

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

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	No. 08-CR-274 (ESH)
)	
KEVIN A. RING)	
)	
Defendant.)	
_____)	

KEVIN A. RING’S MOTION FOR NEW TRIAL

Pursuant to Federal Rule of Criminal Procedure 33, Kevin Ring respectfully moves this Honorable Court for a new trial on counts 1, 2, 3, 7 & 8 in the interests of justice. 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,

/s/ Timothy P. O’Toole
Andrew T. Wise (D.C. Bar # 456865)
Timothy P. O’Toole (D.C. Bar # 469800)
MILLER & CHEVALIER CHARTERED
655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005-5701
Tel. (202) 626-5800
Fax. (202) 626-5801

Dated: December 15, 2010

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**KEVIN A. RING'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION OF A NEW TRIAL**

Andrew T. Wise (D.C. Bar # 456865)
Timothy P. O'Toole (D.C. Bar # 469800)
MILLER & CHEVALIER CHARTERED
655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005-5701

Attorneys for Kevin A. Ring

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In the interests of justice, this Court should grant a new trial pursuant to Federal Rule of Criminal Procedure 33(a) even if it does not grant a judgment of acquittal.

Introduction

Mr. Ring’s motion for judgment of acquittal demonstrated how, in a case replete with evidence of campaign contributions and legal lobbying, the government’s presentation of baseless speculation combined with an insufficiently rigorous “implicit *quid pro quo*” standard to produce irrational, unsupportable convictions. The Court should vacate those convictions and grant judgments of acquittal notwithstanding the jury’s verdict. If it does not, however, the Court should grant a new trial. As described below, the same dynamic discussed in the motion for judgment of acquittal [DE 233] -- where the presentation of a confusing mix of constitutionally-protected conduct and baseless speculation prevented jurors from understanding that the evidence was insufficient as a matter of law -- also made this case particularly susceptible to the government’s efforts to obscure the applicable mental states required for conviction and to erase any legal guidance on intent that the Court attempted to provide. The product was a confused jury that acknowledged it could not discern the line between “legal and illegal gifts” on the day before it rendered its verdict. *See* DE 223.

Particularly important to the government's effort to dilute the requisite level of intent was the government's capitalization on this Court's ruling permitting it to introduce Mr. Ring's emails related to campaign contributions and fundraisers. The government also took full advantage of the sparse evidentiary record to generate and exploit false and misleading impressions -- about the composition of Mr. Abramoff's lobbying team and the conviction status of its members; about Mr. Ring's relationship with Mr. Doolittle; about "official acts" supposedly taken by public officials; and about improper jobs Mr. Ring supposedly obtained for Mr. Lopez's wife. All of these factors rendered it impossible for jurors to focus squarely on the essential elements of the offenses, and to render a verdict based on calm and rational deliberation rather than uncertainty and wholly extraneous factors.

The result is one of those rare and unusual verdicts that Rule 33 is designed to remedy. In ruling on this motion, the Court acts in its capacity as the 13th juror and can grant a new trial for any reason consistent with the interests of justice. Even though the Court attempted to mitigate some of the problems discussed below through the use of various limiting instructions, these instructions could not and did not prevent jurors from misusing this evidence as to every count. In the interests of justice, this Court should grant a new trial on all the counts of conviction even if it does not grant a judgment of acquittal.

A. The Governing Legal Standard

Federal Rule of Criminal Procedure 33(a) permits the Court to "vacate any judgment and grant a new trial if the interest of justice so requires." The Rule 33 standard permits the Court "to [grant] a new trial when it considers the evidence to be marginally sufficient but determines that the state of the evidence calls for a new trial in the interest of justice." *United States v. Wiley*, 517 F.2d 1212, 1218 (D.C. Cir. 1975). In other words, the "[c]ourt evaluates a Rule 33 motion from a different vantage point than [the one from which] it evaluates a Rule 29 Motion

for Judgment of Acquittal.” *United States v. Wilson*, No. 05-100-2 (RWR), 2010 U.S. Dist. LEXIS 65983, at *28 (D.D.C. July 3, 2010) (quoting, in part, *United States v. Edmonds*, 765 F. Supp. 1112, 1118 (D.D.C. 1991)). “In [assessing] a Rule 33 motion for a new trial . . . [a] [c]ourt need not accept the evidence in the light most favorable to the government, and the [c]ourt may weigh the testimony and may consider the credibility of the witnesses.” *Id.* (quoting, in part, *United States v. Walker*, 899 F. Supp. 14, 15 (D.D.C. 1995)). A court should grant a Rule 33 motion if “a serious miscarriage of justice may have occurred.” *United States v. Rogers*, 918 F.2d 207, 213 (D.C. Cir. 1990).

B. This Court Should Grant A New Trial In The Interest Of Justice, In Light Of The Manner In Which The Government Used A Variety of Tactics To Obscure The Applicable Mental States Required For Conviction, Ultimately Erasing Any Legal Guidance On Intent That The Court Attempted To Provide.

Mr. Ring’s motion for a new trial rests on a series of related events that prevented jurors from fairly and rationally examining the critical issue of Mr. Ring’s alleged intent to commit honest services fraud and his alleged intent to violate the illegal gratuities laws. These events, particularly when viewed cumulatively, resulted in a serious miscarriage of justice, which can be remedied only through the granting of a new trial under Rule 33.

1. Repeated, Inaccurate Descriptions of the Mens Rea Standards

One constant feature of this trial (and the last one) was the manner in which the government’s arguments to jurors repeatedly watered down the level of criminal intent it needed to prove in order to secure a conviction. On the honest services fraud charges, the government was required under *Skilling* to prove a scheme to commit bribery -- that is, it needed to prove that Mr. Ring provided a gift conditioned upon official acts or pursuant to a *quid pro quo* agreement to provide official acts in return. *United States v. Skilling*, 130 S. Ct. 2896, 2933-34 (2010). On the illegal gratuities charge, the government needed to prove that Mr. Ring provided gifts for or

because of specific official acts. *United States v. Sun-Diamond Growers of America*, 526 U.S. 398, 414 (1999).

And yet, despite these facially clear legal standards, the government repeatedly informed jurors that they could convict Mr. Ring based only on proof of a general “intent to influence” and “intent to reward.” These arguments were made in the face of a series of defense motions in limine, beginning during the first trial and continued during this one, seeking to prevent the government from making precisely these arguments. *See* DE 101 (Sept. 20, 2009, *Motion In Limine To Prevent Misstatements Of Law As To The Intent Requirements With Respect For The Charged Offenses*); DE 156 at 6-10 (“Throughout the first trial, the government argued that the forbidden forms of intent consisted of an ‘intent to influence’ and an ‘intent to reward.’ These statements misstate the law and should be disallowed”); DE 203 at 4-5 (objecting to same arguments made during opening statements at the second trial).

Despite these motions, and despite some suggestions from the Court that such arguments incorrectly described the applicable legal standard,¹ the government repeated this incorrect legal standard throughout the second trial, going so far as to reference a bare intent “to influence” or intent “to reward” six times during closing arguments. Tr. 11/4/10 (a.m.) at 8:2-3 (“intent to

¹ For example, during a bench conference after Mr. Boulanger had told jurors he had given tickets as a lobbyist “to influence them or reward them,” tr. 10/28/10 (p.m.) at 81:14, the Court stated: “You know, I think the problem, frankly, comes back to what they objected to a moment ago. He gave a ticket to influence. It may be, by itself, be okay, and I am going to end up instructing them. And so, you know, once you start getting -- having him make the case for you by saying that, it’s coming back to bite you.” Tr. 10/28/10 (p.m.) at 82:1-6. As the bench conference continued, the Court made clear that this intent was inherent to lobbying but that “[t]he question is whether there’s *quid pro quo* type thing going along with it.” *Id.* at 83:9-11. Likewise, after the government told one of the jurors in voir dire that “it has always been improper to try to influence [public officials] with a stream of things of value,” 10/19/10 (a.m.) at 26:9-10, the Court stated outside the presence of the juror: “Mr. Edmonds, I would prefer that you not instruct them on the law. I’m not sure I agree entirely, frankly, with your statements of the law. So, that’s my job, not yours.” Tr. 10/19/10 (a.m.) at 28:5-8.

influence or reward”); at 13:17 (“intent to influence”); at 19:15 (“intent to influence or reward”); at 20:2-3 (“intent to influence and reward”); at 20:9-10 (same); at 22:12-13 (“a practice of giving gifts to reward and influence official acts”). These arguments merely parroted similar statements to jurors before the trial that they could convict merely upon finding a one-sided intent “to influence” by the lobbyists alone. *See, e.g.*, Tr. 10/21/10 (a.m.) at 38:3,18 (twice referencing unilateral intent “to influence”); at 39:7 (same); at 51:3 (same).

Such arguments were reinforced throughout the trial. Mr. Boulanger parroted the terms “intent to influence” and “intent to reward” throughout his testimony. *See, e.g.*, Tr. 10/28/10 (p.m.) at 29:19-21; *id.* at 81:14; 10/29/10 (a.m.) at 45:6; *id.* at 75:14. In addition, Mr. Boulanger was asked by the government to walk through his guilty pleas in order to highlight improper language that echoed the government’s arguments about “intent to influence” and “intent to reward.” Tr. 10/28/10 (p.m.) at 53:16-54:8. Such testimony left the clear impression that possessing this level of intent was criminal -- it was part of the guilty pleas of Mr. Boulanger and Mr. Volz, after all -- leaving jurors with the unshakeable impression that they could convict Mr. Ring of honest services fraud based on the insufficient mental states set forth in the guilty pleas. While this Court recognized the problem and attempted to mitigate it with cautionary instructions to jurors, these instructions ultimately did not serve their desired goal. Only a day before returning its verdict, the jury sent a note making clear that needed clarification on the criteria for distinguishing between legal and illegal gifts. DE 223. It is no wonder. Given the government’s repeated efforts to water down this requirement in its arguments to jurors and in its presentation of evidence at trial, juror confusion was the inevitable product. Such confusion

served to empower jurors to decide whether Mr. Ring had lobbied “the right way” rather than being constrained by the stricter legal standards mandated by Supreme Court precedent.²

The government’s related attempt to dilute the standard it needed to meet to prove criminal intent generally also cannot be overlooked. This attempt involved Jury Instruction 43, which is a standard instruction telling jurors that “[d]irect proof of knowledge and intent is almost never available” and is “not required” because “[i]t would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he or she committed an act with an intent to defraud.” While this language, taken in isolation, might seem to minimize the government’s burden of proof, the instruction immediately makes clear that the burden remains on the government at all times to prove intent and absence of good faith beyond a reasonable doubt. DE 222 at 52. But the government’s closing arguments undermined this part of the clarification by isolating the portion of the instruction that suggested what it was “not required” to prove and ignoring the portion of the same instruction showing what it was required to prove:

Yesterday, the Judge read instruction number 43, which explains that direct proof or knowledge of intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that, as of a given time in the past, he or she committed an act with an intent to defraud. The instruction continues, that such direct proof is not required.

This is an important instruction. You don’t have to get inside the defendant’s head to figure out if he was getting all these things of value with the intent to build a reservoir of goodwill, or with an intent to influence and reward official acts.

Instruction 43 says that you can make inferences about the defendant’s intent based on all the evidence. Here, the inferences are obvious. The defendant tells

² As noted in the motion for judgment of acquittal, one juror was quoted immediately after the trial as saying he didn’t know much about lobbying but that his vote to convict Mr. Ring was based on his view that “there’s a right way to do things and a wrong way to do things.” *See* DE 233 at 9 n. 2 & Exhibit 2. For the Court’s convenience, Mr. Ring has attached a copy of the article as Exhibit 2 to this motion as well.

you what he is thinking in his e-mails. And Mr. Volz and Mr. Boulanger told you that the entire team, including the defendant, gave things of value with the intent to influence and reward official acts.

Tr. 11/04/10 (a.m.) at 19:17-20:10.

The government's arguments sought to dilute its burden of proof, which in part prompted the defense to object after closing arguments to the government's attempts to isolate portions of the jury instructions in closing. *See* Tr. 11/04/10 (p.m.) at 15:1-8 (objecting to constant refrain of "intent to influence" and "intent to reward" combined with isolating selective portions of instructions; specifically referencing only instruction 42). The jury's note on intent suggests these arguments had their desired effect. It explicitly referenced Instruction 43, the reasonable doubt instruction, and Instruction 2, the instruction directing jurors to consider the instructions as a whole, DE 223, strongly suggesting that jurors were confused by the government's isolated reference to the portion of the instruction that appeared to dilute its burden of proof.

2. Arguing Illegality Based on Mr. Ring's Entirely Lawful Intent in Giving Campaign Contributions to Public Officials

Another important way in which the government exploited confusion about the intent requirements in this case was by presenting evidence evincing lawful campaign contributions and improperly asking jurors to infer criminal intent from them. This strategy was, in fact, a centerpiece of the government's closing argument to the jury, which pointed repeatedly to an email in which Mr. Ring referred to Mr. Doolittle as a "good soldier" who had performed official acts that had benefitted Mr. Ring's clients. *E.g.*, Tr. 11/4/10 (a.m.) at 25:11-13. But that email did so in the context of an internal request by Mr. Ring within the law office to provide Mr. Doolittle with "his fair share of contributions" after Mr. Doolittle chaired a hearing that benefitted one of Mr. Ring's clients [GX 225] -- a perfectly legal and constitutionally protected use of campaign contributions to reward official acts under *McCormick v. United States*, 500

U.S. 257 (1991); *see also* Tr. 11/04/10 (a.m.) at 26:1-5 (making three references to “Doolittle as subsidiary (he was joking)” email) & GX 238 (remark about Doolittle as “subsidiary” prompted by question about fundraiser).

Indeed, campaign contribution evidence featured heavily in the government’s presentation. The government elicited from 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 (a.m.) at 126:6-24, followed by a series of questions about whether Mr. Ring “treated campaign contributions any differently than he did the giving of tickets.” *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.

The defense argued before trial that the First Amendment prohibited this use of constitutionally-protected evidence. As the defense explained, permitting introduction of the evidence gave rise

[to] the inherent danger that the jury will misuse evidence of legal, First Amendment-protected political contributions and fundraising evidence if it is admitted in a trial where the core allegation is that Mr. Ring sought to establish and then exploit corrupt relationships with public officials through giving things of value. The government is leading the court down an unsustainable path in violation of clear guidance from the Supreme Court, which has cautioned against criminalizing “conduct that has long been thought to be well within the law.” *McCormick v. United States*, 500 U.S. 257, 272 (1991). As such, this evidence must be excluded.

DE 82 at 2.

This Court chose to admit the evidence over objection, however, and the effect was precisely as predicted. While this Court attempted to cabin the prejudice with its campaign contribution instruction, there simply was no way to do so. Allowing jurors to consider this constitutionally-protected conduct as evidence of criminal intent was improper, and was particularly prejudicial as to the gratuities count where campaign contributions were almost inevitably given to “reward” officials who had taken favorable actions, just as the law permits and just as the Supreme Court has suggested frequently occurs in our system of privately financed elections.

Nor does *United States v. Lukens*, 114 F.3d 1220 (D.C. Cir. 1997), permit such arguments. *Lukens* was a bribery and conspiracy case involving personal checks given to and cashed by a Congressman in exchange for his intervention in an on-going government investigation. *Id.* at 1221. While the Congressman claimed the checks were loans to help his struggling re-election campaign, the government disagreed. There was, in other words, a dispute among the parties about whether the payments were in fact campaign contributions, which was given to the jury to resolve. The Court of Appeals did not consider the propriety of using evidence of *bona fide* campaign contributions as inculpatory evidence without meeting the *McCormick* explicit *quid pro quo* requirement. Indeed, throughout its discussion, the Court treats the challenged payments as acts in furtherance of the charged conspiracy. *Id.* at 1222.

Here, there was no evidence, and indeed the government has never argued, that the political contributions and fundraisers were not *bona fide*. Because *Lukens* did not involve *bona fide* campaign contributions, the Court of Appeals did not face the prospect that evidence of concededly lawful political contributions and fundraisers might be misused as indicative of a propensity for corruption and that such misuse could infect the jury’s evaluation of acts alleged

to be corrupt. That issue is one *McCormick* requires resolving in Mr. Ring's favor. The Court's earlier ruling to the contrary, permitting jurors to infer criminality from protected First Amendment conduct, cannot be squared with *McCormick*.

3. Material False Impressions and the Failure to Correct False Testimony

Another contributor to juror confusion was the manner in which the government's evidentiary presentation produced material false impressions. The government chose to try this case in a manner almost designed to warp reality -- refusing even to call a single public official to testify, and basing its case almost entirely on the testimony of two highly-incentivized witnesses who had already been convicted of crimes. The witnesses it did call for the most part described their own corrupt relationships with public officials, read Mr. Ring's emails, and then analogized Mr. Ring's relationship to their own -- all the while claiming ignorance of the specific facts related to those relationships on cross-examination. Given this mode of presentation, false impressions were inevitable.

This served the government's purpose in preventing meaningful cross-examination, but it also left jurors with a one-dimensional view of Mr. Ring's professional lobbying relationships that was subject to considerable manipulation. And it is no answer to say that the defense could have completed the picture by calling witnesses. There is no permissible basis for forcing the defense to make a Hobson's choice between putting the government to its proof and ensuring a presentation that is free from material distortions and false impressions. Mr. Ring had a right to a trial in which jurors were not presented with a distorted picture of the facts, even while he simultaneously exercised his right to put the government to its burden of proof. *See Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2540 (2009) (the Constitution "imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into

court. Its value to the defendant is not replaced by a system in which the prosecution presents its evidence via *ex parte* affidavits and waits for the defendant to subpoena the affiants if he chooses.”). *See also Reyes v. United States*, 577 F.3d 1069, 1077 (9th Cir. 2009) (“According to the district court, defense counsel should have sought immunity for the witnesses, and then proved, through their testimony, that the Finance Department did know about the scheme. It was not, however, the defense’s burden to prove Reyes was innocent. It was the prosecutor’s burden to prove he was guilty.”)

a. *Misleading Impressions about So-Called “Team Abramoff”*

The evidence and testimony surrounding “Team Abramoff” exemplifies the manner in which this mode of presentation was prone to manipulation. As the government was well aware, six lobbyists moved with Jack Abramoff from Preston Gates to Greenberg Traurig, including Alan Slomowitz, Shawn Vasell, Amy Berger and Mr. Ring. Five other support staff moved as well -- for a total of 12 people. Most worked regularly with Mr. Abramoff, Mr. Boulanger, Mr. Volz, and Mr. Ring, and were in every objective sense, members in good standing of “Team Abramoff,” to the extent there was such a thing. Most of these individuals were not, however, charged with any crimes related to their conduct. Jurors, though, were deprived of this information, and given a completely distorted picture of the composition of Team Abramoff as a result. Most importantly, jurors did not know that the bulk of “Team Abramoff” was never charged with a crime at all because of the government’s successful objection to the introduction of such information. *See* Tr. 10/26/10 (p.m.) at 28:18-30:6. Instead, jurors (many of whom already knew about Mr. Abramoff’s criminal conviction before trial started) were told only about Mr. Boulanger’s conviction and Mr. Volz’s convictions, and nothing about the status of other lobbyists who had moved with Mr. Abramoff.

Mr. Boulanger's vague testimony about the move of Mr. Abramoff's lobbying team, in which he explained that "several" Preston Gates lobbyists had met "at a hotel" and were invited by Mr. Abramoff to move to Greenberg Traurig, only heightened this ambiguity. Tr. 10/28/10 (p.m.) at 37:18-38:1. By the time of closing argument, the sparseness of this evidentiary record allowed the government to suggest to jurors that Mr. Ring was one of only a "select few" who met at the hotel with Mr. Boulanger and Mr. Abramoff to make the move to Greenberg Traurig. Tr. 11/4/10 (a.m.) at 9:2-8. And from that false premise, it became simple for the government to suggest repeatedly to jurors that all they needed to determine was whether Mr. Ring was a member of "Team Abramoff" because membership was synonymous with criminality. *See, e.g., Id.* at 8:15-21 ("And let me suggest that the first thing you do when you go back to your jury room is answer two questions. First, was there a Team Abramoff? And second, was the defendant a member of that team? Once you answer these two questions, the rest becomes easy.") On this evidentiary record, such an inference was entirely logical; in the world as jurors were presented it, every member of Team Abramoff was a confessed criminal -- so if Mr. Ring was a member, he must be a criminal too. In the real world, however, such an inference was entirely false and misleading.

b. *Misleading Comparisons Between Congressman Ney And Congressman Doolittle*

Mr. Volz's repeated comparisons of his corrupt relationship with Congressman Ney to Mr. Ring's lobbying relationship with Congressman Doolittle followed a similar pattern. Despite having affirmatively elicited these comparisons as the foundation for Mr. Volz' allegations against Mr. Ring, Tr. 10/25/10 (p.m.) at 3:5-19; 10/26/10 (a.m.) at 42:22-43:10, 49:18-50:19, 52:3-11, 59:1-21, 69:9-71:15, 77:25-78:9, the government successfully prevented jurors from learning that Mr. Ney and his Chief of Staff, Mr. Heaton, had been prosecuted and

convicted on felony charges based on his relationship with Mr. Volz, while Mr. Doolittle and his staff had not been charged with any crimes at all, much less convicted. Tr. 10/26/10 at (a.m.) 28:18-30:6. At the end of the day, then, jurors heard a highly-charged comparison but lacked critical information necessary to evaluate it -- information that would have completely undermined Mr. Volz' testimony and even his credibility more generally.

c. *Misleading Charts and The Presentation Of False Testimony About Them*

The government also presented jurors with a series of misleading and confusing charts, designed to inflate both the value of items provided to public officials and to create false impressions about the number of official acts public officials had performed. As Agent LoStrocco -- the FBI agent called to authenticate the charts -- was ultimately forced to admit on cross-examination, the government's charts did not purport to compare gifts of meals and tickets with "official acts" as defined in *Valdes v. United States*, 475 F.3d 1319, 1323 (D.C. Cir. 2007) (en banc) and this Court's instructions. Tr. 11/02/10 (p.m.) at 9:4-20. Instead, the chart compared emails about meals and tickets (often containing several markings for each email and including gifts that were never given) with "acts" -- a category later amended to include "events" such as Mr. Istook's ascension to the chairmanship of a subcommittee. Tr. 11/02/10 (p.m.) at 32:12-33:2. That, however, did not stop at least one government witness from falsely telling jurors that the charts did compare "official acts" taken by public officials with gifts actually given to them. In particular, the government elicited from Mr. Volz the following testimony:

Q: I want to go to the chart, 20-5A, just the first page. And what is this?

Mr. Volz: This is the Doolittle timeline chart, May to October 2000.

Q: And what is on the top and what is on the bottom?

Mr. Volz: On the top are, "*Official acts* with symbols for letter, e-mail, meeting, miscellaneous."

Q: And on the bottom.

Mr. Volz: *Things of value, meal, job, tickets, miscellaneous gifts.*

Tr. 10/26/10 (a.m.) at 80:15-24 (emphasis added). Notably, the government never affirmatively corrected this sworn testimony. *But see Napue v. Illinois*, 360 U.S. 264, 269 (1959) (constitutional error occurs when the government, “although not soliciting false evidence, allows it to go uncorrected when it appears”).

This clearly had its intended effect. On close inspection, it appears that any gifts to Mr. Albaugh amounted to tickets to four events (a total of 15 tickets) and five meals over the course of four years.³ The 15 tickets had a total value of approximately \$1478.25, and the meals (the jury heard evidence of a total of four) had a total value of approximately \$165.

Mr. Coughlin, who arguably received the most meals and tickets from Mr. Ring (which is unsurprising given the longstanding nature of their friendship), likely received less than \$5000 in meals and tickets over a three year period, and certainly the evidence before the jury did not show anything more than that.⁴ And despite the relatively minimal values of these items when

³ These figures are assumed for argument’s sake only as there is no meaningful evidence in the record to support even these amounts. The only evidence this jury heard about Mr. Albaugh’s meals came from the government’s charts. This evidence was entirely unhelpful, as the government did not purport to document actual meals or tickets in the charts. Mr. Ring has attempted to recreate the tickets and meals received from the back-up materials, Mr. Albaugh’s testimony in the last trial and his plea materials -- none of which this jury heard. Even this has not been simple because of the government’s confusing methodology. For example, the charts and other materials suggest Mr. Albaugh may have received four tickets to a Tim McGraw concert in 2003, although Mr. Albaugh admitted in his plea only receiving two of the tickets. The methodology above assumes arguendo that he received four tickets and that the tickets were valued similarly to those provided to others for Tim McGraw concerts, even though jurors heard no meaningful evidence to support this position, and even though jurors heard no meaningful evidence to support a value for the tickets.

⁴ Jurors similarly heard no evidence from which they could meaningfully value the tickets or meals received by Mr. Coughlin and the figures here are again provided only for argument’s sake. In his statement of offense, Mr. Coughlin estimated the value of the meals and tickets he received at \$4800. *United States v. Coughlin*, No. 08-cr-111 (ESH), Docket Entry 7 at 8. While the government estimated the amount as \$6180, *id.*, the difference was the result of the government’s contention that the face value

(footnote continued on next page)

divided over a four year period (an average of approximately 4 tickets and one meal per year), particularly when compared with stream of value cases like *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),⁵ Mr. Boulanger speculated that an accounting of the gifts would take “months.” Tr. 10/29/10 (a.m.) at 102:20. This speculation was baseless, but its effect was so powerful that it even appeared to have momentarily fooled the Court. *Id.* at 102:16-17.

d. *Suggesting False Information to Jurors About Jobs For Public Officials’ Spouses*

That was not, moreover, the only false information provided by the government to jurors. During his redirect examination of Mr. Volz, the prosecutor asked,

Q: What, if anything, do you know about Kevin Ring setting up a job for the wife of David Lopez with Resource Capital?

Tr. 10/27/10 at 104:1-2. Following this question, the defense moved for a mistrial, and the prosecutor responded by suggesting that he had good faith evidentiary basis for asking the question. *Id.* at 104:18-105:1. During that same questioning, the prosecutor later asked Mr. Volz whether he “recall[ed] any conversations with Mr. Ring about David Lopez’s travel disclosure form?” *Id.* at 119:15-25. When Mr. Volz answered that “[i]f you got something you

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of Redskins suite tickets (\$77.25) should be ignored and much higher value (\$900) should be placed on them. *United States v. Coughlin*, No. 08-cr-111 (ESH), Docket Entry 19 at 40. This Court ultimately determined that face value controlled, *see* Tr. 9/2/10 at 49:5-6.

⁵ In the accompanying motion for judgment of acquittal, Mr. Ring has described how previous stream-of-value cases have 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*. *See* Motion for Judgment of Acquittal, DE 233 at 20-23.

can put in front of me, I don't remember,” the prosecutor then volunteered that “[w]e don't need to take the time right now.” *Id.*

As the Court determined in a hearing the following day, these questions -- for which there was no good-faith evidentiary basis despite the prosecutor's claims the day before that one existed -- improperly introduced false testimony to jurors about matters critical to this case. Tr. 10/28/10 (a.m.) at 5:9-6:13. Throughout the trial, the government focused on vague references to “jobs” other than Ms. Doolittle's, including the lobbyist job provided to Neil Volz, to imply some involvement or knowledge by Mr. Ring of the use of such positions as a *quid pro quo* tool. But after Mr. Volz was forced to admit that Mr. Ring opposed his own hiring at Greenberg Traurig, Tr. 10/26/10 (p.m.) at 93:13-16, the government was left grasping for other “improper” jobs in which Mr. Ring was supposedly involved. Because none existed, however, the government was left to fabricate them, which it did in its questioning. While the Court found that the government had no good faith basis for asking the question and had “crossed the line of professional responsibility,” it denied the defense motion for a mistrial at the time. Tr. 10/28/10 (a.m.) at 5:9-6:13. The Court should revisit that ruling. As the Court explained at the time, such improper tactics are particularly harmful “in a case that is this close.” Tr. 10/28/10 (a.m.) at 7:19-20.

e. *Exploiting Juror Ignorance of How Congress Works*

The government's presentation also served to exploit the jury's ignorance of how Congress works by suggesting they could rationally infer bribery from any legislative action that appeared to contradict some utopian definition of the “public interest.” Thus, in the government's view, jurors could fairly infer corruption by virtue of the fact that a California Congressman was advocating for or against the spending of federal money in connection with a water plant in Montana. As the government well knew, however, congressional representatives

take a variety of acts that directly affect people throughout the United States, and Mr. Doolittle himself happened to be the Chairman of the House Subcommittee on Energy and Water Development, with national responsibilities for allocating federal water resources that reach far beyond the districts of any individual member. This, of course, did not stop the government from repeating this line of questioning with respect to other of Mr. Doolittle's actions outside his district, despite his membership on various committees with supervisory authority over those areas. No rational inference of corruption can fairly be drawn from such conduct. As the Supreme Court has made clear, "[f]ew governmental actions are immune from the charge that they are 'not in the public interest' or in some sense 'corrupt.'" *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 377 (1991). And yet introducing and arguing such inferences was another misleading pillar of a fundamentally flawed government case.

4. Repeated Efforts to Prevent Jurors from Receiving Clear Guidance on *Quid Pro Quo* Bribery

Working in tandem with all of these efforts were the government's repeated attempts efforts to prevent jurors from receiving clear guidance about the *quid pro quo* bribery standard it was compelled to meet by the Supreme Court's *Skilling* decision. Before the second trial, the government successfully prevented application of the explicit *quid pro quo* standard of *McCormick v. United States*, 500 U.S. 257, 272 (1991), to its honest services counts, despite its extensive reliance on campaign contributions and evidence of legal lobbying conduct by Mr. Ring as critical parts of its proof. As trial approached, the government even successfully prevented the term "bribery" from being mentioned by the Court during its preliminary instructions [Tr. 10/20/10 at 134:19-135:3 and 136:13-137:1] -- despite *Skilling*'s holding that the honest services fraud law "covers only bribery and kickback schemes." *Skilling*, 130 S. Ct. at 2907. Moreover, despite conceding at one point that it would not object to defense arguments

that mention the term “bribery,” [Tr. 10/20/10 at 136:24-25], the government objected and requested a cautionary instruction after defense counsel used the term “bribery” in opening statement. Tr. 10/21/10 (p.m.) at 36:7-11.

The government also successfully objected to the defense use of the term “agreement” in its opening statement (despite the plethora of case law discussing the two way nature of bribery charges and specifically referencing the need to show an “agreement”), *Id.* at 36-39, prompting the Court to provide a cautionary instruction to the jury. Even after that cautionary instruction, the government pressed on, demanding that the Court instruct jurors “that the Government is not required to prove that “the [public] official must agree to accept corruptly a thing of value in exchange for the performance of an official act. As I will instruct you at the close of the case, the Government is not required to prove that ‘one of the parties to the scheme be a public official.’” DE 202 at 9.

The Court wisely declined this request and, three weeks into the case, jurors were ultimately allowed to hear the term “bribery” in closing instructions, as well as being instructed on the nature of the *quid pro quo* agreement the government was required to prove beyond a reasonable doubt. But even there, the government successfully blunted the force of these instructions by adding so many extraneous matters that they became virtually unintelligible. This was exactly the problem the defense identified in its objections to the government’s proposals, pointing out that adding language about whether a public official needed to complete the official act “water[ed] down th[e *quid pro quo*] requirement, misstating the law and creating the potential for extreme confusion.” DE 216 at 7. The Court added those principles anyway, over defense objection. 11/1/10 (a.m.) at 57:11; DE 222 at 51.

CONCLUSION

In assessing the arguments raised in this motion, the Court should step back and consider the cumulative effect of the manner in which this case was presented. Using the methods described above, as well as a healthy dose of inflammatory testimony concerning the menu prices at Mr. Abramoff's restaurant, the costs of floor seats at the Wizards game, and the efforts of conservative Republican leadership to pursue political objectives antithetical to the political views of many District of Columbia residents, the government skillfully obtained a jury that was primed to convict. The government's not-so-subtle message, inviting jurors to express their political disapproval of these moneyed "fat cats" and their extravagant lifestyle, was a powerful one -- it incited District of Columbia jurors to not only return convictions unsupported by the evidence but to laugh and joke with one another both before and after they did so. In the end, such a verdict bears no resemblance to the sort of fair and reasoned decisions that our system generally produces, and rightly prides itself upon. If the Court does not grant a judgment of acquittal on all counts, Mr. Ring respectfully requests a new trial in the interests of justice.

Respectfully submitted,

/s/ Timothy P. O'Toole
Andrew T. Wise (D.C. Bar # 456865)
Timothy P. O'Toole (D.C. Bar # 469800)
MILLER & CHEVALIER CHARTERED
655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005-5701
Tel. (202) 626-5800
Fax. (202) 626-5801

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