

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**UNITED STATES OF AMERICA** )  
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 )  
 v. )  
 )  
**KEVIN A. RING** )  
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 )  
 Defendant. )

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**No. 08-CR-274 (ESH)**

**KEVIN A. RING’S MOTION FOR JUDGMENT OF ACQUITTAL**

Pursuant to Federal Rule of Criminal Procedure 29(c), Kevin Ring respectfully moves this Honorable Court to enter a judgment of acquittal notwithstanding the verdicts on counts 1, 2, 3, 7 & 8. This motion incorporates all grounds for acquittal previously raised in Docket Entries 108, 143 & 155, although its focus is on new issues relating to the jury’s verdict and the evidence presented during the second trial. This motion is based on the accompanying memorandum of points and authorities, the First, Fifth and Sixth Amendments to the United States Constitution, and any other authorities that the Court deems relevant to this motion.

Respectfully submitted,

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Dated: December 15, 2010

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>v.</b>	)	<b>No. 08-CR-274 (ESH)</b>
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<b>KEVIN A. RING</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**KEVIN A. RING’S MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR JUDGMENT OF ACQUITTAL**

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Pursuant to Federal Rule of Criminal Procedure 29(c),<sup>1</sup> Kevin A. Ring respectfully moves this Honorable Court to enter a judgment of acquittal notwithstanding the verdicts on counts 1, 2, 3, 7 & 8.<sup>2</sup>

**Introduction**

This jury was the first in the United States to determine whether a registered federal lobbyist committed honest services fraud for conduct that was, under any view of the evidence, intricately intertwined with legal lobbying efforts. These efforts included campaign contributions to powerful public officials, policy arguments, old-fashioned begging -- and hospitality in the form of free meals and tickets, accepted tools of the lobbying trade widely distributed by scores of lobbyists in Washington D.C. (circa 2000-04). The government's theory

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<sup>1</sup> By separate motion, Mr. Ring has also moved in the alternative for a new trial in the interests of justice, pursuant to Rule 33(a).

<sup>2</sup> By focusing his arguments on particular deficiencies, Mr. Ring does not suggest that these are the only deficiencies in the case. Mr. Ring has previously moved for a judgment of acquittal on all elements of all counts, and the Court has made clear that all legal objections raised in this trial and the last have sufficed to preserve such claims for the purposes of appellate review, should such review become necessary. Tr. 11/3/10 (a.m.) at 47:9-48:6; 11/3/10 (p.m.) at 2:8-10; 12:14-14:19; 10/29/10 (p.m.) at 80:1-3. As Mr. Ring has pointed out in earlier filings, the government's materiality showing and its failure to prove the breach of a fiduciary duty by a public official were particularly deficient. See *United States v. McGeehan*, 584 F.3d 560 (3d Cir. 2009). Because Mr. Ring has already briefed these issues extensively, however, he will not repeat those arguments here.

was that, at the same time he was making campaign contributions and engaging in other legal lobbying activities, Mr. Ring provided some of the public officials he lobbied with meals and tickets over a four-year period pursuant to *quid pro quo* bribery agreements. The jury's novel task was to separate the campaign contributions and the legal lobbying from the disputed meals and tickets, and to determine whether the government had proven the requisite elements of bribery under the standards set forth in *United States v. Skilling*, 130 S. Ct. 2896, 2931 (2010).

To have a group of lay jurors fairly and rationally untangle the constitutionally-protected conduct from the rest of the evidence would have been difficult under any circumstances. But the jury's task was made infinitely more difficult here because of the absence of any testimony from public officials allegedly involved in this *quid pro quo* scheme, who could have elucidated their communications with Mr. Ring in a way that would have allowed jurors to rationally credit or reject the existence of a *quid pro quo* agreement. Not only was such testimony lacking, but jurors themselves never heard that three potential public official witnesses (John Albaugh, Robert Coughlin and Ann Copland) had rejected the government's theory of a corrupt agreement to exchange meals and tickets for official acts despite facing imminent sentencing hearings that provided ample incentive to support the government's allegations.

In place of these percipient witnesses, this jury was forced to rely largely on the speculation of cooperating witnesses Todd Boulanger and Neil Volz about the supposedly "corrupt" nature of Mr. Ring's relationships with public officials. But even these highly-motivated witnesses could not describe a single communication between Mr. Ring and a public official from which a *quid pro quo* agreement could fairly be inferred, and generally lacked any percipient knowledge of Mr. Ring's relationships with these public officials altogether. *See, e.g.*, DE 204 at 3-4 (government conceding that Mr. Boulanger lacked percipient knowledge of Ring-

Doolittle relationship). Jurors were accordingly left to determine whether an implicit *quid pro quo* could be inferred from isolated phrases in Mr. Ring's emails (many of which related to campaign contributions and/or were directed to individuals the government never suggested were even part of the scheme), testimony from government witnesses about joking conversations they had with Mr. Ring related to campaign contributions,<sup>3</sup> and the bare fact of gifts of meals and tickets made around the same time he was successfully lobbying public officials using a variety of other unquestionably legal lobbying tools.

As a matter of law, the government's evidence presented during the second trial was insufficient to withstand objective scrutiny as a bribery case. The absence of testimony describing communications between Mr. Ring and the public officials from which a *quid pro quo* could fairly be inferred should have proven fatal to its case, as the rational inference of a *quid pro quo* cannot arise from "baseless speculation by a cooperating witness."<sup>4</sup> That label, however, aptly describes the government's evidentiary presentation here.

As the defense predicted before the first trial, however, this presentation, while legally defective, carried a considerable potential to create a miscarriage of justice. This potential was itself heightened by the skillful tactics, discussed in detail in the accompanying new trial motion, the government used to obscure the applicable mental states required for conviction, ultimately erasing any legal guidance on intent that the Court attempted to provide. At the end of the day, it was virtually inevitable that the "implicit *quid pro quo*" standard, when combined with abundant

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<sup>3</sup> Mr. Boulanger testified that Mr. Ring had a running joke in which he would hold up large campaign contribution checks and say "[h]ello quid, [w]here's the pro quo?" Tr. 10/28/10 (p.m.) at 22:2-13. This "running joke" about campaign contributions was not only a featured part of the government's closing argument, Tr. 11/4/10 (p.m.) at 7:4-5, but was also featured in the government's press release celebrating the jury's verdict. Exhibit 1.

<sup>4</sup> *United States v. Goyal*, No. 08-10436, 2010 U.S. App. LEXIS 25223 at \*26 (9th Cir. Dec. 10, 2010) ("baseless speculation by a cooperating witness is not proof of fraudulent intent").

and confusing evidence of campaign contributions and legal lobbying, and mixed with the government's successful efforts to water down the governing legal standards, would result in a jury that that considered itself empowered to put our campaign finance and legal lobbying systems on trial. This is why the defense argued that evidence related to the campaign contributions and fundraisers should be excluded altogether, DE 82 at 7, warning that to permit jurors to consider such evidence would "lead[] the Court down an unsustainable path in violation of clear guidance from the Supreme Court." DE 82 at 2. And this is why the defense argued that, once the Court decided to admit the campaign contribution evidence, only an explicit *quid pro quo* standard could sufficiently protect Mr. Ring from a conviction based merely on juror disapproval of his constitutionally-protected campaign contribution and legal lobbying activity. DE 159 at 15-16.

Nonetheless, over defense objection, these counts were sent to jurors with only an implicit *quid pro quo* standard to guide them. The resulting verdicts serve as a testament to the insufficiency of the implicit *quid pro quo* standard in rationally guiding the deliberations of lay jurors in cases replete with core First Amendment activity. Indeed, on the last day of deliberation prior to their verdict, jurors returned a note evidencing their failure to understand the line between legal and illegal gifts. DE 223; Tr. 11/11/10 at 2:10-12. And if there were any doubt, jurors' post-verdict comments to the media confirm they struggled to draw a know-it-when-I-see-it line between "a right way to do things and a wrong way to do things"<sup>5</sup> rather than search for proof of *quid pro quo* bribery.

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<sup>5</sup> "Several jurors said in interviews after leaving the courtroom that they didn't know much about how lobbying worked before the case, but prosecutors convinced them Ring had crossed the line. 'There's a right way to do things and a wrong way to do things,' said retired postal worker Tom Bandy." Nedra Pickler, *Ring Convicted on 5 Counts of Bribery*, Associated Press (Nov. 15, 2010), *found at* [http://news.yahoo.com/s/ap/20101116/ap\\_on\\_bi\\_ge/us\\_abramoff\\_ring\\_4](http://news.yahoo.com/s/ap/20101116/ap_on_bi_ge/us_abramoff_ring_4) (Attached as Exhibit 2).

(footnote continued on next page)

The conviction on Count VII, which is premised on an email between Mr. Ring and Mr. Albaugh (discussing, in part, campaign contributions and indisputably legal lobbying efforts)<sup>6</sup> exemplifies this juror confusion and irrationality. As an objective matter, it is fundamentally irreconcilable with the acquittals on the other three counts involving emails with Mr. Albaugh (Counts IV through VI). No party to this litigation ever sought to distinguish among the Albaugh counts or to suggest the particular email that forms the wiring predicate for Count VII involved distinctive *quid pro quo* language. The government, in fact, not only disclaimed any difference in the counts involving Mr. Albaugh, it argued to the jury that there was no functional difference among any of the counts at all.<sup>7</sup>

There is no legitimate or rational basis for these verdicts, which find no support in the evidence. They can be explained by juror susceptibility to rampant witness speculation, the unpopularity of our system of campaign financing and legal lobbying, and repeated efforts to minimize what it was the government needed to prove. But they cannot be defended on those grounds, and they serve as precisely the sort of speculative, outlier verdicts that Rule 29 is designed to remedy. Under *Skilling*, the resulting convictions (including the conviction for

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(footnote continued from previous page)

<sup>6</sup> The indictment describes the email that is the subject of Count VII by specifically referring to fundraising activity: “On or about January 13, 2004, defendant RING sent Albaugh an email in which defendant RING offered to host another fundraising dinner for Representative 4 and asked about a bill in the U.S. Senate and Representative 4’s office’s relationship with the U.S. Department of the Treasury.” DE 2 at 14 ¶ 56.

<sup>7</sup> “Counts IV through VII are based on e-mails between Kevin Ring and John Albaugh . . . Each count is part of the same scheme to defraud, but simply reflects a time there was an e-mail or wire transfer that crosses state lines in furtherance of the overall scheme. There was not a Coughlin scheme, there was not an Albaugh scheme, there was not a Doolittle scheme. There was only one scheme to corrupt public officials. And they were all targeted by Team Abramoff as part of this scheme. And the fact that four counts relate to John Albaugh doesn’t mean that he was a more important person in the conspiracy. It simply means that there are four e-mails related to him.” Tr. 11/04/10 (am) at 17:11-25.

conspiracy to commit honest services, which was infected by all of these same problems) must be vacated, notwithstanding the jury's verdict. In addition, for the reasons stated below, the remaining convictions must be vacated and a judgment of acquittal entered in Mr. Ring's favor.

**I. THE COURT SHOULD GRANT A JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICTS ON COUNTS 1, 2, 3, 7, & 8**

Viewing the evidence in the light most favorable to the government, the jury's verdicts of conviction on counts 1, 2, 3, 7 and 8 must be vacated. The Court should accordingly grant a judgment of acquittal under Rule 29(c) on these counts.

**A. The Governing Legal Standard**

Federal Rule of Criminal Procedure 29(c)(2) provides that "If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." When considering whether to grant a motion for judgment of acquittal notwithstanding the verdict, the Court "must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *Bailey v. United States*, 416 F.2d 1110, 1112 (D.C. Cir. 1969) (quotations omitted). The Court "must view the evidence in the light most favorable to the verdict, and must presume that the jury has properly carried out its functions of evaluating the credibility of witnesses, finding the facts, and drawing justifiable inferences. A verdict will be overruled only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt." *United States v. Campbell*, 702 F.2d 262, 264 (D.C. Cir. 1983) (affirming grant of judgment of acquittal notwithstanding verdict on gratuity charge). That being said, "the trial court has a responsibility to the criminal justice system to grant a defendant's Rule 29(c) motion when the jury has no

evidentiary basis for its action.” *Id* at 267. That last standard describes exactly what took place here, which is why this Court should grant motion for judgment of acquittal.

**B. The Court Should Grant A Judgment of Acquittal on the Honest Services Fraud Counts Because the Government Supplied No Evidence of an Explicit *Quid Pro Quo* and No Juror Could Infer an Implicit *Quid Pro Quo* Without Evidence of Communications between Mr. Ring and a Public Official**

For each of the three honest services fraud convictions, the governing law clearly requires a showing of bribery. *United States v. Skilling*, 130 S. Ct. at 2907. This showing “draws content not only from the pre-*McNally* case law, but also from federal statutes proscribing -- and defining -- similar crimes.” *Id.* at 2933-34. Notably, there is no pre-*McNally* analogue to the prosecution of a federal lobbyist based on gifts of local meals and tickets provided to public officials, particularly under circumstances where any gifts of meals and tickets were inextricably intertwined with both campaign contributions and legal lobbying efforts, so the content for this prosecution must be drawn solely from the federal bribery law.<sup>8</sup> As to that law, the Court of Appeals has made clear that such a showing of bribery requires demonstration of a two-way exchange as involving a “promise” or “commitment” from the public official to perform official acts in exchange for a thing of value. *United States v. Orenuga*, 430 F.3d 1158, 1166 (D.C. Cir. 2005) (emphasis added) (in a bribery case, “the illegal conduct is *taking or agreeing to take*

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<sup>8</sup> It is the defense position that, after *Skilling*, such a novel use of the honest services law is not permitted. Lobbyist gifts of meals and tickets to public officials have been widely documented in the media, both in Washington and elsewhere. Jeffrey Birnbaum and Thomas B. Edsall, *Hill Gift Limits Often Exceeded, Lobbyists’ Records Show*, Washington Post (Jan. 1, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/31/AR2005123100719.html>; Thomas Heath, *After Abramoff, Nats Fear It’s Out With the Hill Crowd*, Washington Post, Mar. 28, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/27/AR2006032702036.html>; and see Nicholas W. Allard, *Lobbying is an Honorable Profession: The Right to Petition and the Competition To Be Right*, 19 Stan. L. & Pol’y Rev. 23, 31 n.20 (2008) (describing lengthy history of similar lobbyist hospitality). As a result, one would think that there would have been at least one similar pre-*McNally* prosecution if such conduct were truly within the “core” of the honest services law that survived *Skilling*. Simply labeling such conduct as “bribery” twenty years later does not make it such.

*money for a promise to act in a certain way*”); *United States v. Schaffer*, 183 F.3d 833, 841 (D.C. Cir. 1999) (“[B]ribery requires a *quid pro quo*, and accordingly can be seen as having a two-way nexus.”).

In cases where fundamental First Amendment interests are at stake, an even stricter standard applies -- the government must prove an explicit *quid pro quo* agreement. That was the teaching of the Supreme Court’s decision in *McCormick v. United States*, 500 U.S. 257, 272 (1991). In fact, the importance of applying an explicit *quid pro quo* standard in honest services fraud prosecutions was recently reaffirmed when the Supreme Court granted certiorari and vacated the Eleventh Circuit’s opinion in *United States v. Siegelman*, 561 F.3d 1215 (11th Cir. 2009), for reconsideration in light of *Skilling*. *Siegelman v. United States*, 130 S. Ct. 3542 (U.S. 2010); *Scrushy v. United States*, 130 S. Ct. 3541 (U.S. 2010). The question presented in the *Siegelman* petition for certiorari argued that the Eleventh Circuit had improperly diluted the *McCormick* standard in an honest services fraud case involving campaign contributions. The Supreme Court’s order casts considerable doubt on the Eleventh Circuit’s analysis,<sup>9</sup> suggesting that a rigorous version of *McCormick*’s “explicit *quid pro quo*” requirement will apply in post-*Skilling* honest services fraud prosecutions in which the alleged bribery is intertwined with core First Amendment activity. *See also United States v. Whitfield*, 590 F.3d 325, 348-49 (5th Cir. 2009) (assuming *McCormick* applied in case where proof consisted in part of loan guarantees provided to judges “in the context of . . . electoral campaigns”).<sup>10</sup>

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<sup>9</sup> The Supreme Court’s grant, vacatur and remand (GVR) suggests “a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996).

<sup>10</sup> Mr. Ring raised the explicit *quid pro quo* issue twice before trial, once in connection with the motion for judgment of acquittal and later in a request that the Court reconsider its jury instructions. DE 159 at (footnote continued on next page)

The same principles should apply here. The government's case rested heavily on Mr. Ring's statements made in connection with campaign contributions and fundraisers, which themselves carry the First Amendment protection that triggered the *McCormick* ruling. If such evidence was admitted at all (which the defense contended it should not be), the government should have been forced to meet the explicit *quid pro quo* standard in compliance with *McCormick*'s mandate.

The rest of the government's case was replete with other legal lobbying activity. Indeed, this evidence was so prevalent that the prosecutor was forced to concede in closing argument that "Kevin Ring sometimes lobbied with policy arguments, political pressure, campaign contributions and other legitimate tools," Tr. 11/04/10 (a.m.) at 23:9-11, and the Court excluded as cumulative evidence of Mr. Ring's many lobbying relationships that were concededly legal. But precisely because the presentation to the jury was inextricably intertwined with abundant legal lobbying activity, which itself enjoys constitutionally-protected status under the First Amendment,<sup>11</sup> an explicit *quid pro quo* standard should have applied even if all evidence of campaign contributions had properly been excluded.

In declining an earlier defense request for imposition of an explicit *quid pro quo* requirement, this Court focused narrowly on whether lobbyist hospitality itself is afforded First

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15-16. After the Court rejected his argument, Tr. 8/5/10 at 30-31, 54, Mr. Ring did not raise the issue again during final jury instructions, after the Court requested that such issues not be re-raised and made clear that they were already considered to be preserved. Tr. 10/29/10 (p.m.) at 80:1-3.

<sup>11</sup> *United v. Harris*, 347 U.S. 612 (1954); *American Civil Liberties Union v. New Jersey Election Law Enforcement Com.*, 509 F. Supp. 1123, 1128 (D.N.J. 1981); *see generally* Allard, *supra* note 5, at 39-42 (discussing various aspects of constitutional "right to lobby" protected by First Amendment).

Amendment protection.<sup>12</sup> But that mode of analysis cannot be squared with *McCormick*'s, which imposed an explicit *quid pro quo* requirement in a case involving a state legislator's receipt of envelopes of cash that he never reported as campaign contributions. If the narrow form of the gift were all that mattered, then these envelopes full of cash should not have triggered any extra First Amendment scrutiny, since there is certainly no constitutional right to hand envelopes of \$100 bills to public officials that are never reported as campaign contributions. *McCormick*, 500 U.S. at 260. But the Supreme Court in *McCormick* looked beyond the specific gifts themselves to their broader context, observing that these envelopes were given during the course of an expensive reelection campaign to a public official who had previously voted in a way that furthered the donors' professional interests. Under *McCormick*, the appropriate inquiry is not whether a particular gift itself receives constitutional protection but whether the broader conduct at issue is sufficiently intertwined with protected First Amendment activity that the absence of a bright, concrete line between legal and illegal (which is what the explicit *quid pro quo* standard supplies) would make it too easy for jurors to criminalize constitutionally-protected conduct. If the answer is "yes," as it surely is in a case where any bribery allegations are completely intertwined with campaign contributions and other legal lobbying activity, an explicit *quid pro quo* standard must be used to ensure protected First Amendment activity is never the subject of a criminal conviction.

The conviction on Count VII exemplifies the precise First Amendment dangers that exist in a prosecution like this one. As the Indictment makes clear, count VII is based upon an email in which Mr. Ring offers to host a fundraiser for Mr. Istook. DE 2 at 14 ¶ 56. In that same

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<sup>12</sup> Given the widespread and long-standing use of hospitality by lobbyists, a strong argument can be made that it would be included within the First Amendment provided by lobbyists, but as *McCormick* makes clear, that is not the proper question.

email, Mr. Ring informs Mr. Albaugh that his lobbying team might need to “smack [ ] around” officials at the United States Department of Treasury who were apparently antagonizing one of his clients. GX 165. The email accordingly reflects core First Amendment activity because it references the possibility of holding a fundraiser for Mr. Istook, and seeks to obtain information that might support a hard-ball lobbying strategy on behalf of one of Mr. Ring’s clients. At the same time, both activities referenced in the email are ones lay jurors might be prone to misunderstand and criminalize in the absence of a bright line between legal and illegal. One could see how a lay juror, lacking concrete guidance, might misconstrue an email proposing holding a fundraiser and discussing the potential “smacking around” of Treasury officials as demonstrating that Mr. Ring just “didn’t do things the right way.” *McCormick* clearly protects the fundraising by mandating that an attempt to criminalize it be accompanied by an explicit *quid pro quo* (and, we believe, by requiring exclusion of such evidence in the absence of an attempt to make such a showing). The defense submits that the rule from *McCormick* affords similar protection to other legal lobbying conduct.

There can also be no doubt that campaign contribution evidence featured heavily in the government’s presentation. A centerpiece of the government’s case was Mr. Volz’ testimony about Mr. Ring’s statement concerning public officials whose “lights would go on” when they realized lobbyists were making supportive campaign contributions. Tr. 10/27/10 (am) at 126:6-24. After eliciting this testimony, the prosecutor asked a series of questions about whether “Mr. Ring treated campaign contributions any differently than he did the giving of tickets” -- once again exploiting this Court’s ruling on campaign contributions in order to present that constitutionally-protected activity as evidence of criminal conduct. *Id.* at 127:1-5

The government then did the same with Mr. Boulanger, eliciting testimony from him about Mr. Ring's "running joke" in which he would hold up large campaign checks and remark, "Hello quid, where's the pro quo." Tr. 10/28/10 (p.m.) at 22:4-13. These were featured in both the government's closing argument to the jury, Tr. 11/4/10 (p.m.) at 7:3-9, and in its press release to the public after trial as "proof" of Mr. Ring's supposed bribery. *See* Exhibit 1. But as *McCormick* makes clear, bribery related to campaign contributions must be based on an explicit *quid pro quo* between a third party and a public official, not intra-firm jokes and remarks among lobbyists themselves about the manner in which campaign contributions tend to work, accompanied by baseless speculation from the lobbyists that there was "some truth" to these remarks. *See* Tr. 10/28/10 (p.m.) at 22:22-25; *and see Goyal*, at 2010 U.S. App. LEXIS 25223 at \*26 (finding evidence insufficient to support 15 convictions of fraud and false statements and observing "baseless speculation by a cooperating witness is not proof of fraudulent intent").

If *McCormick* were properly applied here, as it should have been, the government's evidence was clearly insufficient to meet an explicit *quid pro quo* standard. But even under an "implicit *quid pro quo*" standard, there is still no evidence from which a reasonable jury could infer beyond a reasonable doubt that there was any sort of "exchange" or any sort of "commitment." Entirely missing from the government's case was any evidence of communications between Mr. Ring and a single public official from which a commitment or exchange could be inferred. But both before and after *McNally*, real honest-services-fraud-by-bribery cases have been replete with such evidence, and its comparative absence is notable (and dispositive) here. In addition, a number of other factors discussed below make any inference of a *quid pro quo* untenable as a matter of law.

**1. This Case Lacks the *Quid Pro Quo* Evidence That Was Present In All of the Core Honest Services Fraud Cases Cited By *Skilling*, and That**

**Was Present In Honest Services Fraud Convictions Upheld After  
*Skilling*.**

The core failing of the government's proof is that it lacked the *quid pro quo* evidence present in all of the core honest services fraud cases cited by the Court in *Skilling*. *Skilling* relied on three honest services fraud prosecutions to exemplify the theory that survived *McNally*: *United States v. Ganim*, 510 F.3d 134, 138 (2d Cir. 2007), *United States v. Kemp*, 500 F.3d 257, 286 (3d Cir. 2007), and *United States v. Whitfield*, 590 F.3d 325 (5th Cir. 2009). Each involved a scheme between private individuals and public officials to commit bribery; both the public officials and the third parties had been prosecuted during the trial. Each case thus focused directly on the two-way bribery nexus discussed above, and each prosecution was replete with communications from which a *quid pro quo* agreement could fairly and rationally be inferred.

For example, in *United States v. Ganim*, two conversations were held between Mr. Ganim and private individuals in which the defendant agreed to steer city contracts to them, and in return, they agreed that "a portion of that money [from the agreement] would be to take care of [Ganim]. If he needed cash, we would take care of him, if he needed suits, we would take care of him." 510 F.3d at 138. Indeed, an entire section of then-Judge Sotomayor's opinion for the Second Circuit discusses this "Fifty-Fifty Fee Sharing Agreement." *Id.* Similarly, in *United States v. Kemp*, the Third Circuit focused on a phone call in which the private individual waived a substantial loan origination fee, and the public official responded that the private individual could always speak to him directly because "you are my f\_king guy . . . [s]o you get special treatment." 500 F.3d at 286. *Kemp* also noted that the public official did not just say that "special treatment" would be provided, but went on to rig a government bidding processes in favor of the private individuals, and then also referred to later conversations in which both the public official and the private individuals had discussed their deals with others. *Id.*

Likewise, *United States v. Whitfield*, 590 F.3d 325 (5th Cir. 2009), involved criminal charges brought against both an attorney and the state court judges he was accused of bribing. The trial accordingly focused on both sides of the bribery agreement, and included proof that the lawyer and judges had entered a contract -- that is, an agreement -- in which the lawyer guaranteed (and ultimately agreed to repay) hundreds of thousands of dollars in short term loans for the judges, while at the same time litigating multi-million dollar cases in front of them. *Id.* at 336-41. As the Fifth Circuit pointed out, a central feature of these loans is that they came due every six months, so that the judges in *Whitfield* were literally “indebted” -- to the tune of hundreds of thousands of dollars -- to the lawyer who guaranteed the loans and were under a constant literal obligation to repay them. *Id.* at 352 (“By ensuring that the loans became due every six months, Minor kept Whitfield and Teel at his mercy for as long as those debts remained outstanding.”) The case also included evidence of communications between the lawyer and the judges related to the lawsuits, as well as evidence showing that the judges had taken highly unusual actions in those matters, including one judge who *sua sponte* assumed control of a case that had originally been assigned to another judge. *Id.* at 336-41.

The few honest services fraud convictions upheld since *Skilling* share these similarities. For example, in *United States v. Lupton*, 620 F.3d 790 (7th Cir. 2010), the defendant had been recorded on tape seeking a \$75,000 kickback from a prospective buyer of a State building in exchange for arranging the sale of the building to the buyer despite a nominally competitive bid process. The recorded conversation was as follows: “I just want make assurance . . .that if I could put you into that situation . . . that you guys [can] get me a quarter point [out of the sale proceeds].” *Id.* at 794. The case also included extensive testimony about these conversations by

the prospective buyer, who had voluntarily reported the first kickback offer to police immediately afterward, and had then worn a wire to record the later *quid pro quo* conversations.

In short, the leading honest-services-by-bribery cases involved a series of conversations from which a bribery-like agreement could fairly be inferred. These are what *quid pro quo* agreements, even implicit ones, look like. In each case, there was at least some evidence from which a reasonable jury could infer a mutual understanding to “exchange” things of value for a “commitment” to provide official acts. There simply is no such evidence here. Indeed, as the government conceded in a pleading it filed during trial -- seeking to prevent Mr. Boulanger from repeating his testimony from the last trial that Mr. Ring “didn’t need to give Mr. Doolittle a dime” because of the closeness of their relationship -- its witnesses often had no percipient knowledge of the allegedly corrupt relationships at all, much less any knowledge of communications from which a corrupt agreement could be fairly inferred. DE 204 at 3-4 (government concedes that “Defendant Ring demonstrated on cross-examination that Mr. Boulanger does not have the “first-hand personal experience” sufficient to opine on Congressman Doolittle’s motivations” and that Mr. Boulanger had no meaningful percipient knowledge of Mr. Ring’s relationship with Mr. Doolittle.).

## **2. A Number of Other Factors Undermine Any Rational Inference of Bribery.**

Not only does this case fall short of the proof presented in other “core” honest-services-by-bribery cases, but there are also several other factors that further undermine the rationality of any inference of bribery based on the close-in-time nature of the gifts and official acts that benefitted the lobbyist’s clients. In some cases, such an inference might conceivably arise from timing alone; many bribery cases have involved close-in-time cash payments, or loan guarantees or lavish trips and official acts. *See, e.g., Kemp*, 500 F.3d at 266-70 (\$10,000 in home repairs;

\$1300 in kickbacks from proceeds of side business relating to office; \$10,000 loan for family member; \$225,000 no-money-down mortgage; \$21,000 auto loan; half-million in construction loans for Kemp's church; \$7,500 loan to Kemp's brother; \$10,000 in cash from another developer and \$58,000 trip to Super Bowl); *Ganim*, 510 F.3d at 137-40 (\$311,000 in fees paid to Ganim advisors who help company secure wastewater contract with City; Ganim gets portion for entertainment, meals and clothing; fee sharing agreement established in 1996, pursuant to which advisors promise to provide Ganim with his share of cash, fitness equipment, designer clothing, wine, jewelry and job for Ganim's wife; \$1 million ad campaign; 1/3 of \$495,000 in consulting fees in 1998; \$5000 kickback for life insurance policy; cut from \$100,000 fee in 1999; promise of \$500,000 in campaign contributions in exchange for land development rights); *United States v. Whitfield*, 590 F.3d at 336-40 (\$140,000 in loan to judge he never was required to pay back; \$27,400 plus private plane trip to Florida and \$10,000 for legal defense fund to other judge).

Previous stream-of-value cases have accordingly focused on things of value that were rare, costly and had no conceivable legitimate purpose -- like the hundreds of thousands in loans and home repair funds in *Kemp*; the hundreds of thousands in cash, clothing and jewelry in *Ganim*; and the hundreds of thousands in no-obligation-to-repay "loans" in *Whitfield*. Standing alone, the giving of *these* items could perhaps give rise to an inference of a *quid pro quo* agreement -- although every case presenting such facts also had abundant evidence of communications from which such an agreement could fairly be inferred. But in this case, no rational inference of bribery can arise from the items themselves because they were commonplace lobbying tools, extensively available to public officials in the absence of any *quid*

*pro quo* or other criminal conduct.<sup>13</sup> Given the widespread nature of these gifts, their value was infinitely smaller than the sorts of valuable items at issue in the aforementioned stream-of-value cases. No rational juror could fairly infer “bribery” solely from close-in-time hospitality by a lobbyist and official acts, in the manner that might have been appropriate from the more valuable, rarer gifts discussed in *Kemp*, *Ganim* and other cases. In a case like this one, the government needed to provide something more than basic hospitality gifts to create a fair inference of bribery.

But if anything, this case had even less. For example, unlike in *Ganim*, *Kemp* and *Whitfield*, the gifts at issue here were also entangled with virtually unlimited *legal* campaign contributions, which Mr. Ring had a constitutional right to make in a way that “rewards” the official acts taken by those public officials, and with the general hope that the contributions would motivate similar acts in the future. Thus, the exact same gifts of meals and tickets in this case could be given to public officials in course of fundraisers and their legality could not even be questioned, even if given with the intent to reward specific official acts, and even if given with the unilateral expectation of continued official acts in the future.<sup>14</sup> The ready availability of free meals and tickets at precisely the same venues on the circa 2000-04 fundraising circuit does not, of course, exempt these items from the bribery laws. But it further undercuts the rationality of any inference that these gifts *standing alone* can serve of bribes in the absence of

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<sup>13</sup> Birnbaum & Edsall, *supra* note 5; Heath, *supra* note 5.

<sup>14</sup> Allard, 19 Stan. L. & Pol’y Rev at 60 (“For example, under the rules, a lobbyist may not buy a Congressman a meal at a restaurant - unless he and perhaps other guests also hand over checks as campaign contributions and consider the costs of the meal an in-kind campaign contribution. Which is worse? Lobbyists may not travel or arrange travel, say to a ski resort with a Congressman, unless perhaps the trip is related to campaign fundraising.”)

communications between the public official and the third party from which it can be inferred that that is their purpose.

Any fair inference of bribery is also undermined by the relatively small value of the gifts themselves; examined closely, the government's so-called "stream of value" often amounted to far less than what anyone would rationally describe as a "stream." For example, Mr. Albaugh himself arguably received tickets to a total of four events (with a total value of approximately \$1478.25) and a total of four meals (with a value of \$165) over the four-year period of the alleged conspiracy.<sup>15</sup> It is not fair or rational to infer solely from those gifts that Mr. Albaugh was performing official acts pursuant to a *quid pro quo* agreement,<sup>16</sup> particularly in light of the undisputed evidence that Mr. Albaugh continued to perform these same official acts for approximately a year after the meals and tickets ended until Mr. Istook lost his Subcommittee Chairmanship. This is not to say that a gift's value can automatically exempt it from the bribery statute; such gifts could obviously amount to bribes if accompanied by other proof that they were made pursuant to a *quid pro* agreement. But when such corroborating evidence is lacking, as it is here, any fair inference of bribery evaporates. And on this last point, the pre and post-*Skilling* bribery cases involved proof both of substantially greater things of value *and* communications from which a *quid pro quo* agreement could fairly be inferred.

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<sup>15</sup> As discussed below, there was no meaningful evidence before the jury to support even these figures, which are compiled from Mr. Albaugh's testimony at the last trial, the documents that the government provided to back up its charts, and Mr. Albaugh's plea agreement. The jury heard none of this information.

<sup>16</sup> It is a matter of public record that Mr. Albaugh's salary was approximately \$150,000 per year at the time of the events in this case. This explains Mr. Volz's testimony that he could have afforded to pay for the meals and tickets himself when he accepted them as a public official. Tr. 10/25/10 (a.m.) at 32:18-21. Of course, Mr. Albaugh was not called as a witness to discuss whether he could have afforded these meals and tickets on his salary.

**3. The Julie Doolittle Evidence Was Insufficient To Prove Bribery By Mr. Ring.**

To be sure, the government's case strayed occasionally from its main theory involving meals and tickets -- the government presented to jurors some evidence that Julie Doolittle (who was not a public official herself, but was married to one) had entered into a consulting agreement with Mr. Abramoff, for which she been paid \$5000 per month from September 2002 through March 2004. And it is true that, in some circumstances, providing a public official with a job in exchange for taking official acts has given rise to honest services fraud charges. The problem here, however, is that the evidence regarding Ms. Doolittle's job was too vague and too attenuated to give rise to a permissible inference that it arose pursuant to a *quid pro quo* agreement for which Mr. Ring could be held criminally responsible.

Viewed in the light most favorable to the government, the evidence here showed that Mr. Ring took part in approximately five communications related to a potential job for Ms. Doolittle. GX 235, 237, 238, 239, 241. The first four of these took place between June 2000 and September 2000, and consisted of Mr. Ring passing on word that Ms. Doolittle was interested in consulting work and responding to a query about whether a position with one of Mr. Abramoff's charities seemed appropriate for her. GX 235, 237, 238, 239. After these initial communications, however, Ms. Doolittle did not obtain any position in 2000, 2001 or even much of 2002. During the interim, Mr. Ring continued to lobby Mr. Doolittle with great success -- despite his and Mr. Abramoff having done nothing to obtain a job for Ms. Doolittle -- and in fact many of the lobbying victories discussed by the government at trial took place when Mr. Abramoff and Mr. Ring had, by any objective measure, forgotten about, or at least not acted upon, any consulting position.

This fact alone -- which is undisputed -- fundamentally undermines any rational inference that a job for Ms. Doolittle was part of any retainer agreement between Mr. Ring and Mr. Doolittle. If Mr. Ring (and Mr. Abramoff) could forget about the job for two years while his lobbying success with Mr. Doolittle continued, what rational basis is there for inferring that they had a *quid pro quo* agreement with Mr. Doolittle based on a job for his wife? And even after the matter was revived in March 2002, the resulting communications themselves further undermine any rational inference of a *quid pro quo*. Thus, when Mr. Ring passes on another message about Ms. Doolittle's interest and Mr. Abramoff describes it as a "blast from the past" about which he "forgot totally," Mr. Ring responds (10 days later), that "I don't think this is a big deal." GX 241, DX 5.<sup>17</sup> If this job was a critical (or even material) part of a bribery retainer agreement, is it rational that it could be "forgotten totally" for two years or described by one of the parties to the agreement as "not a big deal"?

From the time of the "I don't think it's a big deal" email from Mr. Ring, there was no evidence of Mr. Ring's involvement with Ms. Doolittle's job whatsoever -- there was no evidence of any involvement in her hiring, her supervision or the details of her payment. Nor was there any evidence presented from which a jury could rationally believe that Mr. Ring (or Mr. Abramoff) had exchanged Ms. Doolittle's job for an agreement by Mr. Doolittle to perform official acts in return. There was, for instance, no evidence of a single conversation even related to that subject between Mr. Ring, Mr. Doolittle and his staff or Mr. Abramoff, and the government never tried to link the two. There was also no evidence that would support any inference that Mr. Doolittle's behavior toward Mr. Ring was any different between September

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<sup>17</sup> The government tried to prevent the jury from hearing about Mr. Ring's comment, but this Court correctly permitted the jury to review the email chain in its entirety. Tr. 10/27/10 (a.m.) at 44:7-48:5.

2002 and March 2004 than it was from the time Mr. Ring began lobbying in 1999 to the time Mr. Ring was forced to leave his lobbying practice in 2007.

Instead of actually presenting evidence from which jurors could fairly infer that Mr. Ring gave Ms. Doolittle a job as a *quid pro quo* for official acts by her husband, the government argued that jurors could infer bribery from the mere fact that a job was given to a public official's wife and the absence of evidence that she worked sufficiently hard for her money. The government showed that Ms. Doolittle eventually obtained a consulting position working for Mr. Abramoff in September 2002, but presented virtually no evidence about what she did or didn't do at that position. In particular, its evidence concerning Ms. Doolittle's work consisted of two items -- evidence showing that she worked on a fundraiser for the Spy Museum through March 2003, *see, e.g.*, GX 244, 245, 246, and evidence showing that she consulted for Mr. Abramoff's restaurants afterward. With respect to the Spy Museum project, the government did not even try to present any evidence disputing the volume or quality of work Ms. Doolittle worked for Mr. Abramoff all the way through the March 2003 cancellation of the fundraiser, despite having multiple witnesses available to it on the subject and despite having kept such a witness on its list (Charlene Lefkowitz) until the middle of trial. With respect to the later time period, the government did suggest to jurors that Ms. Doolittle did "little work" during the period, but its proof consisted entirely of emails in which Ms. Doolittle requests new projects and communicates with Mr. Abramoff, Rodney Lane (who had also supervised Ms. Doolittle on the Spy Museum event) and Shana Tesler about them, GX 248, 249 & 250, and the testimony of a former manager of one of Mr. Abramoff's restaurants, Signatures, who had had only minimal exposure to Ms. Doolittle, and who reported to Ms. Tesler, just as Ms. Doolittle did. Tr. 11/01/10 (p.m.) at 61:12-24. While this witness was not impressed with Ms. Doolittle's work

at Signatures, he also admitted that he did not even know that she was a consultant for Mr. Abramoff, and that she had meetings with Shana Tesler and Mr. Lane that he did not know about, and also could have been consulting for Mr. Abramoff on his other restaurants without his knowledge. *Id.* at 55-56, 60-65, 75:14-21.

The government asserted that this evidence “proved” Ms. Doolittle had a “little work” job but as a rational, objective matter it did nothing of the sort. As a predicate to its bribery theory, the government had the burden to prove beyond a reasonable doubt that Ms. Doolittle actually did little for her pay. Instead, it made allegations about a “little work” job, presented one witness who was not in a position to know whether Ms. Doolittle was working or not working, and then claimed that “the evidence” showed Ms. Doolittle did “little work.” “The evidence,” in fact, showed nothing about how much work Ms. Doolittle did or didn’t do after March 2003, and surely that cannot be enough to satisfy the government’s burden of proof beyond a reasonable doubt, particularly when the government chose not to call as witnesses any of the other individuals it interviewed who had had substantial exposure to Ms. Doolittle’s consulting work in connection with Mr. Abramoff’s other projects, and even sought to prevent the jury from hearing about a contemporaneous written suggestion from Mr. Abramoff that Ms. Doolittle was in fact working “hard” for her money. DX 23 (describing Ms. Doolittle as a “hard worker”). And even if the government had presented evidence showing that Ms. Doolittle didn’t work hard enough for her consulting money, it still needed to prove that the position was provided in exchange for official acts -- a burden it also utterly failed to take on.

From the totality of this testimony, there was simply no evidence from which a rational jury could find that the government satisfied its burden to prove beyond a reasonable doubt that Ms. Doolittle had a “little work” consulting job, much less any evidence from which a jury could

reasonably infer that this supposed “little work” job had been provided as part of a *quid pro quo* agreement between Mr. Abramoff and Mr. Doolittle for which Mr. Ring could be held criminally responsible. The government made allegations about a “job for a Congressman’s wife” and left it at that; but simply proving that a lobbyist gave a job to a Congressman’s wife is not sufficient to show bribery. The dangers of such a theory are particularly grave in a case like this one where the government flipped the burden of proof by urging jurors to infer that Ms. Doolittle did not work based on entirely on the absence of testimony either way. Thus, in the government’s world, anyone who provides a job to the spouse of a public official creates a presumption of a bribe, which can be refuted only by affirmatively presenting evidence showing that the spouse earned every penny he or she received.

Such a situation contrasts starkly with what happened in *United States v. Urciuoli*, 613 F.3d 11 (1st Cir. 2010), a case in which a private hospital entered into a retainer agreement directly with a Rhode Island legislator who chaired the legislative committee on insurance regulations, which had jurisdiction over matters that affected insurance payments, from which the hospital received most of its income. In *Urciuoli*, the defendant was a company official who had personally set up and supervised the retainer agreement over a six year period, acting to raise the legislator’s pay as the official acts in favor of the company’s interests were taken, and having the legislator report directly to him and only to him, outside the normal chain of command. The evidence in *Urciuoli* also showed that public official had earned his continuing payments by supporting or opposing only those bills that the Company official told him to, and by holding meetings in which he put pressure on insurance company officials directly subject to his Committee’s jurisdiction to pay the Company’s claims.

*Urciuoli*, in short, shows what a real *quid pro quo* agreement with a public official looks like, and why the evidence with respect to the Julie Doolittle job cannot measure up. *Urciuoli* involved a public official who was literally part of a retainer agreement, which had been personally set up and supervised on a day-to-day basis by the defendant. By contrast, the position here involved a consulting agreement not between Mr. Ring and Mr. Doolittle but between Mr. Ring's boss and Mr. Doolittle's wife, a position in which Mr. Ring had no day-to-day involvement or responsibilities, which Mr. Ring and Mr. Abramoff "forgot" to take any action for two years while lobbying successes with Mr. Doolittle continued, and which was described by Mr. Ring in contemporaneous emails as "not a big deal."

**4. The David Lopez Evidence Was Insufficient To Prove Bribery By Mr. Ring.**

The evidence concerning David Lopez' trip to Puerto Rico tells a similar story. Once again, the government made a lot of noise about a "free vacation to Puerto Rico," but when the dust cleared, its proof on the entire subject was lacking. Viewed in the light most favorable to the government, the evidence barely showed that Mr. Lopez went to Puerto Rico at all, much less that the trip was a *quid pro quo* bribe. Indeed, the only evidence concerning the trip itself consisted of a handful of lobbyist emails about the importance of having Mr. Doolittle and his chief of staff visit Puerto Rico before sponsoring a Committee hearing on its Commonwealth status, two disclosure forms reflecting the trip and listing the sponsor as Greenberg Traurig, and an email afterwards mentioning the trip and Mr. Lopez' desire to return (which he never did.) It is hardly a federal crime for a client to desire (and pay for) a representative on a powerful committee, with jurisdiction over an issue of importance to the client and to the Commonwealth of Puerto Rico generally, to visit the district -- and there are many sound and legitimate reasons for such visits, even when they also involve leisure activities as well. So the mere fact that

lobbyists want a Congressman or staffer to visit the district of a client and offer to have the client pay for it cannot itself be sufficient to prove bribery.

There was no evidence from which jurors could find that this trip constituted a bribe. At the outset, a fundamental flaw in this theory is that the government never made any attempt to link the trip to any official actions by Mr. Lopez at all -- specifically or generally -- as the government's case was completely silent about anything special for Mr. Ring that Mr. Lopez (Mr. Ring's friend and long-time former colleague at the Doolittle office) might have done in return for the supposed bribe. But even setting this flaw aside, the only evidence showing that Mr. Lopez actually even went to Puerto Rico consisted of two disclosure forms filed by Mr. Lopez almost immediately after the trip. GX 296, DX 1. Both listed Greenberg Traurig as the sponsor. *Id.* The travel disclosure form showed reimbursement only for Mr. Lopez' commercial airfare, with a value of \$1352; the form stated that Mr. Lopez had not received payment for food and lodging, and the government presented no evidence showing otherwise. It is undisputed that Mr. Ring did not go on the trip, and there is no evidence of any of the sort of improper activities that occurred on other trips involving Mr. Volz or Mr. Boulanger -- much less any evidence showing that Mr. Lopez engaged in such activities on Greenberg Traurig's dime. Indeed, there was ultimately no evidence -- not a shred -- presented about what Mr. Lopez did while he was on the trip. Instead, Mr. Boulanger speculated about a "free vacation," but in the absence of any evidence about the trip other than the disclosure forms, such speculation remains exactly that. Mr. Boulanger's colorful accusations cannot change the reality that the trip in question -- which, according to the only evidence presented, consisted of a commercial airplane trip worth \$1352, provided to the Chief of Staff of a Committee with jurisdiction over the

territory visited, and disclosed to the public along with the name of the entity sponsoring the trip -- simply cannot create a rational inference of bribery.

**C. The Court Should Grant A Judgment of Acquittal on the Conspiracy Count.**

A judgment of acquittal is also warranted on the conspiracy count. Jurors found that honest services fraud was an object of the conspiracy; on that score, the government's proof suffered from all of the same problems discussed in the sections above and an MJOA on that count is warranted for the same reasons because -- contrary to the situation of a general verdict, where the Court can assume the unsupported count was disregarded by jurors, we know that jurors here were affected by the honest services fraud charges and their conspiracy verdict was infected by that charge. But on a more global level, what was missing from the conspiracy charge was concrete proof of Mr. Ring's joinder of a conspiracy agreement.

To prove a conspiracy charge, the government must show that the defendant agreed to engage in criminal activity and knowingly participated in the conspiracy with the intent to commit the offense, as well as that at least one overt act took place in furtherance of the conspiracy. The conspirators must have agreed on at least the essential nature of the plan, not necessarily the details of their criminal scheme. *United States v. Hemphill*, 514 F.3d 1350, 1362 (D.C. Cir. 2008). The essential element is the agreement, *e.g.*, *United States v. Graham*, 83 F.3d 1466, 1471 (D.C. Cir. 1996), for "agreement is the essential evil at which the crime of conspiracy is directed." *Ianelli v. United States*, 420 U.S. 770, 777 n. 10 (1975).

The evidence presented at trial is insufficient to establish Mr. Ring's knowing and intentional joinder in any such agreement. At the outset, it must be remembered that the government was seeking to prove Mr. Ring's participation in a conspiracy largely by virtue of the fact that he worked on a relatively small lobbying team with Mr. Volz, Mr. Boulanger and Mr. Abramoff -- three individuals who had pleaded guilty to crimes resulting from their own

lobbying efforts. But the fact that Mr. Ring worked closely at a large law firm with individuals who committed crimes is insufficient to show he conspired with them. Nor is the fact that Mr. Ring worked in a smaller subsection of the firm with these individuals sufficient to create a rational inference of a conspiracy. Many individuals were nominally part of "Team Abramoff" in that they worked largely for Mr. Abramoff's clients at both Preston Gates and Greenberg Traurig. But it has never been alleged that every member of "Team Abramoff" was part of any criminal conspiracy.

What *would* be evidence of a conspiracy is testimony or evidence concerning Mr. Ring's communications from which his joinder into a conspiracy could rationally be inferred. But Mr. Volz did not describe any such communications -- not even one that involved implicit winks and nods. For his part, Mr. Boulanger certainly tried to help the government's case in any way he could, describing himself and Mr. Ring as essentially "Masters of the Universe" who sought to "win at all costs." Mr. Boulanger also obligingly repeated his own philosophy of how to "break down the filter" of public officials through meals and tickets. At one point, the Court appeared to grow frustrated with Mr. Boulanger's use of clichés, admonishing the witness after he had already testified for more than a full day:

We're having a constant problem. I instruct you that you can talk about what you know about with real names. And so, if you want to bring out things, you have to direct him and be specific, because this testimony, the same kind of thing you said, did Mr. Orlando help you on this project? Yes. But you don't say what did he do? So, I have no idea whether he has any knowledge about anything. I mean, he talks in generalities. And you are inviting it. And it's a really difficult thing for me to monitor. She was part of my plea agreement. She received things from me and other members of the team. You can't get away with that. Got it?

You're not here to make the government's case, you're here to testify. All right. Let us excuse the witness. I'll give him further instructions later. I have no idea of what the facts are, what facts he knows as opposed to this sort of generalized, you know, we're the masters of the universe notion. And if we keep it up, it's very frustrating. But when you say to him, did he help? Yes. And then I'm sitting here waiting to find out what he did. Without that, it's useless to say did he help.

Tr. 10/29/10 (a.m.) at 59:15-60:10.

But other than the sorts of “generalities” referenced by the Court, there simply was no evidence from which jurors could rationally infer that Mr. Ring joined any conspiracy of to pay bribes or to provide gifts as rewards for specific official acts. Indeed, Mr. Volz and Mr. Boulanger’s generalized testimony -- “we all wanted to reward and influence and giving meals and tickets was part of that” -- could just as easily have been used to allege that individuals like Alan Slomowitz or Ron Platt were part of the conspiracy, a completely absurd allegation that not even the government has ever suggested. But both individuals lobbied with the Greenberg Traurig team; Mr. Platt was quoted in the Washington Post saying that lobbyists had no obligation to help public officials comply with the gift rules, and Mr. Slomowitz had followed Mr. Abramoff from Preston Gates to Greenberg Traurig. Both men were copied on many of the emails relied on by the government throughout the case, and both would have been familiar with Mr. Abramoff’s win-at-all-cost mentality, which Mr. Boulanger described as his basis for not caring about the rules. The “generalities” identified by the Court with respect to Mr. Boulanger’s testimony are precisely what makes the government’s evidence insufficient to show a conspiracy existed at all, or that Mr. Ring knowingly and intentionally joined it.

**D. The Court Should Grant A Judgment of Acquittal On The Illegal Gratuities Count.**

The Court should also grant a judgment of acquittal on Count II of the indictment, which charged Mr. Ring with violating the gratuities statute, 18 U.S.C. § 201(c). The jury convicted Mr. Ring of violating this statute by providing Wizards tickets to Mr. Coughlin after Mr. Coughlin’s forwarded an email from Mr. Ring to an employee at the Immigration and Naturalization Service requesting expedited treatment of a visa application. Mr. Ring has extensively briefed why Mr. Coughlin’s forwarding of an email, with an express disclaimer

about the importance of taking any favorable action, along with express instructions about what to do if the application is denied, did not rise to the level of an official act set forth in *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc) and *United States v. Sun-Diamond Growers of America*, 526 U.S. 398 (1999). Mr. Ring will not repeat those arguments here, other than to again assert that this case law warrants the granting of an MJOA on Count II for two reasons: (1) no reasonable juror could find beyond a reasonable doubt that Mr. Coughlin performed an “official act” within the meaning of the gratuity statute; and (2) no reasonable juror could find beyond a reasonable doubt that Mr. Ring provided tickets to Mr. Coughlin “for or because of” any official act. On this last point, it is important to remember that the jury was required to find that Mr. Ring’s own gift of the Wizards’ tickets was “substantially, or in large part motivated” by Mr. Coughlin forwarding the email about the Eshkol school. *United States v. Schaffer*, 183 F.3d 833, 843 (D.C. Cir. 1999) (emphasis added). No rational juror could find that beyond a reasonable doubt.

Mr. Ring also submits that, even if the Court does not grant the MJOA on this count, the government’s repeated arguments urging jurors to convict merely upon a generic “intent to reward” improperly lowered the standard of intent in violation of *United States v. Sun-Diamond Growers of America*, 526 U.S. 398 (1999). While these attempts alone warrant a new trial, their effect was particularly prejudicial when viewed in combination with the government’s misuse of campaign contributions and fundraisers. Both of these arguments will be developed more extensively in connection with the new trial motion, filed simultaneously.

**CONCLUSION**

This case presents precisely the sort of rare but irrational verdict that Rule 29 was designed to remedy. For the reasons set forth above, and for all the other reasons set forth in his earlier Rule 29 motions, Mr. Ring respectfully requests that this motion be granted and that the Court enter a judgment of acquittal as to each of the five counts of conviction.

Respectfully submitted,

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