element and might have a bad reflection on my professional career as a police officer. That is how careful I was, that scrupulous. I have been invited many many times by many people. I have given that as a little bit of background to give you my state of mind.

The question I ask here is the question I asked when I was in court. Why am I here? What did I do wrong? I don't believe I did anything wrong. I don't believe it then, I don't believe it now. I was charged with bribery, conspiracy, 28 overt counts. They were dismissed. They had no basis to begin with. The remaining charges won't be upheld. We are confident about that. The possibility of reversal. You can't trust a jury, but they are not of my peers, clearly. Many many other factors come into play.

But I would like to talk about the offense, the question of illegal gratuity. I wanted to go to Florida in 1984. I wanted to go to a spa and use the facility at the Bonaventure Spa at the Bonaventure Complex where people reside. They have a hotel. If I stayed at the hotel, I wouldn't need anyone to intercede. I didn't stay at the hotel. I was staying at a friend's apartment, which I had been staying in for 18 years. When I was told that wasn't possible, I searched out who did I know, and I knew that Meade Esposito had a home in the Bonaventure Complex. Who is Meade Esposito? He is an accountant in Brooklyn. He is a Damon Runyon capitalist. If you met him, you would know what I am talking about. He is rough and tough. He is the last of the great old-timers who—

The CHAIRMAN. Let me interrupt you, Mr. Biaggi. They are having a hard time hearing you.

Mr. BIAGGI. He is referred to as a dinosaur. He is a product of the streets but he was all powerful, not only in Brooklyn, the city, but the State. He has been entertained by Presidents, President Carter, Governor Rockefeller, Mayor Lindsay, Mayor Koch, Mayor Beam, both sides of the fence. He was a consummate politician.

The record indicates I have known Mr. Esposito for 25 years. I refresh my memory. I know him for almost 40 years. When I was a young cop, he was a bondsman in Brooklyn, and we were involved in fraternal affairs, more specifically, the Organization of Italian Ancestry, and I was President of the Grand Council of Italian Americans in Civil Service, which represented 100,000 people and we were always moving and always in touch with each other, and we developed a friendship. It is a kind of a friendship I have with him—I am the only one probably in captivity that could razz the hell out of him. I always demeaned him with affection and love. The man is 81 years of age today. I think his birthday was sometime in December. It is that kind of relationship. He was my friend then. He is my friend now, and he will be my friend.

So when I called him, I told him what my problem was, he worked it out. He was able to make the arrangements, and I enjoyed myself in that place. I exercised, and I dieted. Near the end of my stay, I went to his house. He arranged—I invited him over to the hotel to have a drink. He said, “No, come over to the house. The family is here.” He picked me up, and I went to the house, and I walked in, and they all commented upon the way I looked. He says, “You look great.” I said, “Yeah, great, thanks.” We chatted a little bit, stayed for a while, had a bite to eat.

Then I said, “Meade, when you get the bill, send it to me. Send it to the Washington office.” He said, “Forget it. You are my guest.” I said, “Meade, forget it, send me the bill in the Washington office”, and then he repeated, only this time in his earthy manner, “Forget it.” Now that is not a strange way for Meade Esposito to act. If you know of him and you know him, you know that is exactly how he acts. That is what happened in that 1984 trip. Clearly that is what happened.

Now, people say when you accept a gift or hospitality, beware of strangers. He was not a stranger. He was in his own home. That was part of the total complex. In my mind, that represented hospitality. If that wasn't hospitality, then what in God's name is hospitality? Some may ask, well, it is a chance for you to get away from paying the bill. Let me tell you I have lived a modest life. I have made—most money I ever made in my life was here in Congress. Mine was pretty much civil service.

But 28 years ago I invested \$20,000, \$12,500 was out of my savings account, and I borrowed \$7500 with nine other people. We bought two pieces of property in Manhattan, 28 years ago. We sold it that year. My gross income that year was \$740,000. That is why I decided to go there that year, to go and indulge myself. I was 66 or 67 years of age. I said let me indulge myself, and that is what I did.

If I really wanted to do it without spending my own money, wouldn't it be easy for me to arrange, for me to speak, maritime unions, maritime industry, education and labor. How easy would it be for me to do? My colleagues, you now what that is about. It is that easy.

In addition to that, the law firm that I had separated myself from in 1979 owed me over \$200,000. So you are not talking about—you are talking about nickels and dimes by comparison. I think this is important to understand and go back again to talk about Meade Esposito. For me to ask Meade Esposito to pay for a bill would be offensive to him and would be offensive to my dignity, because our relationship was, although we are in the same business of politics, everybody—he is everybody's Godfather. That would be a presumption on my part and would offend my dignity. I couldn't do that. It would be beneath me when you consider his status in the whole political scheme.

Can you imagine talking to your colleagues, asking them to get you a reservation and say, “By the way, will you pay for this?” Now, of course, the question says, well, he will pay for it because he had some legislative interest. Let me talk to that. I did not know until June 2nd, 1986 that he wrote insurance for Coastal Dry Dock. That is important, and that is in the June 2nd telephone con-

versation. In that same conversation, I asked him that trip, was that a gift? He says no. It is an act of love. Same conversation.

Now, if you are going to accept that conversation in that, you can't accept specific references to conversations. I did not know until 1986, June 2nd, that he had Coastal Dry Dock as an insurance client.

Frankly, it wouldn't make any difference to me because what we were trying to do, we were trying to help Coastal Dry Dock. That was my business.

That was my obligation. That was my obligation. Not only I, Joe Addabbo, Senator D'Amato, Congressman Molinari. Furthermore, when Joe Addabbo died, the shift came to me because Coastal Dry Dock came up to my Bronx office.

I said, you can come up to my office, but why are you coming to me? He says, we hear you get along with this Administration because you have been voting a few items in support of them. I said, well, what is your problem?

He says, we are having trouble with the Navy. I introduced them to D'Amato, brought him down. D'Amato spoke to Lehman. I didn't speak to Lehman.

I wouldn't have had any problem speaking to him but it didn't make sense. I am a democrat.

Senator D'Amato is a Republican. He is my good friend and he knew Coastal Dry Dock. He knew them well. He knew them well and they contributed to his campaign as well as to mine.

But my campaign, what they contributed to mine and others, was not on the same level. So that argument has to fall of its own weight. So what I am saying, this is an act of hospitality.

My motivation was clearly to help a shipyard that was employing more than a thousand people. Brooklyn Navy Yard, now out of business, now out of business and no one has been in there yet and I don't think anyone will come into that place. You know, when you say "jobs", I don't have to tell you what your own reaction, jobs in the district, city State, the delegation gets together. And that is what happened.

Why did they come to me? Well, when we had the loan guarantee, the city of New York had the problems when New York City was on the verge of bankruptcy, who do you think the delegation designated to head up that whole operation?

They designated Mario Biaggi.

Why? Because I got through nonsense, number one. I am an activist, number two. I have the ability to reach out across the nation.

And I do this with many, many other companies and have done it for many other companies. I have done it with people from individuals, to companies in the district, outside the district.

We talked about the Bronx. Everyone talks about South Bronx.

Well, we work together, not just the Congressman. Every level of work. We are talking about the city. All the delegation works together with every level of government fighting together.

You understand that. That is why I got involved. In the end, Coastal Dry Dock was right. There was a Navy captain was declared by an administrative judge to be found—was the word—clearly offensive, clearly offensive, clearly prejudiced and obstructive.

tionist and he was afforded—Coastal was given some money as a result of it.

Now, some of the conversation with Meade and I, Meade would say what are you doing for Coastal? Well, I was working for Coastal three years before Meade got involved. It is on the record.

We have a case sheet of everyone that comes in. We have the case sheet of Coastal. If Meade had never got involved, I would still be working for Coastal. So what do you do?

You call him up and say this is what I am doing, Meade, this is what I am doing. Why?

For practical reasons. Why ingratiate yourself?

If anything good happens, make him feel like he did it; he is part and parcel of it. I am talking about practical politics as we know it, a practical operation as we know it. I mean, that is the way we do it in New York.

I am sure you have the same operation as this and it has many faults and failures enough. Of course, he is interested in Coastal.

I asked him about Coastal. I said, how do you know Coastal? He said he has been my friend for 30 years. He has been my friend for 30 years. Well, that is fine. No one can say that they gave me a penny, no money, nothing. It was never within my contemplation, never within my contemplation, never.

Those of you who know me know the nature of the man I am. I have come this far in life with an unblemished record and to this day I hold my head high. I will tell you. I am not arrogant. I am hurt. I am terribly hurt because I know that I did nothing wrong.

I know I did nothing wrong. Let me tell you just another thing so you get a little bit of background.

I am like yourselves, running all the time. We are machines going all the time, seven days a week. To be sure I don't get in difficulty, I have a certified public accountant firm managing all my money. They have done it for 20 years. I pay them six, \$7,000 a year to do that.

All my income goes to them. All the expenses come from them. Why do I do that? So there isn't any mistake, isn't any mistake.

Why would I not disclose it? We had accounts. They took care of my disclosure form, and when there is a little transition when one fellow left and another came on, the second fellow didn't monitor as closely.

The first fellow monitored every quarter. The second fellow didn't monitor it until the very end and he said there is excess.

Do you know what I did to the excess? I gave some back to the law firm under the pay they owed me and I gave the rest to charity. It came to maybe six to \$8,000. So we are talking about even my law school. I think I gave them some 15, \$20,000. He is talking about \$3,000. Mario Biaggi is going to compromise himself for \$3,000? I wouldn't compromise myself for \$100,000.

Let me make reference to an interesting—we are talking about gratuities which is a grey or vague area and contributions. This is an article.

It is not only my view, it is considered the views of Joseph Weeks, Deputy Associate Solicitor for Special Litigation at the Department of Labor writing in the Notre Dame Law School journal

in 1986. "Bribes, gratuities and the Congress: the institutionalized corruption"——

The CHAIRMAN. Mr. Biaggi, we are going to give you another 15 minutes so that you will know you have until 12:15.

Mr. BIAGGI. Thank you very much, Mr. Chairman.

"Bribes, gratuities and the Congress: the institutionalized corruption of the political process, the impotence of criminal law to reach it, and a proposal for change.

"Virtually every member of Congress has been compelled to become a crook. Most of them, we can hope, regret the necessity of having had to accept a life of crime as the price of holding office, but crooks they certainly are. The evidence of the institutionalized corruption of the Congress has now become inescapable."

The law review article, Notre Dame, 1986.

"An excellent example of how even the most seemingly incorruptible office holders have been corrupted is the case of Congressman Mario Biaggi."

"Seemingly incorruptible." I submit to you gentlemen, I am not "seemingly incorruptible". I am incorruptible.

But even from a cynical perspective, they said I was seemingly incorruptible. Why? Based on what they have known about me.

"Representative Mario Biaggi * * *" Medal of Honor for Valor and 27 other citations, and wounded in the line of duty. "* * * was elected to the House of Representatives * * *", and they go on to say about campaign contributions. They involve—they just picked two things and said, receipt of funds from PACs. Also cites our colleague Tony Coelho for criticism.

Consider this point of Mr. Weeks. "In the case of the incumbent candidates seeking reelection, money is being solicited and accepted from PACs or individuals with a particular interest in the legislation that the candidate is or will be considering and voting upon, in exchange for the office holder being influenced to favor the donor in the performance of his duties. Under existing law, these actions constitute a Federal felony for both the contributor and the elected official.

"Similarly, PACs and individuals with special interests clearly make contributions because of the legislator's past or expected future acts favoring the donor. This also should be a Federal felony.

"If pre-election laws could be properly enforced", he adds, "the Federal prisons would be literally populated by lobbyists and former members of Congress."

That is the end of Mr. Weeks. My point is simple. Gratuities is gray and that is what they are shooting for here and be assured, bear that in mind.

My point is simple. We could all be vulnerable, all could be vulnerable. All they need is a focus whether it be a golf trip, whether it be a convention, whether it be a stay at a hotel. You are involved by someone who has a legislative interest.

In my case, there was no legislative interest. The record shows that I asked Mr. Esposito in that wire tap, Meade, do you have any personal business with Coastal Dry Dock? He says yes, I write their insurance. I says, what? That was my response.

But I didn't know until that moment. That was three years after or two years after the Florida situation. Very important, very important.

Gratuity, hospitality. I think I have spelled it out for you, gentlemen. I think I have spelled out hospitality. As far as disclosure is concerned, according to the manual—let's go back to hospitality again. He was not a stranger.

The book says beware of strangers. Clearly he was not a stranger. He was closer to me than some relatives. Let me talk about obstruction of justice for a minute. Monday morning background.

I step out of a car right in front of my office. Two FBI men run to the car, flash their shields right in my face. They didn't wait in the office. The office was open. They didn't ask for an appointment. They came right over and stuck their shields, passes, right in my face saying, can we talk to you?

I thought it was kind of abrupt. I said, sure, come on inside. We went inside and I spoke with them for an hour-and-a-half. My staff member wanted to know why I spoke to them. You didn't have to speak to them. I said I have nothing to worry about.

Why shouldn't I speak to them? I spoke with them for an hour-and-a-half. The conversation on the wire tap, if you read it, it could be this way, that way, but what was it?

In fact, I called Meade Esposito. They planned it that way. They planned it exactly that way. That was all planned, carefully planned.

I received a call from my companion on the trip who was visited while they were interviewing me who was being visited by two FBI agents and asked me what should she do. I said, tell the truth, simply tell the truth. It may be a little embarrassing, but that is my personal life. Tell the truth. That is all I said.

If they were on the wire, they know that is the truth. What did I say when I called Meade?

I asked him a number of questions. What was the purpose? To obstruct justice? Nonsense.

It was to refresh his memory, his recollection, a clarification. How long did we know each other, 20, 25 years? He said, yes, thereabouts. That is all I was thinking about, but upon reflection, I have known him almost 40 years. I said, was this a gift?

He said, gift, something or other. He says, it is an act of love. And other questions.

Then he said something about what are you talking about, what are you talking about? You sound like a grand jury. I said, I can't remember. That is what I am talking about. I had no knowledge of a grand jury. My first impression, I responded to the questions of the FBI.

Now, gentlemen, I asked for a question of fairness. I feel that I will be successful on appeal. Judge Weinstein said during the course of the trial several times in connection with several issues that are in question here that these are appealable issues.

He won't handle them. It is there on the record. They are appealable issues. And we are confident that we will be successful.

No pie in the sky. We are confident we will be successful. I asked that be postponed until that is determined because we have just

seen something occur just a short time ago. We saw former Governor Mandel declared innocent. Do you want to pay him back?

How do you compensate him for time spent in prison pending appeal? How do you do that? Destroy a life, destroy him? Fairness is what we are asking about, fairness. As far as that is concerned, motivation for this hearing, I know what is going on outside. You know what is going on outside.

I know the press is on it and I know we have some members of the House who are inordinate in their zeal who would like to disrupt the procedure of the House.

That shouldn't be your contemplation. That should not be in your contemplation.

You are my colleagues. I respect your integrity. I expect you to make the determination on the facts, not because the press is out there or not because you want a better image of the committee and not to swing that pendulum from one extreme to the other thinking perhaps we should come down hard, come down hard on this gentleman because others in the past have not been severely punished or have been treated more kindly.

Let's show the world that we are serious. Let's be severe in this case. That should not be your determination. That is not fair. It is not honest. It is not human.

I will be closing in a minute.

I think I have stated the case. Let me sum it up. I am 70 years of age. I have built up a considerable reputation. To me that is my most cherished possession, most cherished—thanks to my family and friends—my family and my friends share—I ask you consider that, consider the facts, not pure sympathy, but the facts.

Ask, is this the Mario Biaggi I know? Does this man deserve to be severely punished?

Does he deserve to be in this plight at all? I don't know what more I can say except that whatever you do, if you think I am corrupt, I don't know on what basis you can make that conclusion.

Think of what you must do. I am a man of integrity.

Thank you.

The CHAIRMAN. This is an appropriate place to take a break.

Mr. Brand, you have ten minutes remaining.

[Recess.]

The CHAIRMAN. Gentlemen, a quorum is present. We will come to order.

There are four or five members on this panel that are on the Appropriations Conference that meets at 1:00 o'clock, so we will try to wrap up if we can at 1:00, 1:15 or thereabouts.

Congressman, you have 12 minutes left, and I assume Mr. Brand is going to make some comments.

Mr. BRAND. Thank you, Mr. Chairman.

I just want to make two points essentially. The Congressman has explained I think adequately and with better skill than I can the nature of the personal hospitality that was received.

I would like to point out page 16 in the committee's ethics manual which discusses the personal hospitality exception and states, "During the debate on the revised rule the view was expressed personal hospitality exemption would apply, for example, to dinner at an individual's home but not if the individual took the

member or employee to dinner at a restaurant. Further the exemption was not intended to apply if the individual providing the hospitality was being reimbursed by a corporation or organization." And, lastly on the point of notice to the member, as to who is providing the hospitality, "Questions arose during the debate as to how a member could know this. The reply was that a member must exercise due care in receiving gifts of personal hospitality from those who have or represent those who have an interest in legislation."

The point I want to emphasize again and again here is that Congressman Biaggi had no reasonable basis for concluding that the gift of the use of the spa was anything but a gift of personal hospitality. The spa was attached to the residence of Mr. Esposito. It was provided for those who lived in the complex, for their guests, and there was no other indication that the condominium and the spa was anything other than a personal extension of hospitality by Mr. Esposito.

And I think the standard that the ethics manual expresses is the existing standard in the House. If you shear the volatility of a jury verdict and what the jury may have believed or not believed from this case, which I believe Rule 14 requires you to do, because it requires you to take an independent judgment and look at the evidence, you should be very comfortable with the facts, and the fact is that there was no reason, no indication to put Congressman Biaggi on notice the spa was anything other than the personal extension of hospitality from a personal friend to another.

The other point I would like to make is that with respect to the appropriate level of sanctions, and I will rely on our written submission which is extensive, and I do not want to take the time of the committee to go over that, I do want to point out that in the last case which was brought to the Floor for a sanction coming from this committee was the case of Congressman Hansen in 1984, and I want to draw the members' attention to page 347 and 348 of that report, which is the special counsel's report recommending the level of sanction. The report indicates, your rules indicate that reprimand is appropriate for serious violations, censure is appropriate for more serious violation, and expulsion only for the most serious violations.

Quoting from the report, "If there is any distinction to be drawn in the precedents between censure and reprimand, it is that censure appears to have been reserved for offenses related to the misappropriation of either appropriated funds or other funds or unjust enrichment by the Member." And if you recall the case of Charlie Diggs and the alleged misuse of Clerk hire, that was a case in which censure was imposed.

This case involves no such misappropriation. The offenses for which—quoting from the report—"The offenses for which the committee under its rules found Congressman Hansen violated are disclosure related offenses, even the other rule violations which the committee has found based on acceptance of gifts or the appearance of a conflict of interest relate to failure to disclose. Indeed we have found, based on the report in the trial, it was to avoid explaining the relationship with certain persons outside the Congress, Congressman Hansen failed to list these transactions. As these

precedents indicate, it has been the character of the offense disclosure and conversion which establishes the level of punishment imposed, not the cumulative nature of the offenses."

In this case, what you have are two offenses, the receipt of a gift and the obstruction count and a related count of failure to disclose. But even in those kinds of cases, as the Hansen report points out, the committee has deemed reprimand to be the appropriate sanction. I know that the committee counsel's report talks about the accumulation of offenses being a basis for going beyond the level of reprimand. I would suggest to you that that, insofar as the committee would agree with that, would be breaking new ground and changing what has been the traditional level of punishment imposed.

And I would also recall for the members that what was involved in Congressman Hansen's case were something upwards of \$300,000 worth of financial dealings with someone who had a direct interest in legislation in the payoff of loans, in the conferring of ready-made silver commodity transactions and in loans from three Virginia gentlemen, not like Coastal Dry Dock in the city represented by the Member, but from out of state; and in that case, with all that to distinguish it from this case, the committee recommended only reprimand.

I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Biaggi, you have four minutes.

MR. BIAGGI. Thank you, Mr. Chairman.

I know there has been a submission by counsel, but my experience, sitting where you are sitting, almost compels me to supplement his comments. A review of the submission, that is critical, a review of his submission will reveal there are individuals, and I don't quarrel with the findings, God bless them, have committed more serious offenses than I am charged with and not reprimanded, on some cases, they were reprimanded. One individual accepting money from a foreign government, another individual not even reprimanded using corporate aircraft on 16 different occasions, far in excess of the amount of moneys involved here, not reprimanded, another being permitted and—the first one, the one I just referred to, was allowed to pay it back, which is fine. Another one is allowed to pay back some \$47,000.

I ask on this point—I point out some of these so you look at that submission and compare it to this. That was not money coming to me unexpected. You have to understand the nature of this, gentlemen. I will tell you this. You are built a certain way. I know Members have come to my town, and when I couldn't be with them, I would send them as my guest to certain places. Why? Because they are in my town. I know if I were in their town, it would be the same way. It was my pleasure to do it.

When you find Esposito, you call him an old Godfather type, a multi-millionaire, by the way, this is a pittance, it is nothing. He has done this traditionally with many people. He would take people, half a dozen, away to different islands. Why? Just to have guys around to shoot the breeze. I give you this just to give you the flavor.

Please read the submissions, and I think in terms of what I said, what I said about this charge—the charge is—frankly I asked the

question at the outset, "What am I doing here?" I still ask the question, "What are you doing here?" You are around talking to members, you know what their actions is. As far as the judges are concerned, they said it was a dirty deal, it was a raw deal, it was wrong. They are bewildered themselves. People are checking on their own activities in the past to make sure that if they have done anything that might be even in the gray area, can be viewed as being in the gray area, can be viewed as being in the gray area, they are trying to correct it.

I submit to you, gentlemen, that this is a subject that should end with Mario Biaggi. This is a subject that should be reviewed by the entire House. I said before I love this House, and I do. I love my association with all my colleagues, whether I agree with them or not. I walked along the corridor the other day, the gentleman, Mr. Gingrich walked by, said, "Hi, Mario." I said, "How are you doing?" That was instinctive, that was instinctive reflection. I am a Member of Congress, you are too. It's—whoever dreamed that kids in the street could be Members of Congress. I am sure many of you came from similar origins, and you know what this means to yourselves, your family, your friends.

It is emotional, it is emotional, but it's a terrible way to end a career with this plight after 51 years of unblemished service. I am proud of that, and I walk the streets with my head held high, and I do my constituent work, and I go out there and thank God for them and thank God for the Members of Congress who have been supportive.

I find myself in the strangest positions, in dilemmas beyond my imagination. I know in the end I will survive, but I would like to emerge relatively unscathed. This period of stress in my life is one that will leave its mark no doubt, and it will be a period which I hope the passage of time will diminish its effect.

But I am asking you gentlemen to consider my story and what I have said and only, please, if nothing else, only on the merits of the case, please don't think in terms of the press. The press will find another story to write tomorrow. Please don't think of the criticism of laxity in the past. Think in terms of this, Mario Biaggi, coming to the holidays, going home. If you can honestly say you made a determination on the merits, then I am sure you will have a Merry Christmas. But if you compromised yourselves, this Christmas more than any other Christmas will be good for you because you have to live with yourselves.

Thank you.

The CHAIRMAN. Thank you very much, Congressman.

Mr. Lotkin, you have 45 minutes to use such time as you may desire.

Mr. LOTKIN. Thank you, Mr. Chairman.

I am going to try to give the committee a different perspective of why the Congressman and this committee are meeting today. The Congressman has just told you and asked the same question he asked of the judge, why am I here?

The Congressman is here and this committee is meeting today because the Congressman was convicted by a Federal jury of three felonies. He was also sentenced by a Federal judge to two-and-a-

half years in prison. Mario Biaggi's good deeds didn't bring him here.

The Congressman's felonies brought him to this juncture and forced the committee to engage in an extremely important, as well as painful consideration. There are no winners in this matter.

Obviously, Congressman Biaggi is in a position to lose and he is losing. The committee is in a difficult losing position and certainly the institution of the House of Representatives is a loser.

Why losers? Because this institution loses when one of its members has tainted the reputation of the institution, whether it is the House or the Senate, by a criminal conviction of felony conduct.

There are essentially two questions this committee should consider. One is, obviously, what is appropriate for Mario Biaggi in terms of the appropriate disposition of sanction? The other equally important question is what is best for this institution in the light of three felony convictions by a colleague of yours? I don't have a horse in this race, I don't have a vested interest in the outcome and neither does this committee.

That objectivity and the approach to this matter is in stark contrast to what you have heard for the last 45 minutes. I don't have any goal or any axe to grind to keep any sanction to a minimum. It is the committee's determination.

But, because of the objectivity of my approach and the objectivity that should be the hallmark of the committee's consideration, the committee should ask itself in the context of what the committee has listened to for the last 45 minutes essentially four related questions:

Who was doing the talking?

Was it an advocate for a position or a party in interest?

Obviously the Congressman is a party in interest in this matter.

Is there any potential bias in the presentation that you listened to?

Were perhaps self-serving statements made to you for the first time and as it turns out five invitations by this committee to appear and meet with this committee on this matter? This is the first, last, and only opportunity you have to hear from the Congressman notwithstanding approximately five invitations beginning in September of this year.

And also consider the accuracy of the legal arguments that you listened to or that were submitted to you by his counsel, particularly in terms of cases that were offered or referred to in the Hansen matter or the Korea-gate cases. I think when you ask yourselves these four questions, you are going to find there is something to be desired by the past 45 minutes of presentation.

Essentially, the Congressman today in asking why he is here, which I think everybody knows why he is here, has asked the committee to consider a number of wide-ranging issues.

First, he has referred to the sentencing transcript and portions of that transcript were submitted to the committee when the Congressman's attorneys submitted their recommendation that he be given the lightest form of sanction by the House of Representatives in the face of three felony convictions.

They recommended the sanction be limited to reprimand. But you should consider the sentencing transcript, and I will read you

portions of that sentencing transcript which the Congressman's attorneys were kind enough to send to the committee.

He wants you to consider each violation separately—in a vacuum. Don't consider whether there is a pattern of improper conduct going on here. All of this conduct was related, all of these felony convictions were the progeny of central, improper conduct, but you are not asked to consider that.

You are being asked to consider these things in a vacuum; obstruction happened all by itself and the legal gratuities were received all by themselves and a violation of the Traffic Act fell out of the sky.

That is not what happened. What happened here is there were three felony transactions that occurred in relation to one another, they were related and dependent upon one another. The Congressman mentioned earlier you should consider what he was acquitted of. We are not here because of his having been acquitted, we are here because he was convicted beyond a reasonable doubt, there is no question about that.

I think the Congressman's question, while interesting and emotive, is not terribly persuasive when I consider the matter in an objective way.

Consider the Congressman's friendly relationship with Esposito. I submit to you, I think as you well know, friends can commit crime, that is what the Federal jury found. Friends can conspire to commit murder, friends can conspire to commit bribery. Friends here committed illegal gratuities.

One friend asked another friend to misrepresent the facts underlying his receipt of improper gratuities. Somehow, the Ethics Manual—this committee—is now at fault for inadequate language or guidance in the Ethics Manual.

Quite frankly, the Ethics Manual was the furthest thing from the actors' minds when these gratuities took place. I don't think anybody was walking around with the red book of the 98th Congress considering the propriety of the transactions, but today it is held up as an excuse. We are told there is no misuse of Federal funds. How about a breach of the public trust? How about the expectations of the Congressman's constituency when they elected him to office to apply his wits and talents in a way best for all of the constituents and not perhaps in favoritism for some of the constituents.

In the last case dealing with a breach of public trust, Ozzie Myers was expelled. This case is a breach of public trust. Somehow this committee is to be scared off to avoid Executive Branch expansive interpretations of the gratuity statute.

The Congress passed the statute, this Congressman doesn't like its application. If the Congressman or this Congress doesn't like the application of the gratuity statute, they can change it, but a Federal jury, attorneys on both sides, and a Federal judge applied the law, and the Congressman was found guilty beyond a reasonable doubt of accepting the illegal gratuities. There is nothing expansive about it, it is just that the buck landed there. We are supposed to take the nature of the gratuity into consideration. It was the innocent receipt of spa trips. Would the committee feel any better in-

stead of going to the spa, the Congressman took it in cash? The gratuity doesn't have to be a trip or any form of entertainment.

It could have been in cash. So I ask the committee to ask itself: Would it be better if he took \$10,000 in cash instead of the trips? The gratuities still exchanged hands.

We are told the obstruction was not connected to his official duties. Well, in fact, that is exactly what happened. There was an effort to obstruct justice by having Meade Esposito not truthfully relate to the FBI why the Congressman went to the spa and to the islands in 1984 and 1985. Why did he go? Because he went to the spa and accepted these gifts of entertainment, these so-called manifestations of love, which I will get to, in appreciation for the Congressman's official activities.

There clearly is a relationship between the gratuities and the official duties and to say the obstruction somehow is unrelated boggles my mind. It is clearly and logically and irrefutably there.

The disclosure offenses, the failure to report these obviously illegal gratuities should be worth no more than a reprimand.

Congressman Hansen went to jail for disclosure offenses. Congressman's counsel says that Hansen is a distinguishable case or at least it should be relied upon by the committee.

Congressman Hansen was not convicted of three felonies, Congressman Hansen was not convicted of accepting bribes, Congressman Hansen was not convicted of obstructing justice, Congressman Hansen was not convicted of violating the Travel Act. He didn't fill out his Ethics in Government form correctly. He went to jail. He was reprimanded by the House. If there is an equation between these two cases, I can't find it.

Let me turn specifically to some of the arguments that I have just gone through. Again, these offenses didn't occur in a vacuum, they were a pattern of illegal conduct.

What does the gratuity statute say? I will read it to you.

"Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or because of any official act performed or to be performed by him shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

The Congressman said this morning to you that he was doing things for Coastal Dry Dock three years before Meade Esposito approached him. Those were acts performed.

There is no doubt about it. What did he do? Between 1984 and 1985 and perhaps as early as 1982, the Congressman engaged in over 40 overt acts on behalf of Coastal Dry Dock. Why? Because Coastal Dry Dock was a matter brought to his attention and he was initiated or asked to act on behalf of Esposito. The trial transcript was clear on that. What was his interest?

Coastal Dry Dock owed his company \$300,000 in unpaid insurance premiums. Meade Esposito appreciated what this Congressman did, those 40 overt acts. What did he do? He treated him to three trips, two trips to a spa and one trip to the islands. The statute that I just read has been perfected by the Congressman's own words.

The Korean influence cases are brought up, the gifts from a foreign government.

They are referred to in the Congressman's brief. Well, in none of those Korean cases was there any criminal conviction. There wasn't a prosecution sought. Those cases dealt with the Foreign Gifts and Declarations Act and the receipt of gifts from foreign governments if there is a violation, is a civil matter. We are not dealing with a civil matter here, we are dealing with crimes. Three felonies. A more appropriate line of cases is not Korea-gate, it is the Abscam cases where three or four or five members of the House and Senate accepted money which was induced, which was offered to them for the purpose of inducing them to do something as a quid pro quo.

There was a breach of public trust. The constituents' expectations were thrown out the window for the self-serving interest of the members involved. What happened? Every one of those members in the Abscam cases either resigned his office or was expelled from Congress. Korea-gate is not even a relevant reference for this committee, Abscam is and in Abscam none of those members is here.

The next statute the Congressman was convicted of was the Travel Act, 18 U.S.C. 1952. I will read a portion of that to you.

"Whoever travels in interstate or foreign commerce or uses any facility in interstate for foreign commerce, including the mail with the intent to otherwise promote, establish or carry on or facilitate the management promotion carrying on of any unlawful activity" shall be fined and potentially put in jail.

The trial transcript is clear. The overt acts were clear. The Congressman used the telephone on numerous occasions across state lines to perfect his actions on behalf of Coastal Dry Dock as well as to make sure that his spa visits could be arranged to his liking.

The last statute and perhaps the most important statute for the committee's consideration is the obstruction of justice statute, 18 U.S.C. 1503. That statute says "whoever corruptly or by threats of force or by any threatening letter or communication influences, obstructs, impedes or endeavors to influence or impede the due administration" of justice is guilty of this provision.

The Congressman has been kind enough to refer the committee to the June 1986 wire tap. Let me read the full wire tap to you, or at least more, than the Congressman has been kind enough to lend to you for your consideration.

"Mario BLAGGI. Hey, Meade.

"MEADE ESPOSITO. Thought you were goin' to Albany.

"Mario BLAGGI. I'm going.

"MEADE ESPOSITO. Are we gonna nominate Badillo?

"Mario BLAGGI. Yeah, right."

Moving down—keep in mind this was after he was interviewed by the FBI, interviewed about the circumstance giving rise to his acceptance of the spa visits, the illegal gratuities. The Congressman asks: "How long have you and I known each other?"

"MEADE ESPOSITO. Quite a long time.

"Mario BLAGGI. Say 20, 25 years?

"MEADE ESPOSITO. At least.

"Mario BLAGGI. At least. We're very dear friends.

"MEADE ESPOSITO. Oh, yeah.

"Mario BIAGGI. You try * * * you regard me as a son?

"MEADE ESPOSITO. No problem.

"Mario BIAGGI. Okay?

"MEADE ESPOSITO. Whatta you want?

"Mario BIAGGI. Uh * * * you're, you're concerned about my health?

"MEADE ESPOSITO. Absolutely [laughs].

"Mario BIAGGI. You knew I had, you knew I had some trouble with my heart?"

His friend of 25 years.

"MEADE ESPOSITO. When?

"Mario BIAGGI. Now just listen to what I'm saying.

"MEADE ESPOSITO. Go ahead.

"Mario BIAGGI. And uh, * * * and I needed some relaxation?

"MEADE ESPOSITO. Yeah.

"Mario BIAGGI. And, and * * *

"MEADE ESPOSITO. Well, what the fuck do ya want, pal? Tell me * * *

"Mario BIAGGI. I'm, listen to me, listen to me. This is serious.

"MEADE ESPOSITO. Yeah.

"Mario BIAGGI. All, all, all of this. And that's why you, you invited me to the spa?

"MEADE ESPOSITO. Yeah.

"Mario BIAGGI. You're my host?

"MEADE ESPOSITO. Of course.

"Mario BIAGGI. Okay.

"MEADE ESPOSITO. When do you wanna go down?

"Mario BIAGGI. No. I did that. Uh, the reason I ask * * *

"MEADE ESPOSITO. Yeah.

"Mario BIAGGI. And, uh, you knew, uh, you knew, uh, my friend Barbara Barlow?

"MEADE ESPOSITO. Sure.

"Mario BIAGGI. Remember her name. What's her name?

"MEADE ESPOSITO. Barbara Barlow.

"Mario BIAGGI. Right. 'kay, you knew her before?

"MEADE ESPOSITO. I met her before.

"Mario BIAGGI. Right. Uh * * *

"MEADE ESPOSITO. It sounds like a fuckin' grand jury.

"Mario BIAGGI. That's that's what I talking about.

"MEADE ESPOSITO. Go ahead.

"Mario BIAGGI. Uh * * * cause this is, uh * * * You, ya, you said I needed, I needed my health and all of that? And you, and you invited, you invited us both to uh, for the spa, right?

"MEADE ESPOSITO. Well, you wanna go to St. Maarten?

"Mario BIAGGI. No.

"MEADE ESPOSITO. Then what?

"Mario BIAGGI. But, uh, you would invite me to St. Maartens too?

"MEADE ESPOSITO. Sure.

"Mario BIAGGI. Okay?

"MEADE ESPOSITO. No problem.

"Mario BIAGGI. But, uh you would, would you regard that as a gift?

"MEADE ESPOSITO. No, sir.

"MARIO BIAGGI. What would you regard it as?

"MEADE ESPOSITO. As a friendship. And uh, a uh, feeling of love.

"MARIO BIAGGI. Okay.

"MEADE ESPOSITO. What, what, what gift? My ass.

"MARIO BIAGGI. Okay, that's what I said. Uh, let me ask ya. Now it comes * * *

"MEADE ESPOSITO. Where'd you say that, over there?"

Moving down, "Meade Esposito: Where'd you say that?"

"MARIO BIAGGI. Two, uh, FBI people were up here today.

"MEADE ESPOSITO. Oh, okay.

"MARIO BIAGGI. That's what I'm saying. Now let me ask you. Uh, you and I spoke a lot over the phone?"

"MEADE ESPOSITO. Very, oh, yeah, quite a * * *

"MARIO BIAGGI. I mean while I was down there. In, in this last December?"

That's the wire tap. Those are portions of the wire tap. We are not dealing with somebody who was interested in making sure his friend of 25 years had any affection for him. We were dealing with the situation and the jury was facing a situation where the Congressman, after being confronted by FBI agents, called Esposito and told him what the Congressman's questions were all about and arranged with him and sought to solicit and elicit from Meade Esposito misrepresentations to the FBI if the question of Coastal Dry Dock or visits to the spa ever took place.

The Congressman's attorneys have been kind enough to refer to the Korea Influence Manual and as far as I am concerned misplaced reliance on the Korea-gate. Let me read you part of the Manual not referred to.

"In sum, the committee should adapt the substantive constitutional statutory and code provisions to the disciplinary context by considering the recommendations of sanctions where the member—excuse me—where the substance of these provisions was violated by a member, 1. with actual knowledge of all relevant facts; 2. in reckless disregard of the relevant facts or, 3. without exercising reasonable care to ascertain the propriety of the gift or compensation accepted, or of the transaction, when he participated."

Three criteria, the Congressman clearly fails on all those criteria. He knew what this was all about. The wire tap went to the Congressman asking about Coastal Dry Dock in his discussions with Meade Esposito. There were no manifestations of love. Esposito was deeply appreciative and the jury agreed beyond a reasonable doubt, appreciative of the fact the Congressman in 40 or so overt acts over a two-year period was helping Coastal Dry Dock.

Why? Because Esposito had \$300,000 to lose if Coastal Dry Dock went under. That's why. That is the burden, the substance and the underpinnings of the gratuity statute and that knowledge clearly was what the jury found beyond a reasonable doubt was at the heart of the obstruction of justice conviction.

The Congressman has asked earlier, and I am not going to take too much more time of the committee, "Why am I here?" The sentencing transcript has the following attributed to the Congressman in his address to the judge. Your Honor—this is quoting. "The only wrong thing I did as it developed was to accept the personal hospi-

tality of an old and dear friend." The jury did not think it was the personal hospitality of an old and dear friend.

Continuing, "It boggles my mind. I sat through a trial bewildered. Why am I here? What did I do wrong? I have never been corrupt. I don't know what I am doing, Your Honor."

I think Judge Weinstein, the Chief Judge of that court, answered the Congressman's questions when he sentenced the Congressman. Let me read to the committee what the judge said in response to the Congressman's apparent confusion why he was about to be sentenced after three felony convictions. Reading from the judge: "Defendant and his attorney have taken considerable satisfaction in the fact that they say the jury did not find the defendant guilty of corruption. Their view of the word 'corruption' is a rather narrow one. 'Corruption' is defined in the Oxford Dictionary as 'moral deterioration or decay.' Webster's Third New International Dictionary says it is, among other things, 'impairment [of] virtue or moral principle.' A more specific definition is 'inducement (as a political official) by means of improper considerations (as bribery) to commit a violation of duty.' It is also defined as a 'departure from what is pure or correct.'

"A public official's violation of the law, as in the case before us, is certainly evidence of corruption in the generic sense. While accepting supplementations of income may not reveal as much corruption as outright bribery, it is corrupt. This action tends to cause a deterioration of the political system. As to obstruction of justice by inducing a potential witness to lie—can anyone doubt that this is corruption clear and simple?"

That's what the judge said. The judge didn't have an axe to grind. The judge was not confused. The judge should have clarified any confusion in Congressman Biaggi's mind as to why he was there at that time and why he is here today.

Before, and in closing or as part of closing, let me read to you the words of a very distinguished American which were prepared in connection with an earlier expulsion case that was before the Congress.

"The power of expelling a Member for misconduct results, on the principles of common sense, from the interest of the nation, that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposite to the keeping of worthless characters. But when a man, whom his fellow-citizens have honored with their confidence, on the pledge of a spotless reputation, has degraded himself by the commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison had reached the heart."

Those are the words of John Quincy Adams in 1807 with regard to the expulsion of John Smith. Those words may be as applicable today as they were in 1807.

As I have submitted to the committee, it is my painful and very unfortunate responsibility in this particular setting to make a rec-

ommendation to the committee with respect to the appropriate sanction.

In my judgment based on the precedents, particularly Abscam, the lack of any distinction of merit in Korea-gate or any of the other cases that have been alluded to, Congressman Biaggi has breached the public trust with as much intent to do so as the Abscam defendants did; that he sought to hide that breach of public trust when he sought to obstruct justice.

Unfortunately it seems to me the only appropriate disposition of this matter is in keeping with the precedents that Congressman Biaggi be expelled from the House of Representatives. As I said earlier, and at the beginning, there are only losers in this matter, but in my view this institution should not suffer anymore indignities than it already has if it were to keep this Congressman among its ranks, given the numerous violations of federal law and standards of conduct that the Congressman violated when he committed the crimes involved. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Biaggi, I will grant you five additional minutes with the understanding Mr. Lotkin will close on this matter.

Mr. BRAND. Very briefly, I want to point out two things. First, counsel stated Congressman Hansen was not convicted of four felony counts. As the report states, "On April 2, 1984, after a 10-day trial, the jury in the case returned a verdict of guilty on all four counts." If the committee is going to evaluate cases under Rule 14 on the basis of the numerical comparisons here, then Congressman Biaggi was convicted on fewer counts than Congressman Hansen was.

Now, counsel repeated invocation of the jury and what is in the jury's mind and that crimes have been committed. I submit to you—are wholly irrelevant to this proceeding. Rule 14 triggered a review of the conduct. The committee is bound to look at the conduct and the evidence which supports a conduct and reach an independent separate judgment.

What the jury thought and what the conviction means are irrelevant to this proceeding. I would also point out that insofar as counsel has sought to distinguish these other cases, Congressman Hansen's convictions were interrelated as were Congressman John Dowdy's bribery, perjury and obstruction of justice counts related and in one of those cases was the penalty of expulsion imposed.

That is all I have, Mr. Chairman.

Mr. BIAGGI. I think a review of the June 2 phone conversation will not reveal that I instructed Esposito to change his testimony. I also would like to point out the very significant omission by counsel of the conversation that I had referred to in my presentation where I asked Meade Esposito to specifically—"Do you feel any personal business with Coastal?" And he says, "Yes, I write their insurance."

My response was, "What?" That was the first time. With relation to the heart situation, the fact of the matter is—and the medical department downstairs has all the records you want and that was presented in court—I was subjected to, I think, five cardio versions as a result of a heart condition and that was introduced in evidence, volumes of it, volumes of it. When I asked Meade Esposito

about my heart, I assume he knew it because when I went in the first time, the television carried—we in public life don't like those things revealed. You go in and try to come out as quickly as you can without someone knowing you have some ailment. Otherwise you will have someone on your tail trying to take your seat.

That was on TV. I assume the whole world knew. I assumed he knew. The records revealed—the last one didn't take. It lasted a week. As far as travel is concerned—by the way, he makes reference to two trips in Florida. Okay? The second one my law firm paid for that, my law firm paid for that. They still owe me over \$200,000 and it was paid by American Express. That is the fact in the record with documents.

As far as travel is concerned, I went down there on official business. I didn't take a per diem. I went down there on two occasions, one to visit a nursing home, one to visit an HMO with Congressman Smith had, was supposed to join me.

This big HMO finally went out of business. There was a big investigation, he was very active, he was supposed to meet me there. He didn't show up, his staff was there. We were there for several hours going through the place. All I did was take the travel, I didn't take per diem. Based on that, I made arrangements to have a holiday at the same time.

The most important thing, again I refer to that conversation, I had no knowledge of Meade Esposito's association with Coastal Dry Dock, I had no knowledge he had any kind of interest whatsoever.

My action was borne as the general response, as you would respond, we react to these things. Someone comes in for help, you react. Jobs you go blind. You try to correct an injustice. That is clear, nowhere, nowhere did the government ever say that the Coastal Dry Dock ever gave me penny one.

They did give me political contributions. The maximum was \$1,000. And they didn't give me that right away. That contribution, by the way, was not a straight contribution, it was a luncheon that I had, and they attended the luncheon. They bought a table.

The CHAIRMAN. Thank you very much.

Mr. Lotkin, you will have five minutes.

Mr. LOTKIN. Let me just reply to Mr. Brand's pointing out Congressman Hansen was convicted of four violations; those were four failures to report the receipt of funds on his financial disclosure statements.

That is somewhat different than three felony convictions or crimes as opposed to four violations for failing to put the same transaction on a form.

I think that is, I am happy Mr. Brand corrected me because I am happy to tell the committee what those four violations were all about. The Congressman just said he, in that conversation of June 2, found out supposedly for the first time Coastal Dry Dock was insured by Meade Esposito's firm.

Well, the Congressman's knowledge quite frankly under the statute is irrelevant. It is anything, any official act performed or to be performed. Meade Esposito knew what Congressman Biaggi was doing, and knew he was insuring Coastal Dry Dock, and Meade Esposito sponsored three vacations to Florida and the islands. Con-

gressman Biaggi's knowledge about that is irrelevant to the statute.

Mr. Brand's comment that my references to the jury are irrelevant to this proceeding, I think they have tremendous relevance because if nothing else, there is a higher standard of proof before a Federal jury than there is this committee.

This committee is clear and convincing evidence, a Federal criminal jury is beyond a reasonable doubt. My references were to the fact a jury of 12 of the Congressman's peers found him guilty beyond a reasonable doubt, and on November 5, this committee unanimously found the same transgressions with concomitant violations of House Rules based on clear and convincing evidence.

So, my references quite frankly make it more difficult for me to make my case as opposed to being irrelevant. Therefore, in sum and substance, the case is clear, the felony convictions and standards of conduct violated warrant expulsion of this Member from the House of Representatives.

The CHAIRMAN. Let me thank counsel for the way they conducted themselves. Mario, we appreciate your appearance here today. It certainly gives us a broader perspective. Hearing from our colleague I think helps us in our deliberations.

With that, gentlemen, we will take this case under submission and correspond or communicate with your attorney. The committee will stand in recess until 3:30. At that time, we will meet in the Ethics Committee. For those attending the appropriations conference, this will be conducted at 1:00 in 216 Hart. I take it they are going to have a final report. We will meet at 3:30 in our normal meeting room.

The committee stands in recess.

[Whereupon, at 1:10 p.m., the committee adjourned subject to the call of the Chair.]

APPENDIX A

BRAND & LOWELL

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October 19, 1987

HAND DELIVERED

Honorable Julian C. Dixon
Chairman
Honorable Floyd Spence
Ranking Minority Member
Committee on Standards of Official Conduct
The Capitol
Room HT-2
Washington, D.C. 20515

Re: Honorable Mario Biaggi

Dear Chairman Dixon and Congressman Spence:

The following is submitted on behalf of Congressman Biaggi as a response to the initiation of a preliminary inquiry under Committee Rule 14:

1. Introduction

On September 22, 1987 Congressman Mario Biaggi was convicted in the Eastern District of New York on the charges of accepting a gratuity, violating the travel act, and obstructing a grand jury investigation. The Congressman was acquitted on the more serious charges of conspiracy and bribery.

On September 23, 1987, pursuant to Committee Rule 14, this Committee initiated an automatic preliminary inquiry. Specifically, Rule 14 provides in pertinent part:

If a Member ... is convicted in a Federal ... court of a criminal offense ..., the Committee shall conduct ... a preliminary inquiry to review the evidence of such offense and to determine whether it

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constitutes a violation over which the Committee is given jurisdiction ... under the Rules of the House of Representatives.

The last time this rule was invoked was after the 1984 conviction of former Representative George Hansen (R. Idaho). In the Matter of Representative George V. Hansen, H. Rep. 98-891, 98th Cong., 2d Sess. (July 19, 1984). The preliminary inquiry in that matter reiterated what had become Committee procedure under Rule 14. That procedure consists of two separate and distinct issues to be considered: first, the Committee must "review the evidence" to determine whether there has been any violation of House standards of conduct; second, the Committee must then "review the evidence" to determine whether any rule violation is within its jurisdiction. Neither of these determinations are automatic; neither results solely from the fact that there has been a conviction. This is clear not only from the Hansen and other precedents, but from the words of the rules which require that the Committee "review the evidence" and not simply review the conviction.

As was made clear during the Hansen inquiry, it is, therefore, theoretically possible that the Committee might conclude that a Member's conduct did not violate a rule even though that Member was convicted for a particular offense. As just one example, the House may have a different interpretation of what the Ethics in Government Act requires that does the Executive Branch. The separate determination required by the rule results from the need for the Congress to maintain its separate and co-equal constitutional status.

As part of its preliminary inquiry in the Hansen matter, the Committee received an initial and then subsequent submissions from Congressman Hansen and his counsel, reviewed and digested for its own rule purposes the trial transcript, met with Congressman Hansen and his counsel to discuss the charges, designated portions of the trial transcript to be used in the preliminary inquiry, held a hearing at which Congressman Hansen appeared to decide on the issues in the preliminary inquiry, received a report concluding that rules violations had occurred, and then, and only then, held a separate hearing to determine what, if any, discipline should be recommended to the full House.

On behalf of Congressman Biaggi, we would request the same procedure be employed in this matter. This letter is our initial submission. We would like to meet with counsel for the Committee to go over the parameters of the inquiry and to review the trial transcript. We then would like to discuss an appearance in this stage of the proceedings of Congressman Biaggi. Should the

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Committee then conclude that rules violations occurred, we would then discuss how to proceed to the Committee Rule 16 - 17 stage.

In this initial stage, we would like to address the charges for which Congressman Biaggi was convicted. While any conviction is a serious event, it is also true that the facts underlying a charge may often demonstrate a more innocent purpose and more explainable conduct than otherwise might be apparent. In addition, the review of the facts will indicate that, especially in this matter, the charges against Congressman Biaggi and his conviction on some of those charges, raise some important issues for the House to consider. Before concluding that the Congressman's conduct violated rules, the Committee and the House should consider the effect such a decision could have on the way that its co-equal branch operates.

2. The Indictment

Congressman Biaggi was indicted for five counts of violating federal criminal statutes. Essentially, it was alleged that he received illegal bribes and gratuities in the form of the use of health club and spa facilities from another for interceding on behalf of Coastal Dry Dock and Repair Corporation, a local company in New York seeking various forms of federal and local assistance. Congressman Biaggi was also charged with violating the Travel Act in traveling to Florida to receive the alleged bribes. He was also charged with conspiracy to violate the foregoing statutes. Finally, he was charged with obstruction of justice for allegedly impeding the grand jury by endeavoring to have Mr. Esposito provide false and misleading information to the grand jury.

Congressman Biaggi was acquitted on the most serious charges (bribery and conspiracy), but was convicted on the gratuity, travel and obstruction counts. The acquittal on the more serious charges reduces this case to more simple proportions: 1) whether the acceptance of a gift of the use of the spa facilities from an old personal and political friend supports a disciplinary proceeding under House rules; and 2) whether the conduct constituting the supposed obstruction, alone or together with the gift issue, supports such a proceeding. We submit that it does not.

In addition, because Congressman Biaggi was acquitted on the bribery and conspiracy counts, these criminal offenses do not trigger review under Committee Rule 14. Since Congressman Biaggi was not "convicted in a Federal court of a criminal offense ..." for the conduct associated with the counts, no further review is

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necessary. Because the entire purpose of Committee Rule 14 is to review conduct found by a jury to have violated the law, it is consistent with the purpose of the rule to omit conduct underlying acquittal from review.¹

Of course, the same conduct constitutes the grist for some of the counts; so, even if the Committee determines to review the entire record it will have to conclude that no violation of any law, rule or standard of conduct applicable to Members was violated.

Finally, as we will show below, this case has critical importance to the House's institutional ability to enforce its own ethical mores. Unlike previous criminal convictions which have triggered committee review, e.g., In the Matter of Representative Charles C. Diggs, H.R.Rep. No. 351, 96th Cong., 1st Sess., Vol. 1 (1979) (inflation of clerk hire salaries by Member to defray personal expenses); In the Matter of Representatives Michael J. Myers, H.R.Rep. No. 1387, 96th Cong., 2d Sess. Vol. 1 (1980) (conviction for acceptance of \$50,000 by Member in return for assistance in private immigration bill); In the Matter of Representative George V. Hansen, H.R.Rep. No. 891, 98th Cong., 2d Sess. Vol. 1 (1984) (conviction of Member for conviction under false statements statute for failing to disclose receipt of loans of \$50,000, pay-off of loans, receipt of \$87,000 in commodities profits and loans of \$135,000 from Virginia businessmen), this case pits interpretations of House rules permitting certain gifts from personal friends against the Department of Justice's view of the gratuity statute which would undermine and contradict the present understanding of permissible conduct.

3. The Conviction

a. Travel Act Conduct

Congressman Biaggi was charged with violating the Travel Act, 18 U.S.C. §1952, to wit, that he traveled and used facilities in interstate commerce with intent to promote unlawful activity, that being bribery. The jury returned a verdict against Congressman Biaggi on this count. The Travel Act is an unusually broad criminal statute, although its original intent

¹ This does not mean that a Member's alleged bribery or conspiracy could not reviewed by the Committee. It means only that, to do so, the normal procedures of Committee Rule 9 and 10 on complaints and the initiation of charges would have to occur.

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was to "aid and assist local law enforcement officers in controlling hoodlums and racketeers." The Attorney General's Program To Curb Organized Crime and Racketeering: Hearings on S. 1653-58, S. 1665 Before the Senate Comm. on the Judiciary, 87th Cong., 1st Sess. 1 (1961) (statement of Attorney General Kennedy). The Attorney General also testified that "[t]he target [of the Travel Act] is clearly organized crime." Id., at 16. The floor debate during enactment reinforces this purpose. 107 Cong. Rec. 13,943, 16,540-41 (1961) (repeated references to 1957 meeting of Cosa Nostra leaders in New York and need for federal government to prevent future initiatives by such organizations). In addition, because the statute makes it unlawful to travel in interstate commerce based on the violation of specified predicate criminal acts, it is necessary that the official have committed one of the predicate acts, in this case, bribery, extortion or arson. 18 U.S.C. §1952(b)(2). In this case, Congressman Biaggi was acquitted of the bribery count by the jury, removing the predicate act which forms the sole basis for prosecution under the Travel Act.² On this basis alone, the Committee should determine not to proceed to a disciplinary hearing on the Travel Act conduct.

But there is a further reason why the Committee should determine not to proceed to a disciplinary hearing on the Travel Act conduct. First, the Travel Act provides an expansive means by which the Executive branch may intrude upon and review internal House rules and procedures respecting legitimate and authorized official travel by Members. The Executive branch could thereby render any official travel by Members in furtherance of their duties prosecutable under the Act. As previously discussed, the Travel Act was designed to combat organized crime and permitting the Executive to apply this

² While the gratuity statute, 18 U.S.C. §201(g), under which Congressman Biaggi was convicted, is a lesser included offense of the bribery statute, United States v. Brewster, 506 F.2d 62,67-69 (D.C.Cir. 1974), there is no case which has held that receipt of a gratuity as a lesser included offense constitutes a predicate act under the Travel Act. The Committee should not venture to expand such a broad federal statute beyond its accepted current limits by construing the Travel Act to render gratuity a predicate act, particularly where it serves merely as a trigger to review the underlying conduct of the Member. This is for an appellate court or Congress in its legislative role to do. The Committee should also take notice that the prosecution did not allege in its indictment that the violation of the gratuity statute constitutes a Travel Act offense. See Indictment, Count 6 ¶2.

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statute to Members official travel represents an abusive and unjustified threat to legislative independence. Secondly, a review of the evidence in the case reveals that Congressman Biaggi's conduct in traveling to Florida was legal and in compliance with all standards of conduct applicable to Members for travel. The evidence presented at trial demonstrates that:

- (1) The airfare for two trips to Florida on behalf of a House subcommittee of the Select Committee on Aging, of which Congressman Biaggi is chairman, was paid for with official committee allowances, Tr. at 1195-96;
- (2) Congressman Biaggi met with senior citizen groups in Florida in connection with his role and duties as Chairman of the House Select Committee on Aging, Tr. at 1196-1198;
- (3) Congressman Biaggi made and received calls to and from his staff on the trip respecting Committee business, Tr. at 1200;
- (4) Congressman Biaggi visited health maintenance organizations ("HMO's") in Florida as part of fact-finding for his committee;
- (5) Congressman Biaggi was joined in a tour of he facility by a staff member, Tr. at 1362;
- (6) that Congressman Biaggi held a hearing on the subject of HMO's during which time the fact of his trip came up, Tr. at 1364;
- (7) that Congressman Biaggi similarly traveled to Florida in his role as chairman of a Subcommittee on Merchant Marine regarding port security after the Achille Lauro incident and received travel reimbursement, Tr. at 1365;
- (8) that all the official travel was properly authorized, documented and published in the Clerk's report, Tr. at 1366; and
- (9) that Congressman Biaggi did not, with respect to these trips, seek reimbursement for lodging or expenses, although he was entitled to do so. Tr. at 1367.

The prosecution did not allege or seek to prove that the travel was not in accordance with applicable House rules and regulations, only that Congressman Biaggi did in fact travel.

Based on the evidence presented at trial, the Committee should conclude that the Travel Act conduct does not form a basis for a disciplinary hearing. In addition, the Committee should also conclude that even if it has jurisdiction under Rule X, cl.4(e) of the Travel Act conduct, it should not proceed to a disciplinary proceeding because to do so would permit the Executive branch to unduly intrude in the internal affairs of the House.

b. The Acceptance of Gifts

Congressman Biaggi was charged with violating both the bribery and gratuity statutes, 18 U.S.C. §§201(b), 201(g) in connection with receiving the use of a spa and related expenses in Florida for the performance of official duties. The indictment charged that defendant Meade Esposito, a political

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associate and personal friend of Congressman Biaggi, gave him the use of the spa in return for his assistance to influence federal and state officials relating to matters concerning Coastal Dry Dock and Repair Corporation. Congressman Biaggi was acquitted by the jury on the bribery counts, and convicted on the gratuity counts. As previously mentioned, the gratuity statute is a lesser included offense of a far less serious nature than bribery. United States v. Brewster, 506 F.2d at 71 ("Corruptly" [in the bribery section] bespeaks a higher degree of criminal knowledge and purpose than does 'otherwise than as provided by law for the proper discharge of official duty' [in gratuity section]"). The conduct which formed the basis for the gratuity conviction simply does not support a justification for finding a violation of any rule, law or standard of conduct applicable to Members.

The acceptance of gifts of hospitality from long standing friends and political allies is not prohibited by a standard of conduct applicable to Members. Indeed, the Committee itself has specifically and unequivocally stated that "the gift limitation [in House rules] is not intended to interrupt or interfere with normal social relationships." H.R.Rep. No. 1837, 95th Cong., 2d Sess. 11 (1980). Moreover, it has stated that if the Member does not believe that the donor of the gift has a direct interest in legislation, he should feel free to accept such gifts." Ethics Manual For Members and Employees of the U.S. House of Representatives, 98th Cong., 2d Sess. 61 (1984) (emphasis added). Given the long and continuous friendship of Congressman Biaggi and Meade Esposito the payment of the spa expenses was nothing more than a manifestation of a "normal social relationship." As to one of these trips, the Congressman paid for some of the expenses at the hotel affiliated with the spa and charged them to his own American Express card. Tr. at 2348. ³

As the Committee is aware, H.R.Rule XLIII, cl.4,, prohibits the acceptance of gifts over \$100 in any year from persons with a direct interest in legislation. The rule and the Committee further define persons with a direct interest as anyone or organization that employs or retains lobbyists or maintains a political action committee. Mr. Esposito falls into neither of these categories.

While the rule also includes persons who the Member knows have a direct interest in legislation, or with an interest "above and beyond" the general public interest, no facts were adduced at

³ Congressman Biaggi paid about \$500 of the bill with the credit card and about \$300 in cash. Tr. at 2358.

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trial to indicate that Mr. Esposito falls into this catchall category. There is no doubt that Mr. Esposito is very involved in politics. However, his involvement in local partisan elections and local issues, not the workings of the House. So at least for purposes of House rules and the "direct interest" test, Meade Esposito's conveyance of a gift of use of the spa facilities is not a violation of House Rule XLIII, cl.4. Moreover, as already pointed out, the House has "cautioned" Members "to be wary of any gifts, entertainment, or favor offered to them by persons who are not relatives or personal friends", Ethics Manual For Members, Officers and Employees of the U.S. House of Representatives, 100th Cong., 1st Sess. 11 (1987) (emphasis added).

In addition, two other factual issues demonstrate that Congressman Biaggi's use of the spa was not a violation of any law, rule or standard of conduct. First, Meade Esposito was not Coastal Dry Dock and Repair Corporation; he merely brokered insurance for Coastal and there is insufficient evidence in the trial record to show that Esposito gave the gift "on account of" Congressman Biaggi's intercession for Coastal with various state and federal agencies. Nor did Congressman Biaggi become acquainted with Meade Esposito, by virtue of his insurance business or his affiliation with Coastal, but rather as a result of a political friendship and association forged by virtue of Mr. Esposito's prominent role as county, city, and state Democratic leader. Second, the House rules specifically recognize an exemption from the gift rules for personal hospitality (see Ethics-in-Government Act, 2 U.S.C. §707(l); and House Select Comm. on Ethics Advisory Opinion No. 9, which define personal hospitality as hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, on property or facilities owned by that individual).

As to the former, there is no evidence that Congressman Biaggi was aware whether the spa charges were paid by Coastal. A Member need not investigate in detail the actual ownership arrangements between a member entitled to use such facilities, like those made available to Congressman Biaggi by Meade Esposito, as long as it appears that personal hospitality is being made available. Given the long personal association between the two and the fact that Congressman Biaggi had been working to assist Coastal for four years prior to the spa gifts, along with many other members of the New York congressional delegation, the Committee should not find any reason for proceeding to a disciplinary hearing based on the evidence at trial. These elements of the proof established at trial distinguish the facts from those in other cases where the Committee has recommended sanctions upon conviction because the

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Member accepted largess from persons not normally involved with local issues of importance and from outside the geographic region served by the Member. In the Matter of Representative George v. Hansen, H.R.Rep.No. 891, 98th Cong., 2d Sess. Vol. 1, 307 (1984) (loans from Virginia businessmen to Member from Idaho who assisted them at Pentagon).

As the Ethics Manual states, a Member would not normally be aware whether a corporation or organization owned the donated facilities or was reimbursed by a corporation or organization. Ethics Manual, supra at 16. Debate during adoption of the rule indicated only that a Member "exercise due care" in accepting personal hospitality. Clearly, it is unlike taking a Member to a restaurant, where the personal hospitality exemption would not apply and the Member would be aware it was unavailable.

In addition, Congressman Biaggi had a long history of working on Coastal's behalf before the first trip in 1984. He first met Coastal representatives in 1980, when discussions surrounding problems at the Navy yard first arose, and in 1982 the Congressman became involved to have work on the USS Iowa performed at the yard. Therefore, not only does the trial record fail to support a direct link between representatives of the party on whose behalf Congressman Biaggi interceded and the donor of the gift, neither is there a temporal nexus with the purported gratuities. The caselaw makes clear that "goodwill" gifts and entertainment do not constitute illegal gratuities. United States v. Arthur, 544 F.2d 730, 734 (4th Cir. 1976) (occasional goodwill entertaining motivated by generalized hope or expectation of ultimate benefit on part of donor not a violation of gratuity statute). Although it is not necessary to prove a violation of the gratuity section that the gift was conferred with specific knowledge of a definite official act for which compensation was intended, United States v. Campbell, 684 F.2d 141, 149 (D.C. Cir. 1982), there must be some evidence that "the gratuity was produced because of the official act." United States v. Brewster, 506 F.2d at 72. No evidence was produced that the trips and the use of the spa were given because of the official act.

The standard employed by the Justice Department in bringing this case would subject an enormous range of gifts from Members personal friends and political allies to criminal liability that the Committee has not deemed prohibited under its rules.

If as the Ethics Manual states, Members should only be "wary" of gifts from strangers, and the Member has no knowledge that the extension of what reasonably appears to be personal hospitality may be corporately reimbursed, Members should not

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have to run the risk of being prosecuted for conduct permitted under House rules. Once again, permitting the Department to manipulate and distort internal House disciplinary standards in such a manner, and then use the basis of the prosecution to initiate disciplinary proceedings, fosters undue interference in the enforcement of the House's ethical standards.

Finally, the prosecution attempted to make much of the failure of Congressman Biaggi to report the gifts on his Financial Disclosure forms. But as the trial judge charged the jury, "[t]he case is not about and does not charge Congressman Biaggi with violations of the Ethics-in-Government Act nor is Congressman Biaggi charged with failure to file a proper Financial Disclosure Statement." Tr. at 2561. The trial record also demonstrates no effort by Congressman Biaggi to otherwise conceal the acceptance of the use of the spa facilities (he used his American Express card to pay for part of the expenses, Tr. at 2346, and disclosed the details of the trip and who accompanied him on it to the FBI when they interviewed Congressman Biaggi, Tr. at 2337-2339, 2341) and so his failure to report should not, by itself, trigger a disciplinary proceeding.

c. The Obstruction Charges

Congressman Biaggi was charged with obstruction of justice, 18 U.S.C. §1503, for seeking to mislead the grand jury by urging Mr. Esposito to provide false and misleading information in connection with the grand jury investigating the incidents charged. He was also charged with conspiracy to obstruct the due administration of justice by interceding on behalf of Coastal with various city and federal agencies. Congressman Biaggi was acquitted on the conspiracy charge, and convicted of urging Mr. Esposito to give false information to the grand jury.

First, with respect to assisting Coastal in its efforts to obtain work to employ constituents and stimulate the economy, that can hardly be obstruction, since the propriety and regularity of constituent service and assistance with obtaining in order to obtain government benefits is so well established in House practice, that it cannot form the basis for discipline.

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Ethics Manual supra at 167. ⁴ As we have stated, this conduct should not be reviewed because he was acquitted.

Candidly, the more serious aspect of the obstruction charge is the supposed attempt to mislead the grand jury and FBI by calling Mr. Esposito after Congressman Biaggi's interview. But that also falls when the full facts and circumstances are known.

After the FBI interviewed Congressman Biaggi and raised the Florida trips, he called Mr. Esposito. Again, as the trial judge instructed the jury, to state an obstruction violation, the Congressman must have "urged, requested or instructed Mr. Esposito to directly or indirectly give false, evasive or misleading information or conceal information from the grand jury on matters charged by the indictment." Tr. at 2611. No such inference is possible from their conversations.

In addition, other elements of the offense are not supportable from the record at trial. For example, a person must know or believe that a grand jury had been empaneled and was sitting on the day Congressman Biaggi was interviewed (June 2, 1986), and that it was investigating matters set forth in the indictment. First, Congressman Biaggi had no knowledge of a grand jury proceeding and since the areas he was questioned about and his call to Meade Esposito concerned his trips to Florida, and who accompanied him, (a subject the grand jury was not investigating) there can be no obstruction under the statute. As the trial judge charged, Congressman Biaggi must have "believed that a grand jury proceeding was in progress" to have acted improperly. Tr. at 2611.

In any event, the discussion between the Congressman and Meade Esposito is innocent enough and susceptible of the interpretation which the defense put on it at trial. What also mitigates against basing a disciplinary hearing on this charge is the manner in which the FBI surprised Congressman Biaggi at the interview, approached him not in his office but as he emerged from his car (at the exact same time they went to interview Mr. Barlow) to ask him about matters bearing on his personal life. Tr. at 2341-42. The irregularity of such a technique raises

⁴ We have already adequately addressed the issue concerning the conferral of gifts, which if proper for purposes of House rules, as we contend they are, do not render the intercession with government agencies improper. Congressman Biaggi's involvement well prior to the use of the spa facilities negates any inference that he interceded as a result, or in contemplation of, Meade Esposito's generosity.

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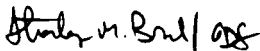
questions whether the Executive branch conduct is consistent with commonly accepted motions of fairness and whether the Committee should condone such techniques by basing a charge thereon.

Obviously, while Members are not above, the law, it seems highly irregular to conduct review of a sitting Member in this fashion, only later to charge that he attempted to obstruct the inquiry. The trial record is replete with facts that none of the elements of intent were present, that he had no knowledge of the proceeding and sought only clarification of the questions raised in the interview.

4. Conclusion

As stated above, the Committee should use this trial record to clarify that its own rules, when properly and faithfully adhered to by a Member in a case involving a close personal friend with whom no relationship to the company on whose behalf the congressman interceded was fully known, and on whose behalf he was working for years prior to the alleged gift, cannot be manipulated and ignored by the Executive to render criminal that which is consistent with House rules.

Sincerely,


 Stanley M. Brand


 Abbe David Lowell

APPENDIX B

UNITED STATES HOUSE OF REPRESENTATIVES
 COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

)
 In the Matter of the)
)
 Honorable Mario Biaggi)
 _____)

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MEMORANDUM OF RESPONDENT IN CONNECTION
WITH DETERMINATION OF SANCTIONS

Introduction

Pursuant to Rule 14 of the Committee's rules, the committee staff conducted a preliminary inquiry into whether the evidence of offenses of which Representative Biaggi was convicted on September 22, 1987 in federal court in New York constituted violations over which the Committee is given jurisdiction. On November 3, 1987 the committee staff completed its review of the trial evidence and recommended that the Committee conclude that Representative Biaggi committed violations of law, House rules, and the Code of Ethics for Government Service over which the Committee has jurisdiction and recommended that the committee proceed to hold a hearing to determine what sanction to recommend.

Counsel recognizes that this phase of the proceeding relates only to what sanction is appropriate, the Committee having already decided, by adoption of the staff's report, that violations over which it has jurisdiction have been established. However, any discussion of the appropriate level and manner of sanctions under House disciplinary precedents inevitably and

necessarily involves analysis of the underlying conduct and the evidence supporting it. For example, a full discussion of the appropriate sanction, if any, for accepting illegal gratuities cannot avoid weighing the severity of the offense against other similar offenses previously reviewed by the House and the factual context in which it occurred. This is not an attempt to reargue the issue whether House rules, statutes or standards of conduct have been violated, but only given the offenses found, when compared with other such offenses of which the House has taken cognizance what sanction is appropriate.

As an attachment, we have included a copy of portions of the sentencing transcript. These portions articulately describe the mitigating factors in this case, including the Congressman's service, the letters written by Members of Congress on his behalf, and his achievements. We would urge the Committee to read this carefully before making a decision in this case.

The Gratuity Charges

As in the initial phase of the Committee's review under Rule 14, it is important to remember that Congressman Biaggi was acquitted of receiving bribes in the form of the use of health club facilities from another for interceding on behalf of Coastal Dry Dock and Repair Corporation, and for conspiracy to violate the bribery statute, as well as the Travel Act. As we submitted during phase one, acquittal on these more serious charges reduces this part of the case to what sanction should be

imposed for the acceptance of a gift of the use of health facilities from an old personal and political friend.

Whether viewed as conduct which implicates a statute, 18 U.S.C. § 201 (g), (federal gratuity) or a House rule, H.R. Rule XLIII, cl. 4, (prohibiting gifts from persons with a direct interest in legislation over \$100 in the aggregate per year), the offense is essentially the same -- the acceptance of a gift from a person the Committee found the Member should have known was not permitted to convey such a gift to him.

Sanctions for the improper acceptance of fees or gifts by Members and employees has ranged from no action to reprimand. United States v. Sweig, 316 F. Supp. 1148 (SDNY 1969) (administrative assistant to Speaker charged with receipt of fees from persons with matters before federal agencies on whose behalf he interceded by exerting influence of Speaker's office; no action by Committee); In the Matter of Representative Edward R. Roybal of California, H.R. Rep. No. 1743, 95th Cong., 2d Sess. 1 (1978) (Congressman received foreign currency worth \$1000 from Korean national).¹

¹ Congressman Charles H. Wilson of California was also reprimanded for responding falsely to a questionnaire as part of the House's investigation into Koreagate that he did not receive anything of value in excess of \$100 when in fact he had. In the Matter of Representative Charles H. Wilson, H.R. Rep. No. 1741, 95th Cong., 2d Sess. 1-2 (1978). While the gravamen of the offense was this false representation to the Committee investigating charges of foreign gift giving, the Committee surely was punishing the underlying conduct sub silentio by its action, given the special charge of the House to the Committee to investigate whether Members accepted anything of value from the Government of the Republic of Korea. Manual of Offenses and
(continued...)

As the measure of more severe punishment, the Roybal matter is obviously distinguishable from this case. The conduct there was more serious than that involved here by at least one measure.

Gifts from foreign governments to Members are specifically prohibited by express textual constitutional provision. U.S. Const., Art. I, § 9, cl. 8 (no person holding office shall accept any present, involvement, office or title of any kind whatever, from any being, prince or foreign state). This provision, designed by the Framers to prevent "foreign influence of every sort," 3 J. Story Commentaries on the Constitution of the United States 216-17 (1833), was deemed so important that it was written into the Constitution itself. Despite the paramount place in the hierarchy of standards of conduct applicable to Members which an express constitutional prohibition occupies, the House imposed only reprimands on the offending Members. 124 Cong. Rec. H12820-12828, H13249-13261 (daily ed., Oct. 13, 1978). As to whether the inclusion of additional charges warranted increasing the sanction, some of these same Members also were charged with and found to have made false statements to the Committee. This conduct was found to have obstructed its own constitutionally conferred processes and which the Committee determined could constitute violation of the federal false statements statute, 18 U.S.C. § 1001. Manual of Offenses, supra, at 14. Indeed, the

¹(...continued)
Procedures, Korean Influence Investigation, 95th Cong., 1st Sess. 1 (Comm Print 1977).

Committee even discussed whether "a false statement by a Member . . . made during the course of this investigation should be the subject of criminal prosecution under . . . 18 U.S.C. § 1505 (prohibiting the obstruction of congressional committees)," *id.*, at 15 -- the congressional analogue to the section for which Congressman Biaggi was charged and convicted. The Committee concluded that reliance upon these statutes would be unnecessary since "a Member who willfully and knowingly makes a false statement to this committee or its staff in an attempt to impede or divert its investigation would breach traditional notions of basic ethical conduct and the requirement of "Rule XLIII (1) of the House of Representatives that a Member conduct himself at all 'times in a manner which shall reflect creditably on the House of Representatives.'" *Id.* at 15-16. Yet no Member received a sanction higher than reprimand for such conduct amounting to obstructing. There simply is no precedent for imposing a higher sanction on a Member for accepting gifts from a friend than for a Member accepting gifts from a foreign representative in the teeth of a constitutional prohibition, or for obstruction of a grand jury than for a Member obstructing the processes of the House's own constitutionally conferred disciplinary process during an internal investigation carried out pursuant to that authority. Indeed, in at least one case the Committee took no action against a Member convicted of bribery, perjury, conspiracy, interstate travel (Travel Act) and sentenced to 18 months in prison and fined \$25,000, United States v. Dowdy, 479 F. 2d 213, 216-17 (4th

Cir. 1973), and 3 Deschler's Precedents of the House of Representatives, ch. 12 § 15.3, H.R. Doc. No. 661, 94th Cong., 2d Sess. 192 (1977). There the conviction was reversed on appeal because the indictment charged and the proof submitted violated the speech or debate clause prohibition on the evidentiary use of legislative acts. Had the House acted, the basis for its action -- conviction -- would have been revised as well.

What cannot be overemphasized in determining the level of punishment are the Committee's own statements on the interpretation of the House gift rules: that Members should "be wary of gifts, entertainment, or favor[s] offered to them by persons not relatives or personal friends," Ethics Manual For Members, Officers, and Employees of the U.S. House of Representatives, 100th Cong., 1st Sess. 11 (1987) (emphasis added); that the rules are not intended to inhibit "normal social relationships," H.R. Rep. No. 1837, 95th Cong., 2d Sess. 11 (1980); and that, the Member need not fear the donor if "he does not believe that the donor of the gift has a direct interest in legislation." Ethics Manual For Members and Employees of the U.S. House of Representatives, 98th Cong., 2d Sess. 61 (1984) (emphasis added).²

² The staff report glosses over important interpretations of precisely who can be deemed to have a direct interest and has utterly failed to demonstrate how Meade Esposito falls within that class of persons or why Congressman Biaggi should have believed that Esposito was directly interested. The specific test for determining direct interest is whether the person retains a registered lobbyist or maintains a PAC, neither of which Mr. Esposito is alleged to have done. As to whether he has
(continued...)

As the trial record shows, Congressman Biaggi had a personal and political relationship with Mr. Esposito arising from common political ties long before the conferral of the gift of use of the spa facilities and worked on behalf of Coastal as a key member of the New York congressional delegation well before the gifts. These factors certainly mitigate with respect to the appropriate level of sanction.

The Committee is well aware of the differences between bribery and gratuity, Manual of Offenses, supra at 11-12, the latter not involving a direct quid pro quo, nor "corrupt" intent, United States v. Brewster, 506 F. 2d 62, 69. (D.C. Cir. 1974). The gravamen of the gratuity offense, unlike the bribery offense where official action is corrupted, is simply that additional "[p]ayments [are made] to a public official for acts that would have been performed in any event . . ." United States v. Campbell, 684 F. 2d 141, 148 (D.C. Cir. 1982). These important considerations must temper the disciplinary sanctions imposed on a Member acquitted on bribery, but convicted of gratuity.

Without minimizing the improper conduct found by the Committee to have been committed, comparative analysis further

²(...continued)
 an interest "above and beyond the general public interest," no facts suggest he falls into that category as previously defined by the Committee. See Manual of Offenses, supra, at 29. ("The test appears to be whether the donor would be personally (or officially), affected in some specific and definable way by the passage or defeat of legislation.")

supports the sanction of reprimand as commensurate with the offenses found.

The receipt of a gift or gratuity involves no misuse or misappropriation of appropriated monies -- offenses for which the House has imposed censure, In the Matter of Representative Charles C. Diggs, H.R. Rep. No. 351, 96th Cong., 1st Sess., Vol. I 17-18 (1979) (inflation of clerk-hire salaries to defray personal and official expenses of Member), or the misuse of travel funds provided for official business, H.R. Rep. No. 27, 90th Cong., 1st Sess. 31-32 (1967); Powell v. McCormack, 395 U.S. 493, 500 (1969), or the hiring of persons for salary not commensurate with his duties and for conversion of campaign funds to personal use, In the Matter of Representative Charles H. Wilson, H.R. Rep. No. 930, 96th Cong., 2d Sess. 11 (1980)³.

³ Representative Wilson was also charged with receiving a gift of \$10,500 from a person with direct interest in legislation. H.R. Rep. No. 930, supra, at 4. The severity of the punishment in the Wilson case, however, can be explained by the presence of other violations, including the misuse of clerk-hire funds in paying someone a salary not commensurate with the duties performed, and the conversion of campaign funds to personal use. The misuse of clerk hire -- absent here -- is clearly an aggravating factor under the precedents. In the Matter of Representative Charles C. Diggs, supra. While the report does expressly state, the offenses for which Representative Wilson was censured marked the second time he was charged and disciplined by the House, see H.R. Rep. No. 1741, 95th Cong., 2d Sess. (1978) (Korean influence investigation), the report did refer to these "second" offenses. H.R. Rep. No. 930, supra. The Committee concluded that the second offenses "were not directly related to the scope of the Korean Influence Investigation" and so they were not previously fully pursued. H.R. Rep. No. 930, supra at 1. The fair inference to be drawn is that had these offenses originally been pursued during the Korean Influence Investigation and been found to exist, perhaps the penalty of reprimand would have been deemed adequate.

Indeed, as one dissenting Member pointed out, the "misuse of tax dollars" has always been considered as warranting a higher penalty than for other rules violations. Id., at 13 (Rep. Rahall, dissenting).

As we have argued before in phase one, the appropriate measure of punishment for receipt of a gratuity under the statute or a gift under House rules should be measured against the unique backdrop provided by internal House rules. The statute prohibits receiving anything of value "otherwise than as provided by law," but a Member reading the Ethics Manual's admonitions against gifts from strangers, the permissible acceptance of personal hospitality and the policy underlying the rules not to interfere in "normal social relationships" could clearly construe gifts conveyed within these rules and interpretations as "provided by law." Certainly when the House acts to prescribe rules of conduct for its Members under its constitutional power to discipline, U.S. Const., Art. I, § 5, cl. 2, and to determine its rules, id., of which the Ethics Manual is one manifestation, it is making law just as it does when it passes a statute. Indeed, in one sense the House rules and the gratuity statute, if not read in this manner, are in stark conflict. H.R. Rule XLIII, cl. 4, specifically permits the receipt of gifts under specified circumstances for which 18 U.S.C. § 201(g) on its face provides no exemption, no matter what the value or whether it is conveyed as personal hospitality. "No one would want to label the casual Washington lunch a criminal act, much less authorize a

prosecution for one, but such a lunch clearly is a criminal act under the expansive view of the gratuity statutes. On the other hand, the Caribbean vacation, provided merely as a goodwill gesture, is not a crime under the restrictive view of these statutes . . . " Perry, The Fuzzy World of Illegal Gratuities, 3 District Lawyer 25, 30 (June/July 1979).⁴

The House should be reluctant to impose sanctions which imply that it is endorsing a standard inconsistent with its own rulemaking and interpretative authority, or that its ability to define what gifts are permissible as "provided by law" is circumscribed by the Executive branch's view of what constitutes illegal gratuities under the statute. Imposing a disproportionate sanction can only serve to encourage the Executive Branch to seek expansive use of the gratuity statute and constitutes interference in the House's internal affairs.

The offending gift here was use of a health spa. While gratuity convictions have been predicated on rather low level amounts, United States v. Arthur, 544 F. 2d 730, 733 n. 3 (4th Cir. 1976) (\$120 for postage stamps, \$25 greens fees, \$150 political dinner tickets, \$10 raffle tickets; \$400 political contributions to party dinner), United States v. Evans, 572 F. 2d 455, 466 (5th Cir. 1978) (\$500), the House has taken the amount involved and type of gift into consideration. In at least one

⁴ In this regard, it must be emphasized that the "gratuity" in this case was use of a health-club facility, hardly the type of gift about which the rules speak or that would make a Member particularly cautious.

case, the Committee imposed no sanction on a Member who "accepted gifts of transportation valued at \$285 in 1983, \$876 in 1984 and \$4,797 in 1985," From a person with a direct interest in legislation. Investigation of Travel on Corporate Aircraft Taken By Representative Dan Daniel, H.R. Rep. No. 470, 99th Cong., 2d Sess. 11 and 14 (1986).⁵

Under all the precedents which we have been able to review, reprimand is the most appropriate sanction for the conduct found to have been committed given in these circumstances.

The Obstruction Charges

The Committee has also recommended disciplinary action based on the telephone calls with Meade Esposito following the FBI interview of Congressman Biaggi because the calls establish an "intention . . . to impede a lawful Federal investigation." As previously discussed, Members have been sanctioned for false statements and declarations during the House's own investigation of alleged misconduct by Members. However, no sanction higher than reprimand has been imposed for such conduct, even when the same conduct evidenced substantive violations of rules, laws, or express constitutional prohibitions, see H.R. Rep. No. 1741, supra, and even when it was part of a "gifts" case.

⁵ Representative Daniel was not sanctioned on the ground that he took steps to "return" the gifts to the donor. Id., at 15. If this is the difference between a sanction imposed in one case, and no sanction in another where the amount of the gift in the latter far exceeds the amount in the former, it should be noted that Representative Biaggi too agreed to "return" the cost of the gift.

There are several reasons for imposing a less severe sanction for obstruction outside the House than for attempts to do so with respect the House's own functions. Just like the contempt power, which is designed to preserve the integrity of the legislative process, Kilbourn v. Thompson, 103 U.S. 168 (1881), the power to punish Members for "disorderly behavior," U.S. Const., Art. I, "is evidently given to enable each House to exercise its constitutional function of legislation unobstructed." H.R. Rep. No. 815, 44th Cong., 1st Sess. 2 (1876); 2 Hinds' Precedents of the House of Representatives § 1283 (1907). If preservation of the integrity of the legislative process is one of the primary purposes of the self-disciplinary power, then breaches of its process lay on a higher plane than breaches occurring outside the House. Moreover, the obstruction is not intimately cognate to the functions or duties of a Member of Congress, breaches in connection with which are subject to more severe treatment because they run to the office of a Member. United States v. Dowdy, 479 F. 2d 213, (4th Cir. 1973). This has been a distinction recognized in the law from time immemorial. In Marshall v. Gordon, 243 U.S. 521 (1917) the contempt of a witness for distributing outside the Congress an alleged defamatory letter to the Chairman of a Committee investigating the witness was deemed "extrinsic" to the discharge of its duties and related only to the presumed operation which the letter might have upon the public mind. Id., at 546. Because "the contempt relied upon was not intrinsic to the right of the House to

preserve the means of discharging its legislative duties" id., the contempt was held beyond the power of the House.

Likewise here, the offense is for conduct wholly extrinsic to the legislative and official duties of the Member and not to core functions incident to the office of a Representative.

The Disclosure Charges

The Committee staff finally recommended that Congressman Biaggi be sanctioned for failure to disclose the acceptance of gifts. Again, the precedents support a sanction of reprimand for such conduct. As the Committee has previously discussed,

If there is any discernible distinction between those rules offenses for which censure has been imposed and those for which the somewhat lesser punishment of reprimand has followed, it is that disclosure-related offenses have generally been confined to reprimand, even when the failure to disclose reveals a related violation of a substantive rule of the House concerning the appearance of conflict of interest embodied in, for example, the Code of Ethics for Government Service. In The Matter of Representative Robert L.F. Sikes, H.R. Rep. No. 1364, 94th Cong., 2d Sess. at 21 (1976). See also, In The Matter of Representative Edward R. Roybal, H.R. Rep. No. 1743, 95th Cong., 2d Sess. 1 (1978) converting a campaign contribution to personal use and giving false testimony under oath).

In The Matter of Representative George V. Hansen, H.R. Rep. No. 891, 98th Cong., 2d Sess. Vol. 390 (1984) (report of the special counsel on sanctions).

In the case of Representative Sikes, for failure to report substantial holdings as required by House rules and for investing in a Navy bank, the establishment of which the Member was promoting, the House imposed a reprimand. H.R. Rep. No. 1364, supra. In that case, the failure to disclose masked a continuing

pecuniary interest not the circumstances of this case. While Congressman Biaggi failed to disclose the gifts, those improper gifts do not constitute the kind of financial interest masked in the Sikes case, or the case of Representative Hansen, whose failure to disclose a \$50,000 loan by a Dallas bank, the pay-off of that loan by another, the receipt of \$87,000 from a silver transaction, and loans of \$135,000 to the Congressman from three non-constituents, masked a continuing financial obligation and relationship with the persons involved -- and yet only reprimand was imposed in those cases.

Other Sanctions Available to the House Supplemented Its Ability To Impose Reprimand For Gifts and Disclosure Grade Offenses

The House has great flexibility in calibrating the sanctions it can impose to appropriately fit the offense found to have been committed. The House no longer looks to reprimand, censure and expulsion as the only means of exercising its Article I, Section 5 power to discipline, as the Committee rules provide a broader range of sanctions, including fines, denial or limitation of rights, powers or privileges, and any "other sanction determined by the Committee to be appropriate." Comm. Rule 17(b)(1). Members have been denied committee chairmanships, H.R. Rep. No. 930, supra, and seniority. Powell v. McCormack, supra.

These additional penalties enable the House to "grade" its offenses with more particularity and correlation to the severity of the conduct, much the way the courts have graded offenses in sentencing.

Should the Committee determine that, despite the fact that reprimand has been the sanction imposed for the conduct involved here, reprimand is insufficient, it should utilize these supplementary means of punishment to, in effect, increase the penalty without having to reach the next level of punishment. So, for example, if the Committee is concerned about cumulative charges, this concern does not merit raising the sanction to the level of censure, but rather would warrant the additional elements, for example fine, suggested in the Hansen and other cases.

Conclusion

The rule violations found against Congressman Biaggi must be weighed against those in the House precedents. When that occurs, if other factors, such as making an example of Congressman Biaggi, are set aside, then the appropriate sanction in this matter would be a reprimand.

Respectfully submitted,

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By:

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Counsel for Respondent
Honorable Mario Biaggi

December 4, 1987

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 ----- X
4 UNITED STATES OF AMERICA, : CR 87-151
5 Plaintiff, :
6 -against- :
7 United States Courthouse
8 MARIO BIAGGI, : Brooklyn, New York
9 Defendant. : November 5, 1987
: 9:30 o'clock a.m.
10 ----- X

11 TRANSCRIPT OF MOTIONS AND SENTENCE
12 BEFORE THE HONORABLE JACK B. WEINSTEIN
13 UNITED STATES DISTRICT CHIEF JUDGE.

14 APPEARANCES:

15 For the Government:

16 ANDREW J. MALONEY
17 United States Attorney
18 BY: EDWARD A. MC DONALD
19 Attorney-in-Charge
20 Strike Force
21 and
22 LEONARD MICHAELS
23 Special Attorney
24 225 Cadman Plaza East
25 Brooklyn, New York

For the Defendant:

BARRY SLOTNICK, ESQ.
MARK M. BAKER, ESQ.
225 Broadway
New York, N. Y.

Also Present:

STEVEN R. ROSS, ESQ.
General Counsel to the Clerk
U.S. House of Representatives
B-105, The Capitol
Washington D.C.

20 1 sentence.

2 MR. SLOTNICK: Thank you.

3 As your Honor knows, by letter that I submitted to
4 the Court, I recently returned from a symposium on sentencing,
5 and alternatives. During that symposium I had some difficulty
6 with the term alternative because I just don't think that the
7 norm is prison and that everything else is an alternative.

8 I think your Honor has a wide range of sentencing.
9 It was a very interesting symposium and it presented all
10 branches of government and individuals in the private and
11 public sector. Naturally, the sentence was the subject of
12 some private conversation.

13 I would like the Court to know that there is no --
14 at least among the professionals -- a presumption of incarceration
15 because one wears the mantel of a Congressman. And I am
16 concerned about that factor in this case. I ask your Honor
17 to treat Mario Biaggi as a first offender and as you would any
18 other first offender under the circumstances.

19 The Probation Report states as follows, and I think
20 that it's important that I read this into the record to the
21 Court. And your Honor has had an abundance of opinions,
22 which I will refer to, but not repeat, because I know that you
23 read everything, Judge. And really my interest at this point,
24 Judge Weinstein, is that the defendant takes great pride in
25 his dedication to community service and legislative accom-

21 1 plishments during social welfare and our criminal justice sys-
2 tem. He has also been outspoken in connection with a number
3 of foreign policy issues and was nominated for the 1982 Nobel
4 Peace Prize for his efforts in Northern Ireland.

5 The defendant shared with the Probation Officer a
6 personal handwritten letter he received from Jim Wright. And
7 we do have authority to publicize that. Jim Wright, as your
8 Honor well knows, is the Speaker of the House. Jim Wright,
9 among others. And I know that your Honor has before you
10 hundreds of letters. And he was aware of the allegations and
11 was aware of the conviction, as well as anybody else was,
12 Judge, because, as your Honor well knows, the House of Repre-
13 sentatives is investigating this matter through the Ethics
14 Committee. And people in public office somewhat shunned or
15 disdained to right favorable things about individuals who
16 are convicted.

17 It is a -- I thought it would be a great act of
18 personal fortitude for a public official to come forward and
19 say, I know Mario Biaggi. He's been convicted of a crime. And
20 I ask your Honor not to send him to jail. Because there is
21 always the fear of their own personal criticism at some later
22 date.

23 Well, he's got to be a pretty special guy, Judge,
24 because you've gotten letters from people of all walks of life.
25 You've gotten letters from Congressmen. You've gotten letters

22 1 from other people of elected office. You heard the Junior
2 Senator from the State of New York on the witness stand, knowing
3 what he was accused of, candidly say, he's a good Congressman,
4 and I wish others were like him.

5 You heard from a major member of the opposition
6 party on this witness stand talk about Mario Biaggi, the Con-
7 gressman and the man, and he essentially said, he was my hero,
8 knowing of the allegations. And that said something. Because
9 your Honor well knows that when people are charged some of
10 their closest friends run away from them. And when they are
11 convicted, nobody comes near them. Not anybody in public life.
12 Unfortunately public life is somewhat strange and sometimes
13 devious. And sometimes artificial in terms of action and in
14 terms of the people in it.

15 We have some of our own artificiality which I will
16 talk to your Honor about. Jim Wright wrote after the convic-
17 tion, the defendant is praised for his deeds of courage and
18 selfish service over the years.

19 The Speaker encouraged the defendant to hold his
20 head high, and this is a quote from his note.

21 To Mario.

22 Hold your head high secured in the knowledge that
23 many of us know you for the strong and decent man that you are
24 and always have been.

25 That was not a solicited comment. That was a remark

22a₁ by someone who clearly knew and understood the importance,
2 the decency and dedication of Mario Biaggi in terms of his
3 office as a Congressman.

4 (continued on following page.)
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EASTERN DISTRICT COURT REPORTERS
UNITED STATES DISTRICT COURT
229 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

1 MR. SLOTNICK: (Cont'g.) I found out a lot about my
2 client in a very condensed period of time and I found out about
3 him, Judge, from the people that I met on the street. This is
4 an important factor. From the people that didn't write letters
5 to your Honor, from the person who walked over to us this
6 morning as we were having a cup of coffee and looked at the
7 Congressman with tears in his eyes and said, good luck. I hope
8 the judge does the right thing. Good luck.

9 And he just walked away. He never met or had known
10 Mario Biaggi before.

11 If I told your Honor Mario Biaggi stories we would be
12 here for three days. The first time that I ever went to his
13 office my driver said, that's the Congressman. You know, my
14 friend had a problem with social security. He walked in and
15 three weeks later it was straightened out.

16 Do I have to tell about the cab drivers? And I guess
17 you have gotten twenty cab drivers' letters.

18 The cab driver who said to me, you're that lawyer who
19 represents the Congressman. You know what? My cousin had a
20 problem and walked in and there he was in the office and he
21 took care of him. And the cab driver who told me that -- and I
22 think your Honor has a letter -- if not for Mario Biaggi's
23 intercession his son wouldn't have gone to college and he
24 wouldn't have been aided. And he doesn't even live in his
25 district.

1 I ask that your Honor consider those letters to
2 account for almost everything. There aren't too many people
3 that I know that could engender such letters in such a
4 generous, outpouring of support by people who have lots to lose
5 by supporting a convicted felon.

6 His history.

7 So that we have now gone through the letters and I
8 hope that the pages flip by in your Honor's mind because they
9 have some meaning and they've got to. The fact that we know he
10 was the most decorated police officer; the fact that he
11 received the Medal of Honor; the fact that he grew up out of
12 abstract poverty; the fact that he was able to obtain a
13 scholarship to New York Law School; the fact that he became a
14 lawyer; and the fact that he's been a Congressman for two
15 decades in shining distinction is somewhat important.

16 Both before this indictment came and after, and after
17 the conviction of the counts, three counts, I have had
18 opportunity to speak to senior citizen groups. I guess one of
19 my hobbies is to bore people, but I get invited and I go.

20 Judge, there isn't a senior citizen group that doesn't
21 put Mario Biaggi first on their agenda. Because if there is
22 anybody who's done anything for the aging in this country, it
23 is this man who sits on my right. I'm talking about all the
24 good things and I'm going to be telling about the public things
25 because part of what I expect to hear from the government is

1 about sending out public messages. And I understand the public
2 messages that have to be sent out of this court, and about
3 corruption.

4 And I trust, your Honor, that the evidence in this
5 case was indicative of the fact that Mario Biaggi would have
6 helped Coastal Dry Dock with or without the intercession of
7 Meade Esposito. He helped Coastal Dry Dock in 1982 and
8 everybody helped Coastal Dry Dock. And he would have helped
9 Coastal Drydock because Montanti came to him. And he would
10 help Coastal Dry Dock because that's the way he was. He had an
11 interest in the Merchant Marine Committee.

12 And I dare say, Judge, anybody in this courtroom who
13 went to Mario Biaggi for help, would have been helped if he
14 felt it was proper and appropriate. And I believe he felt that
15 that was proper and appropriate.

16 The public and their perception-- the public knows and
17 especially his constituents, they are aware of this trial. It
18 was covered, your Honor, on a daily basis. They are aware of
19 the allegations and they are aware of the conviction.

20 Last weekend I by chance met my client at a funeral.
21 I didn't know whether he was going and I didn't even suggest it
22 because he has suffered public humiliation and shame, believe
23 it or not. But I went to the funeral for the District Attorney
24 of Bronx County and my client came too. And at this very, very
25 sad occasion, in a very inappropriate manner, but maybe

1 somewhat important for the Congressman, the people in the
2 streets looked at him and they saw him. They saw the pain.
3 They saw the suffering and agony. If anybody thinks that he
4 hasn't gone through pain and suffering agony as a result of
5 this, they are either purposely malicious or they have their
6 head in the sand.

7 The people in the street applauded for him. That was
8 wrong. It was a funeral. But they love him because of what
9 he's done for them. I dare say, in spite of this conviction
10 there has been rarely a Congressman in history who has been
11 able to stump the streets and help his people.

12 And again, your Honor has letters from people who
13 don't live in his district, from people whose votes he wasn't
14 looking for. That's his nature.

15 The government talks about being artificial and about
16 flippant comments to the press. And they relate a flippant
17 comment. Well, let me give you the background of that flippant
18 comment.

19 Aside from the allegations and aside from the
20 difficulties of the trial, there were very severe personal
21 allegations. There were horrible, horrible revelations of a
22 private life that the Congressman never wanted, the Congressman
23 never wanted anybody to know. But they were to find out. The
24 same theory on June 2 when the P.B.I. visited him they were to
25 find out.

1 I guess the First Amendment allows the press in this
2 country to report properly and appropriately what he thinks is
3 news until the name of Barbara Barlow was spread across every
4 newspaper in this country.

5 In spite of that fact, with the great show of support
6 his wife publically stood by him. And they will resolve this
7 issue. His children came to court every day. And I don't know
8 whether your Honor noticed them or not, they sat in that corner
9 on each and every day. They support their father.

10 The day of the flippant comment was the day of the
11 conviction. And I know my client -- well, I am going to say it
12 anyhow. One of the first things he said to me, smile and look
13 strong. I don't want my children to know the ultimate effect
14 this will have upon me.

15 We sat in the office and he was like a man of steel.
16 He sat with his children and he told them about the appeal, and
17 the errors, and the inconsistencies, and the repugnancies, and
18 the verdict, and how not to worry. It will all be okay. And
19 tonight, tonight was the dinner in which your mother is being
20 honored and we are all going.

21 Then a reporter came and he said, we have to be
22 happy. We have to be proud. And when he went into the other
23 room to speak to the reports for a moment he practically fell
24 apart. And that's in the article, too.

25 That's the artificial account of that. There is no

1 propensity here.

2 He just celebrated his 70th birthday. He's a young
3 man at 70. His health is failing. And it's important that
4 your Honor understands that too. He doesn't show it. He
5 suffers a disability for the major part of his life. And in
6 spite of that disability, Judge, he was a very honorable and
7 proud man.

8 I ask your Honor to sentence the man, to sentence what
9 he has stood for, and most of all, in terms of the public and
10 all of the messages that the government is going to ask you to
11 send out, not to break the hearts of those who are going to get
12 that message because he's a very special person.

13 And I think that if your Honor wants to send out a
14 message, one of the messages is that special people are treated
15 in special ways. And when I say special, I don't mean because
16 he's an elected official and he's the senior member of the New
17 York Delegation, I mean because he's worked himself to
18 dedication on behalf of his people, on behalf of his
19 constituents, on behalf of anybody.

20 And that's what made him very special. It is very
21 special to be a Congressman from the point of view of being a
22 public servant. But he's a very special person for what he's
23 done on behalf of his constituents and everybody else.

24 His history speaks for itself. Consider his history,
25 his present circumstances, the public requests of a court from

1 the strangest places, his work on behalf of his constituents
2 and the people, his age, his health, and the fact that even at
3 this late stage he is supported by his friends and colleagues
4 who have not seen fit to abandon him.

5 I trust one thing that is important. It is that
6 whatever he did and whatever actions were exhibited in this
7 case, he would have done anyhow, Judge. I think I mentioned it
8 briefly and I think it's important to mention it again, it was
9 the Bonaventure spa that he was going to and it was the act of
10 faith that Meade Esposito had a house on that premises.

11 Otherwise he wouldn't have called Meade and he would
12 have continued to do what he did on behalf of Coastal.

13 It is in your hands, your Honor. I presume there are
14 are no presumptions in this world and I hope your Honor
15 understands what the others have to say and the proper message.

16 Thank you, Judge.

17 THE COURT: Thank you.

18 Do you want to add anything, Congressman, to what your
19 counsel has said?

20 THE DEFENDANT: Yes, I would like to.

21 Someone said, by appearing strong you show no
22 remorse. There is no one more remorseful in this world than
23 I. I think about how it was, at the end of my career, long
24 life, hard work, asendancy, member of Congress, enjoying
25 respect from every quarter, loved by devoted -- devoted wife

1 and loving family and countless friends. With an absolutely
2 unblemished career after 51 years of public service in the post
3 office, the police department, until the Rockefeller
4 Administration, 19 years in Congress, absolutely unblemished.

5 That just didn't happen. It happened because I was
6 raised right. I was raised by two plain folks who told me,
7 always do the right thing, myself and my two brothers.

8 My father who was a decade ahead of his time advocated
9 human civil rights when it was heresy. Respect and dignity, he
10 said. That's what we-- those are the lessons that were
11 inculcated into our being. That's how we conducted ourselves
12 over a lifetime.

13 Do the right thing. Respect and dignity in dealing
14 with human beings.

15 And then like a blow from a bolt of lightning a whole
16 lifetime is in peril. Destroyed. My family, they have been
17 marvelous.

18 My wife of 46 years, a noble lady who understands we
19 have a renewed commitment of even stronger quality than the
20 past. A lady who was stricken about a year ago today with
21 Hodgkin's disease. In my mind I have a deep sense of guilt
22 with relation to that. She was caring, as my children were.
23 In my own mind that precipitated her illness. She will not
24 fully recover.

25 It drained us, tapped and diminished. But she's

1 there, as my family and many of my devoted friends.

2 Only one dimension. I have a constituency, your
3 Honor, that I love and they in turn have demonstrated their
4 feelings for me. Election after election, 95 percent, 94
5 percent, 93 percent. Even after this initial investigation
6 and the press hammering away, I received 90 percent. I was
7 concerned about that constituency, concerned about what they
8 thought about me.

9 Did I betray their trust?

10 Did I do something wrong?

11 I don't think they think so. But certainly as a
12 result of the newspapers' activities perceptions developed that
13 maybe I did.

14 Your Honor, the only wrong thing I did, as it
15 developed, was to accept the personal hospitality of an old and
16 dear friend. It was argued that he was not my friend. He was
17 a political friend. Well, perhaps so as a Genesis. But it
18 developed into an old and dear -- the birds and bees knew it.
19 The people in all our communities know it. Meade Esposito is
20 my friend. He was my friend, is my friend to this very day.

21 It was always a delight to be in his company. He
22 would regale you with stories and there were all people about.
23 He would entertain presidents, govonors, mayors, senators, a
24 whole host of people.

25 And well, his present hospitality -- in my heart, your

1 Honor, in my very heart, I didn't do anything wrong. Because I
2 know and I know he knows that he couldn't -- that I couldn't
3 and I wouldn't be effected in my official actions by any such
4 hospitality.

5 It boggles my mind. I sat through a trial
6 bewildered.

7 Why am I here?

8 What did I do wrong?

9 Oh, I know the government did its job. They saw it
10 from another perspective. But I know within myself, what did I
11 do wrong?

12 I am not saying that my relationship with another
13 person is of the greatest, highest sense, but that is another
14 story. That is not where we are at. I spent a lifetime
15 serving the people. All those years when I was in the post
16 office I was captain of the subs because I could administer to
17 their needs and help them.

18 As a young man I was the PBA delegate, when policemen
19 still wore celluloid collars, many of whom spoke with a
20 brouge. But they elected me. They had confidence in me. Then
21 I became the first vice-president of the PBA. I guess the
22 youngest vice-president they ever had. All I ever did was
23 help, help my colleagues. It's been my life. That's the
24 product of being raised by two wonderful folks and the lessons
25 I have learned.

1 Mr. Slotnick made reference to some flippanant remarks
2 in talking to those -- Mr. McDonald stated, widely spread in
3 the news that I was corrupt for many years. I've never been
4 corrupt. I said 51 unblemished years of public service. That
5 tells the story. It is not to be denied. Wounded ten times in
6 the line of duty. One of those injuries retired me.

7 Also said I didn't realize the gravity of the
8 situation, the consequences of my acts because after -- after
9 the -- after the verdict I was interviewed and I said with
10 relation to bribery and conspiracy, I was innocent coming in;
11 I am innocent going out.

12 As far as the other three charges, they will be dealt
13 with by my attorneys and motions before the judge. That's a
14 right that I have, any individuals has. I don't understand
15 that remark. There wasn't any joy, no jubilation.

16 But Mr. Slotnick was right to tell -- I told my
17 children to help them. Let's get together. Don't cry.

18 I recall when they were children I used to line them
19 up and play games with them. And I said, you are not supposed
20 to cry. You're a Biaggi. They couldn't help it. I couldn't
21 help recall that experience. And I said purportedly, I am
22 proud.

23 They said, my connection with the criminal justice
24 system. I never thought I would hear that purportedly. I
25 never thought I would hear that from anyone in my life.

1 People, policemen all over the country and all over
2 the world know of my history and my exploits and what I have
3 been doing for them for 19 years. I -- all offer the country
4 on behalf of the policemen I speak.

5 Aside from my police work which I told you, most of
6 the time on the street.

7 In the Congress, I was responsible -- I say,
8 responsible -- I was in the forefront of the death benefits
9 bill for the public safety officers killed in the line of
10 duty. It passed. They were trying to give fifty thousand to a
11 hundred thousand. I introduced it on their behalf and
12 introduced my own bill just two weeks ago. We fought six years
13 against the NRA to eliminate the cop killer bullet. No one
14 ever defeated them. It wasn't easy. I was vilified in many
15 editorials throughout the country. We received some support
16 too, of course. We passed it.

17 I was the author of legislation never to create a law
18 enforcement memorial. It was killed in the -- to be killed in
19 the -- in serving and a host of other things.

20 To say that I purportedly -- I am proud of my 23 years
21 in the police department. They are the proudest of my life.
22 It still boggles my mind how I -- the trip, paid by an old and
23 dear friend can be construed to be what it was -- I worked for
24 Coastal. I worked for hundreds of businesses. Direct to --
25 the record is replete with that. I worked for thousands of

1 people. The records are replete with that. Sometimes we have
2 been successful. Other times we haven't been. But we always
3 have been genuine.

4 And you heard, your Honor, that people came out
5 from -- out of the district. They came from all of the -- all
6 over the world to my office, especially during the war when
7 they were members -- servicemen being poorly treated by the
8 military. As a result of that the Military Justice Reform Act
9 developed. Books were written about the activities, my
10 activities in going to the various camps and being able to get
11 in.

12 I remember Jane Fonda campaigning against the
13 military. She wanted to destroy the military from her
14 perspective. She wanted to know how I got in and called me
15 several times.

16 I was cited at that time. I had a principal purpose,
17 to correct the conditions so that when people crossed the
18 threshold they didn't become second-class citizens.

19 How this simple act by an old friend can be construed
20 to be anything else -- I did all of these things not to enrich
21 myself. We -- we live kind of a moderate -- lived in a rent
22 controlled apartment until two years ago. The ironic part of
23 it is, I have never been in a better financial condition than
24 the last couple of years.

25 I heard a witness testify that I invested some money

1 thirty years ago. Twelve thousand dollars. And it produced.
2 We sold the properties. You don't have to be a genius to sell
3 property today in Manhattan. But my financial manager did
4 that.

5 And I am going to jeopardize a career, a life for a
6 pittance?

7 I don't know what I am doing your Honor.

8 Thank you.
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