
**REPORT OF
THE PRELIMINARY INQUIRY
INTO THE MATTER OF
SENATOR JOHN E. ENSIGN**

**SUBMITTED TO THE UNITED STATES
SENATE SELECT COMMITTEE ON ETHICS
BY
CAROL ELDER BRUCE, SPECIAL COUNSEL**

MAY 10, 2011

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF FINDINGS	1
A. Introduction	1
B. Summary of Findings	3
C. The Special Counsel Recommends Referrals to the Department of Justice and the Federal Election Commission.....	7
II. FINDINGS OF FACT	7
A. Factual Background	7
B. Senator Ensign’s Affair with Cynthia Hampton	10
1. Mr. Hampton’s Discovery of the Affair.....	12
2. Mr. Hampton Seeks Assistance to End the Affair and an “Intervention” Is Held	13
3. The Affair Continues until July 2008.....	14
C. Senator Ensign Plans for “Transition Finances” for Mr. Hampton.....	15
D. Senator Ensign Arranges a Consulting Firm Position for Doug Hampton After Terminating Mr. Hampton.....	16
E. The Senator Has Extensive Discussions with Doug Hampton about Severance Payments.....	17
F. The Senator’s Father Makes a Payment of \$96,000 from the Ensign Family Trust to the Hamptons.....	19
G. Mr. Hampton Receives Excessive Unused Vacation Pay	20
H. Senator Ensign Takes Action Surrounding Mr. Hampton’s Post- Employment Lobbying.....	21
1. Senator Ensign Takes Steps to Reduce Records Retention, Communicate Off of the Senate Server, and Minimize Contacts with the Ethics Committee	21
2. Senator Ensign Takes Efforts to Persuade and Compel Constituents to Hire Mr. Hampton.....	22
I. Mr. Hampton Departs and Immediately Lobbies Senator Ensign’s Staff.....	23
J. Senator Ensign and John Lopez Agree to Channel Mr. Hampton’s Lobbying Contacts Through Mr. Lopez.....	27
1. Senator Ensign and John Lopez Assist Allegiant Airlines Based on Mr. Hampton’s Lobbying.....	29

2.	John Lopez Assists Mr. Hampton’s Client Entravision	33
3.	Mr. Hampton Lobbies Senator Ensign’s Office on Behalf of NV Energy.....	34
4.	Mr. Hampton Requests Help in Developing Relationships Between Allegiant Airlines and Federal Officials	35
K.	Mr. Hampton Hires a Lawyer and Raises Damage Claims; Senator Coburn Handles Negotiations with Senator Ensign.....	37
L.	Senator Ensign Discloses the Affair to His Staff and the Public in June 2009	38
1.	The Senator Speaks of “Making the Hamptons Whole”	38
2.	Senator Ensign Makes Journal Entries Describing the Payment to the Hamptons	39
3.	Senator Ensign Makes Draft Public Statements Referring to a “Severance” Payment.....	40
4.	Based on Advice from Senator Ensign’s Attorney, His Staff Removes All References to Payments in the Final Public Statement.....	41
5.	Mr. Hampton Reveals in Public That the Senator Made Payments to the Hamptons.....	42
6.	Michael Ensign, Sharon Ensign, and Senator Ensign Submit Affidavits to the FEC Regarding the Payment.....	43
a.	There Was No Evidence Supporting the Assertion in the FEC Affidavits That the Senior Ensigns Paid for the Hamptons’ Trip to Hawaii.....	44
b.	Michael and Sharon Ensign’s Payment to the Hamptons Greatly Exceeds Other Gifts Given to Non-Ensign Family Members	45
M.	The Senator’s Chief of Staff Misleads the Public Regarding Senator Ensign’s Actions and Mr. Hampton’s Lobbying Efforts	46
III.	SUMMARY OF PRELIMINARY INQUIRY INVESTIGATION	47
A.	The Request for Investigation of Senator Ensign.....	47
B.	The Preliminary Inquiry	47
1.	Initial Document Productions, Witness Interviews, and Depositions.....	48
2.	Retention of Special Counsel to Assist with Preliminary Inquiry	49
a.	Additional Document Production and Forensic Imaging.....	49

b.	Additional Depositions and Immunized Testimony.....	50
C.	The Retirement and Resignation of Senator Ensign	51
IV.	FINDINGS OF THE SPECIAL COUNSEL.....	51
A.	There Is Substantial Credible Evidence That Senator Ensign Conspired to Violate, and Aided and Abetted Mr. Hampton’s Violations of The Post Employment Contact Ban, 18 U.S.C. § 207	51
1.	Mr. Hampton’s Contacts Were Not Exempt as “Informational” Contacts	51
2.	Contacts by Covered Persons Are Illegal Even If the Requested Action Would Have Been Taken in Any Event	52
3.	Evidence of Aiding and Abetting.....	53
4.	Evidence of Conspiracy	55
B.	Findings Concerning the \$96,000 Payment to the Hamptons.....	56
1.	There Is Substantial Credible Evidence That the Payment Was Severance and the Evidence Does Not Support Claims That the Payment Was a Gift.....	56
2.	There Is Substantial Credible Evidence That Senator Ensign Made False or Misleading Statements Concerning the Payment to the Hamptons	57
3.	There Is Substantial Credible Evidence That the Payment Violated Senate Rule 38 and Statutory Prohibitions on Unofficial Accounts with Respect to Mr. Hampton.....	58
4.	There Is Substantial Credible Evidence That the Payment with Respect to Ms. Hampton Constituted an Unlawful and Unreported Campaign Contribution.....	59
5.	Even if Senator Ensign’s Assertions That the Payment Was a Gift Were Credible, Senate Rule 35 Would Have Been Violated.....	60
C.	There Is Substantial Credible Evidence That Senator Ensign Permitted Spoliation and Engaged in Obstruction of Justice	61
D.	There Is Substantial Credible Evidence That Senator Ensign Engaged in Improper Conduct Reflecting Upon the Senate, Including Violations of His Own Senate Office Policies.....	62
1.	The Applicable Standard.....	62
2.	Application of the Improper Conduct Standard	63
V.	RECOMMENDATIONS AND CONCLUSION.....	67

KEY INDIVIDUALS & PRIMARY AFFILIATIONS

Daniel Albregts	Counsel for Cindy and Doug Hampton
Brooke Allmon	Director of Nevada Policy for Senator Ensign
Dick Bouts	Department of Interior
Brian Chatwin	Legislative Assistant for Senator Ensign
Senator Tom Coburn	United States Senator (R – Oklahoma)
Tim Coe	Fellowship Foundation
Senator John Ensign	United States Senator (R – Nevada)
Darlene Ensign	Senator Ensign’s wife
Michael Ensign	Senator Ensign’s father
Sharon Ensign	Senator Ensign’s mother
Rebecca Fisher	Director of Communications for Senator Ensign
Maury Gallagher	Chief Executive Officer, Allegiant Air
Chris Gober	Outside Counsel for Senator Ensign at Fish & Richardson P.C.
Simon Gros	Assistant Secretary for Governmental Affairs, U.S. Department of Transportation
Bruce Hampton	Treasurer for The Ensign Family Trust (no relation to Doug or Cindy Hampton)
Cindy Hampton	Campaign treasurer for Ensign for Senate and BattleBorn PAC; wife of Douglas Hampton
Douglas Hampton	Friend of Senator Ensign’s; Administrative Assistant to Senator Ensign; husband of Cindy Hampton
Ponder Harrison	Vice President, Allegiant Air, Nevada
Tinna Jackson	Deputy Chief of Staff for Senator Ensign
Yorick Jurani	Information Systems Manager for Senator Ensign
Starla Lacy	NV Energy, Nevada
John Lopez	Chief of Staff for Senator Ensign

Nick Lowry	Senior Attorney, U.S. Department of Transportation Office of Aviation Enforcement and Proceedings
Tory Mazzola	Director of Communications for Senator Ensign
Matt Mesmer	Attorney, Senate Select Committee on Ethics
Jason Mulvihill	Chief Counsel and Legislative Director for Senator Ensign
David Quinalty	Legislative Assistant for Senator Ensign
Rachel Roberts	Scheduler for Senator Ensign
Sig Rogich	Rogich Communications Group
Lindsey Slanker	November Inc.
Mike Slanker	November Inc.
Paul Steelman	Steelman Partners
Marty Sherman	Fellowship Foundation
Pam Thiessen	Legislative Director for Senator Ensign

GLOSSARY

BattleBorn PAC	Senator Ensign’s Political Action Committee
CAA	Congressional Accountability Act
CACI	E-discovery vendor employed by SSCE
CODEL	Congressional Delegation trip
Committee	United States Senate Select Committee on Ethics
CREW	Citizens for Responsibility and Ethics in Washington
DOT	U.S. Department of Transportation
EEOC	Equal Employment Opportunity Commission
EFS	“Ensign For Senate” - Senator Ensign’s Campaign Committee
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FEC	Federal Election Commission
FECA	Federal Election Campaign Act of 1971
Manual	Senate Ethics Manual
NRSC	National Republican Senatorial Committee
Report	Report of Special Counsel Carol Elder Bruce
RPC	Republican Policy Committee
SAA	U.S. Senate Sergeant at Arms and Doorkeeper
SSCE	Senate Select Committee on Ethics

I. INTRODUCTION AND SUMMARY OF FINDINGS

A. Introduction

The United States Senate Select Committee on Ethics (“SSCE” or “Committee”), assisted by Special Counsel, conducted a Preliminary Inquiry into certain conduct of Senator John E. Ensign.¹ The scope of the Preliminary Inquiry included an examination into allegations that Senator Ensign violated Senate rules and federal law, including provisions of the criminal code, and/or engaged in conduct that reflecting discredit upon the United States Senate regarding the termination of Doug Hampton’s Senate employment, Mr. Hampton’s post-employment contacts with the Senate, and payments made to the Hamptons, and any other matters as the Committee may direct.

On April 21, 2011, as the Preliminary Inquiry neared its conclusion, Senator Ensign announced he would resign as the 24th Senator from the State of Nevada. Senator Ensign’s resignation was effective May 3, 2011, the day before his sworn deposition was scheduled to begin.² Although Senator Ensign’s resignation divests the Committee of jurisdiction to impose discipline on him as of its effective date, Special Counsel, as required by the governing Resolution and Rules of the Senate, tenders this Report to the Committee for its consideration in the exercise of its continuing authority, obligations, and discretion under the Resolution and Rules.

The Committee’s investigation began after it received a complaint on June 24, 2009, from Citizens for Responsibility and Ethics in Washington (“CREW”). CREW supplemented that complaint on October 6, 2009. These filings presented allegations of sexual harassment/employment discrimination, post-employment ban violations, and issues related to payments to Douglas and Cynthia Hampton, Senator Ensign’s former Administrative Assistant and campaign treasurer.

Based on these serious allegations and other information available to it, the Committee undertook an extensive Preliminary Inquiry as provided by Rule 3 of its Supplementary Procedural Rules. Article I, section 5, clause 2 of the Constitution of the United States of America provides that “[e]ach House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.” Under the Committee’s authorizing resolution, Senate Resolution 338, 88th Cong. 2d Sess. (1964) (“S. Res. 338”), the Committee is empowered to investigate not only violations of law, the Senate Code of Official Conduct, and the rules and regulations of the Senate, but also “improper conduct which may reflect upon the Senate.” While Senators are expected to comply with all laws, Senate Rules and Standards of Conduct, the Senate and the Committee have made clear that a Senator’s obligations of ethical behavior go beyond this:

¹ Special Counsel Carol Elder Bruce was appointed on January 31, 2011.

² Since the very beginning of the investigation, Committee staff has been in communication with Senator Ensign through his counsel and offered him the opportunity to provide any information or legal arguments he wanted the Committee to consider, and he has availed himself of this opportunity. Special Counsel continued this policy after her appointment.

Certain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate,” and has provided the basis for the Senate’s most serious disciplinary cases in modern times.³

During the course of the 22 month investigation, Committee staff, later joined by Special Counsel, conducted 72 witness interviews and depositions, including members of Senator Ensign’s current and former staff and numerous third parties. The staffs for the Committee and Special Counsel also reviewed over a half million documents received from numerous sources, including Senator Ensign and his staff. Included in the materials reviewed were hundreds of documents previously withheld or not disclosed that were produced after the Special Counsel was appointed and challenged the basis for the non-disclosure.

Special Counsel was careful not to seek intimate details of the extramarital affair referenced in the initial complaint. Whether a person is unfaithful to his or her spouse is generally the couple’s own business to deal with, perhaps, in private communications with wronged spouses, marriage counselors, and others, and to surface the infidelity only if and when there is some public complaint or settlement made (such as in divorce proceedings or private resolutions). Reconciliation or resolution in private can protect the families involved and serve the greater good. This is no less true if one of the individuals is a public official. This case, however, involved two individuals whose employment and financial well being were dependent upon the Senator who employed them. This situation placed these individuals in a particularly vulnerable situation.

Further, although concealment is part of the anatomy of an affair, the concealment conduct in this case by Senator Ensign exceeded the normal acts of discretion and created a web of deceit that entangled and compromised numerous people, including a loyal Chief of Staff, was an abuse of the Senator’s power, and raised serious issues of violations within the Committee’s jurisdiction. Therefore, the details of the affair itself and the concealment activities are presented only to the extent relevant to establish the basis and context of the actions that led to the alleged violations.

As will be developed below, it is Special Counsel’s determination that substantial credible evidence exists that gives substantial cause to conclude that Senator Ensign engaged in violations of law and of Senate Rules within the Committee’s jurisdiction under S. Res. 338, as amended, including improper conduct which reflects upon the Senate under Section 2(a)(1) of S. Res. 338. Had Senator Ensign not resigned the Special Counsel would have recommended that the Committee initiate an adjudicatory review for the purpose of considering the appropriateness of disciplinary action against the Senator. The Special Counsel is confident that the evidence that would have been presented in an adjudicatory hearing would have been substantial and sufficient to warrant the consideration of the sanction of expulsion. Special Counsel notes,

³ Senate Ethics Manual (“Manual”), Appendix E, at 432.

though, that Senator Ensign, by resigning before the Special Counsel could question him under oath in a deposition about the facts, did not have the opportunity to challenge factual assertions and evidence, the Special Counsel's interpretation of the facts, or the strength of the case against him.

B. Summary of Findings

Based on the record in this matter, the Special Counsel respectfully submits that there is substantial credible evidence that provides substantial cause to conclude that Senator Ensign violated Senate Rules and federal civil and criminal laws, and engaged in improper conduct reflecting upon the Senate, thus betraying the public trust and bringing discredit to the Senate. The following summarizes the Special Counsel's findings.

- **There Is Substantial Credible Evidence That Senator Ensign Conspired to Violate, and Aided and Abetted Mr. Hampton's Violations of The Post Employment Contact Ban, 18 U.S.C. § 207.**
 - Senator Ensign facilitated Mr. Hampton's unlawful post-employment lobbying by pressuring contributors and constituents to hire Mr. Hampton even though he had no public policy experience or value as a lobbyist other than access to the Senator and his office. For example, when a prominent Nevada constituent declined to hire Mr. Hampton, Senator Ensign instructed John Lopez, his Chief of Staff, to "jack him up to high heaven" and inform the constituent that he was "cut off" from Senator Ensign and could not contact him any longer.
 - Senator Ensign agreed with Mr. Hampton and Mr. Lopez, to have Mr. Lopez be the point person for Mr. Hampton's contacts with the Senator's office in order to provide Mr. Hampton with the necessary assistance for his lobbying efforts during his post-employment period, and not for the purpose of making certain that Mr. Hampton complied with lobbying restrictions.
 - Contemporaneous email communications reveal that Senator Ensign agreed to and encouraged the improper contacts between Mr. Hampton and Mr. Lopez. Additionally, according to Mr. Lopez, Senator Ensign wanted him to assist Mr. Hampton, and wanted it "out of sight, out of mind," so that Mr. Lopez could "take the heat on his [the Senator's] behalf."
 - Mr. Hampton improperly contacted Senator Ensign's office regarding at least twelve different client matters, and initiated at least thirty improper contacts to Senator Ensign's office and various other Senate offices during his one-year post-employment ban period.
 - Senator Ensign communicated with Mr. Hampton and took action on behalf of his clients, including the following matters, among others, which are explained in detail in this Report: (1) a Department of Transportation

(“DOT”) enforcement action that was successfully resolved with a small fine; (2) a draft environmental impact study; and (3) facilitating high-level meetings between one of Mr. Hampton’s clients and the DOT Secretary, as well as other Senators.

- o Before and after Mr. Hampton’s termination and during the time period when the Senator was helping Mr. Hampton get clients, Senator Ensign instituted office policies that had the effect of making Mr. Hampton’s contacts harder to detect, including a shredding policy, discouraging use of official Senate email accounts in favor of Gmail, and directing that all inquiries of the Committee go through Mr. Lopez, the person he directed to interact with Mr. Hampton.

- **There Is Substantial Credible Evidence That Senator Ensign and His Parents Made False or Misleading Statements to the Federal Election Commission Regarding the \$96,000 Payment to the Hamptons.**

- o A \$96,000 payment to Mr. Hampton, Ms. Hampton, and two of their three children from the Ensign Family Trust Fund, made at the time the Hamptons were terminated from the Senator’s employ, constituted a severance payment, and Senator Ensign’s affidavit to the Federal Election Commission (“FEC”) that the payment was not severance is false.
- o Senator Ensign referred to the payment as severance on multiple occasions, including: (1) during an emergency staff meeting on June 15, 2009, when he disclosed his affair with Ms. Hampton to his Senate office staff; (2) in multiple drafts of a public statement in which the Senator publicly disclosed an affair with Ms. Hampton; (3) in credible testimony from at least four witnesses, one of whom stated that Senator Ensign said “I’m going to give him as much severance as possible”; and (4) in his own personal journal entries, written in June 2009, over a year after the payment was made, describing his intent to “help them transition into their new life.”
- o Evidence revealed that the term “severance” was removed from Senator Ensign’s final June 2009 public statement not because Senator Ensign no longer believed the payment to be severance, but because he received legal counsel informing him that calling it severance could expose him to a host of criminal charges.⁴
- o Senator Ensign’s parents’ affidavits to the FEC are also misleading and potentially false. The affidavits stated that the \$96,000 payment was part of their pattern of giving to the Hamptons, and cited payment of an all-

⁴ Special Counsel reviewed the document containing this legal advice, which had previously been withheld as privileged, and determined that the document was not privileged because it was addressed to a third party, not to Senator Ensign. The Senator has abandoned his prior claim of privilege as to this document.

expenses paid trip to Hawaii in 2006 for the Hamptons as support for this pattern of giving. The FEC credited and relied upon these affidavits in dismissing a complaint against Senator Ensign and his campaign, despite a recommendation by FEC staff counsel that an investigation be opened.

- There was no evidence of any “pattern of giving” from Michael or Sharon Ensign to the Hamptons. The senior Ensigs and Mr. Hampton had a contentious relationship not conducive to large monetary gifts and a “pattern of giving,” and had never directly given the Hamptons a gift before. Additionally, the senior Ensigs had never given a single gift from the Ensign Family Trust Fund of the size of the Hampton payment to any non-family member, and also had no pattern or practice of giving significant gifts to any friends of their children.

- **There is Substantial Credible Evidence That a Portion of the \$96,000 Payment Constituted an Unlawful and Unreported Campaign Contribution and Violated Federal Law and a Senate Rule Prohibiting Unofficial Office Accounts.**

- The part of the payment that was severance to Ms. Hampton constitutes an excessive and illegal campaign contribution pursuant to the Federal Election Campaign Act of 1971 (“FECA”) because it exceeded the \$2,000 limit for authorized political committees and the \$5,000 limit for other political committees. The payment, as well as the failure to report the payment, are violations of federal civil and criminal law.
- The part of the payment that was severance to Mr. Hampton would also constitute an improper unofficial office account as it was a payment from a private person, in this case the Ensign Family Trust Fund, to defray official expenses.

- **There Is Substantial Credible Evidence That Senator Ensign Permitted Spoliation of Documents and Engaged in Potential Obstruction of Justice Violations.**

- Senator Ensign deleted relevant documents and files after he knew they were likely to be subject to a legal claim and before and after formal notices to retain all documents relevant to the Preliminary Inquiry were issued.
- Senator Ensign should reasonably have known no later than June 15, 2009, that this evidence could be relevant to anticipated legal proceedings, and has stated through counsel that he did in fact anticipate legal proceedings as to the matters at issue in the Preliminary Inquiry no later than that date.
- Senator Ensign’s Gmail account, which the Senator generally used instead of his official Senate email account and was thus not backed up on the

Senate server, was deleted and replaced on October 1, 2009. Consequently, this important account was not available to be reviewed by the Committee's information technology vendor.

- o Additionally, the evidence establishes that Senator Ensign deleted at least 5 relevant documents after an October 21, 2009 document retention notice issued by the Committee, including a document that directly contradicted the Senator's assertion that the payment to the Hamptons was not severance. There is no evidence that the Senator took any steps at any time to alter his email deletion practices or to ensure that his office was retaining his emails pertinent to the matters at issue in the Preliminary Inquiry.
- **There Is Substantial Credible Evidence That Senator Ensign Discriminated on the Basis of Sex and Engaged in Improper Conduct Reflecting Upon the Senate by Terminating the Hamptons' Employment Because of the Affair.**
 - o Senator Ensign engaged in and continued an extramarital affair with Ms. Hampton, an employee of the Senator's campaign committee and his leadership PAC, even though it was unwelcome to her, and then determined that the affair made it impossible for either of the Hamptons to continue working for him.
 - o According to Ms. Hampton, the affair caused her considerable emotional distress, she repeatedly sought to end it, and she repeatedly expressed concern to Senator Ensign about losing her job. Senator Ensign nonetheless persisted in seeking to continue the affair, initiating constant and even relentless contacts after promising to end the affair multiple times.
 - o Senator Ensign had enormous power over the Hampton family at the time of the affair. He controlled the sole sources of income for both Mr. and Ms. Hampton, provided tuition and other financial assistance to the family, and had maintained a very close personal relationship with the family for years.
- **There Is Substantial Credible Evidence That Senator Ensign Violated His Own Senate Office Policies.**
 - o Senator Ensign violated his own Senate office policies, including, among others, policies regarding fraternization and sexual harassment based on his affair with Ms. Hampton.
 - o The Senator engaged in conduct that would have been the basis for termination of one of his own employees pursuant to the Senator's written office policies. It is reasonable to conclude that a violation of the Senator's own office policies serious enough to warrant termination also constitutes improper conduct reflecting upon the Senate.

C. The Special Counsel Recommends Referrals to the Department of Justice and the Federal Election Commission

The Special Counsel respectfully submits that the Committee should refer under Section 2(a)(6) of S. Res. 338 and Rule 7(a) of the Committee's Supplementary Procedural Rules of the matters outlined herein to the Department of Justice for further investigation and consideration of whether criminal prosecution of Senator Ensign is warranted for aiding and abetting a violation of 18 U.S.C. § 207, or conspiring to violate that statute, for making false statements, for obstruction of justice, and for violations of federal campaign laws. The Special Counsel further submits that the Committee should also refer of this matter to the FEC to review its prior findings regarding Senator Ensign and his campaign and determine whether further investigation of potential violations of federal campaign laws is appropriate.

II. FINDINGS OF FACT

A. Factual Background

John Eric Ensign was born on March 25, 1958, in Roseville, California. He was raised in Las Vegas, Nevada by his mother, Sharon, and his stepfather, Michael Ensign, along with two other siblings. Senator Ensign was formally adopted by Michael Ensign when he was nine years old. Michael Ensign has long been involved with the casino industry in Nevada and is the former chairman and CEO of Mandalay Resort Group.

Senator Ensign holds a Bachelor's degree from Oregon State University, and received his degree as a Doctor of Veterinary Medicine from Colorado State University in 1985. Senator Ensign subsequently practiced veterinary medicine, and opened the first 24-hour animal hospital in Las Vegas.

Senator Ensign married Darlene (Sciaretta) Ensign in 1987 and they have three children, a 19 year old son, a 16 year old daughter, and a 14 year old son. Darlene grew up in Anaheim, California and attended Canyon High School in Anaheim Hills, California, with Cynthia (Barnes) Hampton. Cindy and Darlene continued their friendship after graduating from high school in 1981. Ms. Hampton met Doug Hampton in 1985 at the restaurant where she worked. She was 22 years old at the time. Senator Ensign became acquainted with Cindy and Doug Hampton sometime in 1986 through his wife when both couples were still dating. The Ensigs were married at a Catholic church in Boulder City, Nevada, on November 7, 1987, and the reception was at a hotel on the Las Vegas strip. Ms. Hampton was a bridesmaid at the Ensign wedding. The Hamptons were married on January 4, 1988. The Hamptons had a son in 1990, and then had twins, a boy and a girl, in 1992. The oldest Ensign child is just days younger than the Hamptons' twins, and the children became close as the families spent more time together.

Doug Hampton and Senator Ensign became good friends after their respective marriages. Darlene Ensign's parents lived in Southern California, and John and Darlene would come to visit them, during which visits, Mr. Hampton and Mr. Ensign golfed and played basketball, and became very close friends. The Ensigs and Hamptons vacationed together in the summers at the Ensigs' lake house just outside of Barstow, California. Mr. Ensign and Mr. Hampton would also travel to golf tournaments held by the Jonathan Coe Foundation, a charity started by Tim

Coe, Senator Ensign's long-standing spiritual advisor. Senator Ensign and Mr. Hampton also started a Christian-men's golf tournament in Las Vegas, and held the event at least twice.

In 1994, Senator Ensign was elected to a seat in the U.S. House of Representatives, where he served until 1998. He was the Representative for Nevada's 1st District, which covers Las Vegas and portions of unincorporated Clark County. Mr. Lopez, who would later serve as Senator Ensign's Chief of Staff during the critical time periods of this investigation, began working for then Congressman Ensign in 1995, first as a legislative assistant and later as a senior legislative assistant. In 1998, Senator Ensign ran an unsuccessful campaign for Senate against incumbent Senator Harry Reid, losing by 428 votes after a ballot recount. Mr. Lopez served as Senator Ensign's Northern Nevada Coordinator in that campaign.

Two years later, the other Senate seat in Nevada opened due to Senator Bryan's retirement. Senator Ensign ran for the seat and was elected on November 7, 2000. He started his first term in the U.S. Senate in January 2001.

While in Washington, D.C., Senator Ensign resided at a townhouse known as the "C Street Center." Tim Coe was one of the spiritual leaders of the International Foundation, the organization that counseled Members of Congress and others at the C Street Center and organized the annual National Prayer Breakfast. Tim Coe first met Senator Ensign in 1994 and became very close with him, counseling him on a weekly basis for various personal and spiritual issues.

Since early 2006, Senator Ensign has held positions on various Senate Committees including: Armed Services; Budget; Commerce, Science & Transportation; Finance; Health, Education, Labor & Pensions; Homeland Security; Rules & Administration; and Veterans Affairs.⁵ Notably, during the time period relevant to this investigation (*i.e.*, between 2007 and 2009), Senator Ensign served on the Aviation Operations, Safety, and Security and Science, Technology, and Innovation Subcommittees of the Committee for Commerce, Science and Transportation. As of April 1, 2011, he was the ranking member of the Communications, Technology & The Internet Subcommittee of the Commerce, Science and Transportation Committee; Healthcare Subcommittee of the Finance Committee; and the Ad Hoc Subcommittee on Disaster Recovery & Intergovernmental Affairs of the Homeland Security Committee.

Senator Ensign was elected Chairman of the National Republican Senatorial Committee ("NRSC") in November 2006, making him the fourth highest leader in the Republican Party at the time. Senator Ensign's Chairmanship increased his national profile. Senator Ensign also visited Iowa in May 2009, creating speculation that he was considering a Presidential election campaign.

Senator Ensign hired Michael and Lindsey Slanker to work as the NRSC's Political Director and Finance Director, respectively. Mr. Slanker had previously managed Senator Ensign's 1998 and 2000 election campaigns. Around the time that the Slankers worked for the

⁵ See United States Senate, Committees, *available at* http://www.senate.gov/pagelayout/reference/three_column_table/committee_assignments.htm.

NRSC, the Ensigns and the Slankers became family friends, and ultimately the Slankers and Hamptons became friends as well.

The Hamptons moved to Las Vegas in 2004. According to Ms. Hampton, it “was their [Doug and Senator Ensign’s] dream to always live by each other.” Further, per Ms. Hampton, Senator Ensign and Mr. Hampton sought to facilitate a relationship between their families to “walk through life together,” a term used by the International Foundation spiritual advisors to Senator Ensign.

Before the Hamptons finished moving to Las Vegas, Senator Ensign contacted Senator Reid, who assisted in getting Doug Hampton a job at Nevada Power (later NV Energy). Senator Ensign also told Ms. Hampton, in her words, that “he could probably find me a spot on the campaign.” Mr. Hampton moved to Las Vegas before the rest of his family, and he lived with the Ensigns while awaiting the sale of his home in California and for his family to move to Las Vegas. The home the Hamptons purchased in Summerlin, Nevada was in the same gated community as the Ensign home, and was less than a three-minute walk to the Ensign home.

Mr. Hampton worked in NV Energy’s conservation department. Mr. Hampton was responsible for implementation of renewable energy programs. Ms. Hampton recalled that Mr. Hampton and Senator Ensign traveled to play golf with Walt Higgins, Nevada Power’s President. Ms. Hampton also recalled that after Doug began working for Nevada Power, the company paid for Doug’s golf membership at an exclusive, expensive TPC course in Nevada. According to Ms. Hampton, “they [NV Energy] liked that he had a relationship with the Senator. They gave Doug a golf membership to TPC by our home. And he was able to go and golf with the Senator whenever the Senator wanted to.”

Records from the TPC golf course indicate that NV Energy (then Sierra Pacific Resources) paid a \$15,000 initiation fee for a corporate designee membership for Mr. Hampton, and paid for Mr. Hampton’s business expenses at the course. Mr. Hampton was a member of the club from May 2, 2005 until December 28, 2006. Senator Ensign was also a member of the club, from approximately July 14, 2004 until July 23, 2010. Senator Ensign played multiple rounds of golf with Mr. Hampton and had meals with him at the facility. Mr. Hampton left NV Energy in November 2006, and his TPC membership was transferred to a different NV Energy employee.

Senator Ensign and Doug Hampton played golf together very often, and would typically play both days of the weekend. Mr. Hampton and Senator Ensign were “addicted to golf.” The Ensigns and the Hamptons would then often meet together for a family dinner on Sundays. According to Senator Ensign’s father, Mike Ensign, the couples were “always” together: “we would see them [the Hamptons], and we would see their kids when we would visit John and his family. And they were always invited to everything, no matter what, if it was a dinner, this or that. They were always there. They were best friends. And the kids were best friends.”

Mr. Hampton borrowed money from Senator Ensign, including a \$20,000 unsecured loan when their children were young. Mr. Hampton paid some of the funds back, but after the affair was disclosed, Senator Ensign forgave the loan. The Hamptons also borrowed money from the Ensigns to refinance their home in 2004 (\$15,000) and 2006 (\$25,000); the home was valued at over one million dollars and was too expensive for the Hamptons to otherwise afford. The

Hamptons could not afford to send their children to the same school the Ensign children attended and, over Ms. Hampton's objection, the Ensigns paid for the Hampton children to attend the school. The Ensigns paid approximately \$15,170 in September 2006, and \$23,970 in July 2007, for school tuitions and various other smaller amounts for expenses and school activities. The Hampton children attended public school for a period of time, but the Ensigns continued to insist on paying tuition, so the Hampton children attended the school. Ms. Hampton was the primary car pool driver for the Ensign and Hampton children. After the affair, the Ensigns stopped paying for the school, forcing the Hamptons to borrow approximately \$20,000 from Ms. Hampton's father to permit the children to finish their education at the school.

Ms. Hampton also recalled trips they took with the Ensigns, including two trips to Napa Valley, summer vacation trips to Barstow, California, a family trip to Lake Tahoe, a trip to Del Mar, California, a trip to Washington State, and a trip with the Senator and Darlene Ensign to Hawaii in December 2006. The Ensigns typically paid for those trips and expenses on the trips.

In 2006, Senator Ensign's Chief of Staff, Scott Bensing, announced he was leaving the office to work as Executive Director of the NRSC. Mr. Lopez had been working as Senator Ensign's Deputy Chief of Staff prior to Mr. Bensing's departure; and had held a variety of legislative and campaign positions with Senator Ensign and other lawmakers over the past fifteen years. Mr. Lopez was interested in the vacant Chief of Staff position based on his experience and years of service for Senator Ensign. According to Mr. Lopez, Senator Ensign and he had always had a professional, but not a close personal, relationship, calling it "an inch deep and a mile wide." Mr. Lopez felt that, even with Mr. Lopez's strong congressional office and legislative experience, the Senator preferred the company of "alpha males" as his confidantes and friends, so Mr. Lopez was not surprised when the Senator expressed reservations to him about Mr. Lopez taking on the Chief of Staff position.

Senator Ensign then had the idea that he could hire Doug Hampton as his Administrative Assistant, who could take on certain tasks for which he did not believe Mr. Lopez to be well-suited, and then Mr. Lopez could take the Chief of Staff position. Senator Ensign believed that Mr. Hampton had significant management training in prior positions, and claimed that Mr. Hampton was a "management guru" and had been trained in Japanese corporate management skills. Prior to working at NV Energy, Mr. Hampton worked at the Tom James Company as a clothing salesman, at McDonnell Douglas as a Manager, and as a business pastor of a church in California.

Mr. Lopez then divided Senate office responsibilities between the two positions: Mr. Hampton was responsible for management and oversight of the state offices and all personnel and administrative issues; Mr. Lopez, given his Capitol Hill experience, was responsible for all legislative and communications issues. Mr. Hampton began work for Senator Ensign as his Administrative Assistant in November 2006.

B. Senator Ensign's Affair with Cynthia Hampton

Cynthia Hampton was hired as Assistant Treasurer by the Senator's campaign committee, Ensign for Senate ("EFS"), in June 2004 and became Treasurer after the 2006 election. She also became treasurer of the Senator's leadership PAC, BattleBorn PAC, in February 2008, and

received an increase in pay based on these additional duties.⁶ Ms. Hampton's job was part-time, and she received positive job reviews from those who reviewed her work. Although the schedule varied, when Doug Hampton took the job as Administrative Assistant on the Senator's staff in Washington, D.C., he typically would spend three to four days of the work week in Washington, and one day in Las Vegas, sometimes working out of the Senator's Las Vegas office. When Mr. Hampton was home on the weekends, he would spend a lot of the time golfing with Senator Ensign.

In November 2007, the Hampton home in Summerlin, Nevada was burglarized during the daytime. Although they were in Nevada at the time, none of the Hampton family members were home at the time of the incident. The burglars entered the home by breaking into the downstairs guest bathroom, and they stole electronics and jewelry. When Mr. Hampton came home, he saw that the front door to the home was left open, and suspected that something had occurred. Ms. Hampton was afraid to stay in the home, and the Ensigns offered to let the Hamptons stay in their home until the door was repaired and Ms. Hampton felt safe to return to the home. Senator Ensign said "well, you guys are going to have to come and stay with me."

The extramarital affair between Senator Ensign and Ms. Hampton began after the Hamptons moved into the Ensigns' home following the burglary. As noted above, the Special Counsel did not inquire into the intimate details of the affair, but did inquire as to the initiation, timing, and duration of the affair.

Senator Ensign initiated the affair by contacting Ms. Hampton and asking her to meet with him. She asked Senator Ensign if he "lost [his] mind," and he replied "yes." Senator Ensign was very persistent and relentless in pursuing Ms. Hampton. According to Ms. Hampton, Senator Ensign "just [wouldn't] stop," and "kept calling and calling," and "would never take no for an answer."

Ms. Hampton was in a vulnerable emotional state and a "mess" at the time Senator Ensign was pursuing her, as her home had been burglarized, a family member was undergoing medical treatment, and Mr. Hampton's travel schedule back and forth to Washington gave them little time to be together. Ms. Hampton ultimately yielded to Senator Ensign's pleas. Senator Ensign and Ms. Hampton met "periodically on the weekends" during the affair.

At the time the affair began, Ms. Hampton's sole source of income was her work for the EFS and BattleBorn. Mr. Hampton's sole source of income was from his work as the Senator's Administrative Assistant. Senator Ensign had the power to fire both Ms. Hampton and Mr. Hampton.

Once the affair began, Ms. Hampton had serious concerns about her job with Senator Ensign's campaign. She stated that "I just didn't want to lose my job. I loved my job. I loved the people I worked with ... I had a lot of fear of losing my job." Ms. Hampton repeatedly

⁶ Although the timing of the increase in pay is coincidental to the timing of the affair between Senator Ensign and Ms. Hampton, there is no evidence to suggest that the increase was related to the affair. Ms. Hampton replaced the previous Treasurer, who was fired from the position because of alleged embezzlement, and her increased duties warranted a pay increase.

communicated her concerns about her job to Senator Ensign. Ms. Hampton sought counseling beginning in approximately February 2008, and continuing during the affair, and was advised to tell Senator Ensign to stop contacting her, and that she wanted to continue working as his campaign treasurer. Senator Ensign told Ms. Hampton that “I’ll do everything I can to keep you [employed].”

1. Mr. Hampton’s Discovery of the Affair

Mr. Hampton found out about the affair on December 23, 2007, while he and his wife were on the way to the airport to pick up their son for the holidays. Senator Ensign was in a separate car on the way to the airport to greet the Hamptons’ son as well. While waiting in his car as Ms. Hampton went to pick up their son’s girlfriend from her home on the way to the airport, Mr. Hampton saw that his wife left her cell phone in the car and he viewed a text message from Senator Ensign to Ms. Hampton that made clear an affair was occurring. Press reports indicate the text message stated “How wonderful it is ... Scared, but excited.”⁷

When Ms. Hampton came back to the car, Mr. Hampton stated “I know what you and John are doing.” Mr. Hampton then called Senator Ensign and said that he knew what was happening. Senator Ensign did not inform Darlene Ensign at the time. When the cars were parked in the airport parking lot, Mr. Hampton jumped out of his car and chased Senator Ensign in the airport parking lot. Ms. Hampton went into the airport and sat there for “hours.” Ms. Hampton later took a taxi back to her home. Once she was home, Mr. Hampton sought to get the couples together to talk about what occurred.

On December 24, 2007, the Hamptons went to the Ensigs’ home, and the four adults met in Senator Ensign’s home office. Both Senator Ensign and Ms. Hampton stated that the affair would stop, and Senator Ensign wept and apologized. The Ensigs and Hamptons then had a meeting with their children. The families then celebrated Christmas together. According to Ms. Hampton, had Senator Ensign stopped pursuing her at that time, as he had committed to do before both families, the affair would have ended at that time.

In January 2008, Senator Ensign began texting Ms. Hampton again, and the affair resumed. Ms. Hampton was very despondent during this time frame. Senator Ensign gave Ms. Hampton \$3,000 in cash to purchase items for herself and to use for hotel rooms in Las Vegas that Ms. Hampton reserved in her name at his request for their clandestine meetings, because “it always had to be under my name, it could never be under his name.”

Senator Ensign told Ms. Hampton on more than one occasion that he wanted to marry her. Senator Ensign told Ms. Hampton that he wanted to marry her while they attended the National Prayer Breakfast in Washington.

During a Congressional Delegation trip (a “CODEL”) to Iraq and Afghanistan from February 7, 2008 to February 12, 2008, Senator Ensign repeatedly contacted Ms. Hampton. Telephone bills from the calls she received from Senator Ensign while he was on the CODEL

⁷ *Text Message Exposed Senator Ensign’s Affair*, Associated Press, Nov. 23, 2009. Mr. Hampton also stated the text of the message during his television appearance on Nightline on November 23, 2009.

totaled nearly \$1,000. Senator Ensign gave Ms. Hampton money to pay the telephone bill, and Ms. Hampton obtained a cashier's check to make the payment. Mr. Hampton, who was also on the trip, became aware of the continued contact between Senator Ensign and Ms. Hampton. He asked to borrow Senator Ensign's cell phone to call Ms. Hampton, and Senator Ensign scrolled to a name listing for "Aunt Judy" rather than Ms. Hampton's real name. The call history on the phone also disclosed to Mr. Hampton that the affair was continuing.

2. Mr. Hampton Seeks Assistance to End the Affair and an "Intervention" Is Held

When Mr. Hampton returned from the CODEL trip, he immediately sought the assistance of Tim Coe, Senator Ensign's long-time spiritual advisor, to assist with ending the affair. Mr. Coe recommended that they bring in a "higher authority, someone much bigger than me," and approached Senator Tom Coburn. Senator Coburn was also a resident of the C Street Center, and was a close spiritual and personal confidant to Tim Coe and to Senator Ensign.

Senator Coburn, Mr. Coe, David Coe (Tim Coe's brother and fellow spiritual advisor to the International Foundation), Mr. Hampton, and Marty Sherman decided to confront Senator Ensign about the affair and did so as soon as he returned to Washington, D.C. from the CODEL on Valentine's Day, February 14, 2008. They confronted Senator Ensign at the C Street House. Senator Ensign "started to lie," but he was told that "we know the truth," and then Senator Ensign confessed to the affair. Senator Ensign was told that the affair had to stop. Mr. Hampton was very emotional during the meeting, and at one point got very close to a physical confrontation with Senator Ensign. Senator Coburn asked Mr. Hampton to leave, stating "we'll take it from here. We'll take care of this."

At that confrontation, Senator Ensign agreed to write what appeared to be a sincerely apologetic letter to Ms. Hampton ending the affair. Senator Ensign wrote the letter, and Mr. Sherman mailed it from a Federal Express mailing facility. After it was mailed, Senator Ensign immediately called Ms. Hampton to alert her about the confrontation and to tell her to disregard the letter, which he had written only for the benefit of the men who were confronting him.

On February 16, 2008, two days after the intervention, Tim Coe received a call from Doug Hampton. Mr. Hampton was looking for the Senator to have him sign some documents for the NRSC, and saw his car and Ms. Hampton's car parked in a parking lot of a hotel close to their Summerlin neighborhood. Mr. Coe "pleaded with him [Hampton] to go home." Mr. Coe called Senator Ensign and stated "I know exactly where you are. I know exactly what you are doing. Put your pants on and go home." Senator Ensign initially said he would not leave the hotel room, telling Mr. Coe "I can't, I love her [Ms. Hampton]." Senator Ensign ultimately agreed to leave the hotel. After he left the hotel, Senator Ensign told Mr. Coe that he wanted to marry Ms. Hampton.

The following day, February 17, 2008, Mr. and Ms. Hampton went to Senator Ensign's home early in the morning to talk about the affair. Darlene Ensign was in California at the time with her daughter. Mr. Hampton wanted the affair to stop, and wanted "things to go back to how they were." It was "not a good meeting" because Senator Ensign stated that he was in love with Ms. Hampton and wanted to marry her and that Doug could not work for him any longer.

According to Ms. Hampton, the Senator subsequently told her that her husband had to leave the Senate office because he did not want Doug to be aware of the Senator's schedule, and that Senator Ensign would place fictitious events on his schedule so he could meet with Ms. Hampton.

Senator Ensign subsequently called Darlene Ensign to inform her of his continued feelings for Ms. Hampton. Senator Ensign then moved out of the family home to live with his parents for a time period. Senator Ensign's State Director confirmed that she picked Senator Ensign up from his parents' home for a period, and knew that the Senator was separated from his wife. Ms. Hampton testified that Senator Ensign informed his parents of the affair, and was told by his parents to stop the affair. Ms. Hampton stated that the affair stopped for a period of time, but "then he started right back up again."

3. The Affair Continues until July 2008

The affair continued after the February 17, 2008 meeting in the Ensign home and after Senator Ensign moved out of his home to live with his parents. Senator Ensign gave Ms. Hampton money to purchase two new cellular phones to be used exclusively so that they could communicate without detection. Records from these phones were retrieved and showed numerous text messages from Senator Ensign to Ms. Hampton. Specifically, 76 text messages were exchanged between Senator Ensign and Ms. Hampton from March 7, 2008 to March 10, 2008. Darlene Ensign became aware of these new phones, and they were disconnected. Senator Ensign wanted to buy two more phones, but Ms. Hampton declined because she did not want the contact to continue.

Senator Ensign also created email accounts with fictitious names in order to email Ms. Hampton, including "fredschwartz72@yahoo.com," "mariaschwartz@yahoo.com," and "maryholland82@yahoo.com." Senator Ensign called Ms. Hampton multiple times during this period from various locations at the Capitol, the Senate gym, and from New York while on a fund-raising trip.

Mr. Coe continued his efforts to stop the affair. Mr. Coe decided that Senator Coburn was not "big enough," so he decided to involve Senator Ensign's father, Michael Ensign. Mr. Coe gave Michael Ensign's cell phone number to Senator Coburn, and Senator Coburn agreed to call Michael Ensign. According to Mr. Coe's detailed and specific recollection, a call between Senator Coburn and Michael Ensign "absolutely" occurred. Michael Ensign stated that he appreciated the call, and "he'd handle it." After that call, Senator Ensign called Mr. Coe. Mr. Coe testified that "I've never seen him so angry." Senator Ensign "cursed" at Mr. Coe, a fact Mr. Coe recalled because "he's never cursed me before, and he was very, very upset." Senator Ensign then yelled "all sorts of expletives," and told Mr. Coe that he had no right to involve his father. Senator Ensign hung up on Mr. Coe before he could respond. Mr. Coe had "never seen that character before in him [Senator Ensign]." Senator Coburn denied speaking with Michael Ensign after he was informed about the affair. Michael Ensign did not recall whether a call with Senator Coburn had taken place, but in response to a question from the Special Counsel, Michael Ensign allowed as how the call may have taken place.

Additionally, a second confrontation occurred at the C Street Center approximately a month after the February 14, 2008 intervention. The intervention was instigated by Senator Coburn. Senator Coburn stated “I can’t take this any more. I’ve got to tell these guys.” Mr. Sherman and others, including Members of Congress, went to Senator Ensign’s bedroom at the C Street Center and confronted him about the affair. It appeared that Senator Ensign “got it” and was more receptive to actually stopping the affair. According to Mr. Coe, Senator Ensign lied about the affair and how it persisted, and Mr. Coe did not “trust him going forward.” Also, as noted above, Mr. Sherman did not believe that the affair was going to end after the initial intervention because he did not believe Senator Ensign.

Senator Ensign sent Ms. Hampton an email on April 1, 2008 asking whether “it is possible to talk,” and stated it “concerns your job and a few loose ends.” Ms. Hampton was “shaking” when she got the email, and called Senator Ensign because she believed it was about her job, which he knew she was fearful of losing. When she called, Senator Ensign stated that “he missed me and wanted to still see me,” thus using Ms. Hampton’s job as a ruse to speak with her and confess further feelings to her. Ms. Hampton was upset, but believed that “honestly in the back of my mind, I just thought John would never hurt our family.”

According to Ms. Hampton, the affair continued very sporadically, with one meeting in June and one in July 2008 for a “very short visit.” Ms. Hampton felt that she was not a healthy person at that time, and her attitude during these meetings was that “my life is ruined, so whatever,” and that she agreed to see the Senator only because his persistence wore her down. Although Ms. Hampton continually told Senator Ensign to stop contacting her, he ignored her wishes. This was frustrating to her because “if he would have just left me alone, it would have ended back in December.” Ms. Hampton sent Senator Ensign an email in August 2008 imploring him to stop contacting her because her “life and family is in shambles.” Ms. Hampton never heard from Senator Ensign again. Ms. Hampton saw Senator Ensign at her children’s graduation from high school in 2008, but has not seen him since that event.

In addition to filing for divorce, Ms. Hampton recently filed for bankruptcy and is presently moving out of California to work for a Christian organization.

C. Senator Ensign Plans for “Transition Finances” for Mr. Hampton

Mr. Coe and Mr. Sherman developed a plan to assist the Hamptons. Mr. Coe told Mr. Hampton that the first thing that should be done is to “separate people,” which meant Mr. Hampton leaving the Senate office, and leaving Las Vegas. Mr. Hampton expressed concerns about employment, and Mr. Coe said “I’ll help you find a job.” Mr. Hampton also expressed concerns about his home, which was heavily mortgaged. A plan was formed for Senator Ensign to take over the mortgage or find a way to buy the home.

Mr. Sherman advocated assistance in relocating the Hamptons to Colorado, where he knew some businessmen who may be able to assist Doug Hampton with employment. The plan involved Senator Ensign taking over the Hamptons’ Las Vegas mortgage or buying the house from them, and then providing them with enough money to live for a year and re-establish themselves in a new location.

Mr. Coe advocated the idea of Senator Ensign providing “transition finances” to the Hamptons so they could move out of Las Vegas. Mr. Coe and others asked Doug Hampton “what is it going to take to get you out of town?” Mr. Hampton stated that he needed the following: (1) pay off his mortgage; (2) a new job; (3) an appropriate school for his kids; and (4) be in a place where Cindy would not have to work. Mr. Coe talked about the finances with Senator Ensign, who stated that “I’ll take responsibility for whatever I need to do,” but did not “like the thought of buying the [Hamptons’] house.” According to Mr. Coe, Senator Ensign stated that “there’s no way, shape or form my father is going to give any money or help in the finances of this thing.”

According to Mr. Sherman, Senator Coburn was aware of the transition plan for relocating the Hamptons to Colorado, and was in favor of the plan. According to Mr. Coe, Senator Coburn was supportive of the plan to provide transition finances. Senator Coburn was also supportive of putting the Hampton house on the market to see if it could get sold. Mr. Coe considered Senator Coburn part of “the team” to work out the “financial piece” of the issues. According to Mr. Coe, “Doug was more confident talking to Senator Coburn about finances than he was us,” and Mr. Hampton thought Senator Coburn could “deliver John’s father,” who was wealthy. Senator Coburn played a “support role,” and encouraged Senator Ensign to consider the plans developed by Mr. Coe and others regarding transition and separation.

D. Senator Ensign Arranges a Consulting Firm Position for Doug Hampton After Terminating Mr. Hampton

As set out above, when the Hamptons met with Senator Ensign at his home on or about February 17, 2008, Senator Ensign advised Mr. Hampton that he could no longer work for him. Immediately thereafter, on February 19, 2008, Mike Slanker, Lindsey Slanker, and Senator Ensign had lunch at the Nordstrom Café in Las Vegas. According to Mr. Slanker, Senator Ensign stated that Mr. Hampton was leaving the Senate because “the travel was too much” and Cindy Hampton had health issues.

While Senator Ensign was away from the table, Mr. and Ms. Slanker discussed Mr. Hampton’s departure and wondered if there was a way the two of them could help Mr. Hampton. Mr. Slanker had the idea of allowing Mr. Hampton to use November Inc., a company owned by the Slankers, as a platform for Mr. Hampton’s work. Mr. Slanker had previously created November Inc. in 2003 as a campaign consulting firm, which provided advice to multiple campaigns at any given time. While November Inc. had other partners at various times, it was primarily a creation of the Slankers. When the Slankers joined the NRSC, they ended their relationships with all current clients of November Inc. and let the company sit dormant. November Inc. did not have any current clients or income at the time given the absence of the current principals. According to Mr. Slanker, if Mr. Hampton was able to obtain clients, he could use November Inc. “as the business card.”

When Senator Ensign returned to the table and heard the idea about November Inc., he became “giddy.” Mr. Slanker had not anticipated this reaction; it was his understanding that Mr. Hampton would go out and get a job at an established firm, and that potentially using November Inc. would simply be a fallback plan. Suddenly, however, Senator Ensign appeared settled on

the prospect of Mr. Hampton working through November Inc. Senator Ensign called Mr. Hampton from the Café and told him of the plan.

Immediately after the lunch at the Nordstrom Café, Senator Ensign met with Mr. Slanker and Mr. Hampton in his Las Vegas office. During the initial meeting, Senator Ensign proposed that he would help Mr. Hampton obtain three clients paying \$5,000 per month, enough for Mr. Hampton to be “whole.” From the Slankers’ perspective, they were not forming a partnership with Mr. Hampton, but were just giving him a platform from which he could find clients and “eat what [he] kill[ed].”

At the time they agreed to let Mr. Hampton work for November Inc., Mike and Lindsey Slanker did not know of the affair between Senator Ensign and Cindy Hampton. At some point after the Slankers agreed to have Mr. Hampton work at November Inc., during the Spring of 2008, Darlene Ensign called the Slanker residence late at night. Darlene Ensign informed Mike Slanker in that telephone conversation that Senator Ensign had been having an affair with Cindy Hampton. Mr. Slanker told Lindsey Slanker about the call; shortly thereafter, Darlene Ensign spoke directly with Lindsey Slanker, confirming the affair.

Mr. Slanker met with Mr. Hampton and told him that he knew all about the affair; Mr. Hampton suggested that the two men speak with Senator Ensign. Mr. Slanker and Mr. Hampton confronted Senator Ensign in his office at the NRSC in Washington, D.C. According to Mr. Slanker, Senator Ensign “was eating Wheat Thins one at a time, kind of tossing them in his mouth, and he didn’t seem to miss a beat,” and he gave a very weak apology. Mike Slanker noted that Senator Ensign had lied to him about why Mr. Hampton was leaving the Senate, and felt that it was a burden imposed on him; he did not know why he was given this burden because he was peripheral to the situation. After learning of the affair, the plan remained the same: Doug Hampton would work for November Inc. and obtain his own clients.

Tim Coe stated that Doug Hampton had no lobbying experience, no Capitol Hill experience, and stated “he’s not known at all.” Therefore, Mr. Coe was surprised when Senator Ensign informed Mr. Coe that Mr. Hampton was going to work for November Inc. Mr. Coe stated “how does that get him [Hampton] out of the city?” Senator Ensign stated “he’s not leaving,” and Mr. Coe responded “well, that’s insane.”

E. The Senator Has Extensive Discussions with Doug Hampton about Severance Payments

In late March 2008, Darlene Ensign sent Ms. Hampton an email informing her that she would no longer be Senator Ensign’s campaign treasurer. Senator Ensign subsequently stated to Ms. Hampton that his father and Darlene Ensign would not let Ms. Hampton be the treasurer any longer.

Doug Hampton and Senator Ensign first discussed the payment of severance on April 2, 2008. Mr. Hampton provided information regarding discussions he had with the Senator and provided to the Committee what he represents to be notes from the April 2, 2008 meeting and calls, described as “Record of discussions with John Ensign.” Doug Hampton stated that he prepared the notes the evening of April 2, 2008 in order to record his discussions with the

Senator about the exit strategy. Mr. Hampton's attorney, Daniel Albregts, testified that his understanding from Mr. Hampton was that the notes were prepared contemporaneously "to make sure he had a record – something in writing – so that he could remember what they discussed, in case he needed it for later." Ms. Hampton testified that the notes were consistent with how Mr. Hampton typically worked: "He's very detailed like that. And that's how his mind works. He would always record everything."

Mr. Hampton stated that on April 2, 2008, following an overnight flight to Washington, D.C., he and the Senator met at the Senator's Capitol hideaway. The two discussed an "exit strategy and severance" for both himself and Ms. Hampton. Mr. Hampton believed that he may have been the one to first introduce the idea of a severance payment. Mr. Hampton memorialized the conversation with Senator Ensign in notes that evening, and recorded the following in an excerpt from his notes:

9:40 AM, 4/2 DC

Brief discussion with him on four matters

Exit strategy and severance for Cindy

Exit strategy and severance for Doug

Communication plan

Absolutely no contact with Cindy

-He response [sic] was he understood

(emphasis added).

Following the in-person meeting, Senator Ensign phoned Mr. Hampton twice on April 2, 2008 to discuss Mr. Hampton's imminent departure from the Senator's office and to determine the amount of severance that both he and Ms. Hampton would receive.

During a telephone call at noon on April 2, 2008, Doug Hampton proposed using Ms. Hampton's prior medical history as an excuse as to why the Hamptons were leaving the office (Ms. Hampton subsequently had intestinal surgery in May 2008). Further excerpts from Doug Hampton's notes from that call reflect the following:

Noon, 4/2/ DC

John called me on my cell from NRSC to discuss some details

...

- I shared my idea of health plan – Cindy history

- We discussed timing of departure JE agreed for me to stay on thru April

- Better for client building – He offered to continue effort....

- Said he would go to work on the above issues

Later on April 2, 2008, at 7:30 p.m., Senator Ensign called Mr. Hampton with a proposal. Senator Ensign proposed that Doug Hampton receive two months severance and that Ms. Hampton receive one year severance. The two discussed gift rules and tax law, and splitting up the payments into various amounts, totaling \$96,000, as a way to avoid the payment of taxes on the amount. Doug Hampton's notes from the 7:30 p.m. call state as follows:

7:30 P.M., 4/2 LV

John called asked if it was ok to share the outline of a plan

- **Doug ~ 2 mn severance**, continue client building
- **Cindy ~ 1 year salary**
- Discussed gift rules and tax law
- Shared a plan to have both he and Darlene write ch's in various amounts equaling 96K

He asked if the offer was ok and did I agree – I said I would need to think about and would get back with him.

(emphasis added).

Ms. Hampton testified that Doug Hampton called her on April 2, 2008 and told her about his conversations with Senator Ensign. Ms. Hampton learned from Doug Hampton that Senator Ensign planned to pay her one year of severance and to pay Doug Hampton two months severance. Ms. Hampton testified that she later spoke to Senator Ensign about the April 2, 2008 discussions. The Senator told her that she should expect a check in the mail that consisted of one year severance for her and two months severance for Doug Hampton. Ms. Hampton had no recollection that either her husband or Senator Ensign informed her that they had agreed to a total severance payment of \$96,000.

Mr. Hampton recalled that after the April 2, 2008 meetings with Senator Ensign, he returned to Las Vegas. Mr. Hampton recalled receiving a call from Senator Ensign in which Senator Ensign told him that he would give Mr. Hampton a check and that “you don’t have to tell anyone about it.” Senator Ensign confirmed with the Committee, through counsel, that he spoke with Mr. Hampton about the request, told Mr. Hampton he would be receiving the check, and discussed the federal gift tax.

F. The Senator’s Father Makes a Payment of \$96,000 from the Ensign Family Trust to the Hamptons

After the April 2, 2008 meeting and calls between Doug Hampton and Senator Ensign, the Hampton family—Doug, Cynthia, and two of their three children—received a check for \$96,000, dated April 7, 2008, from the Ensign Family Trust account.

The check appears to have been processed on or about April 9, 2008. No evidence has been presented that the Hampton children actually received the funds that were specifically for them, or as to whether the Hamptons placed the funds in a custodial account for the minor children.⁸ The evidence indicates that Mr. and Mrs. Hampton dictated how the entirety of the funds should be spent, which is consistent with the evidence in the record that the payment was a severance.

⁸ One of the Hampton children was a paid intern for the NRSC during this time period, specifically from March 2008 to August 2008. The Special Counsel developed no evidence to suggest that he did not work and earn his payments or that this employment was related to the affair or Mr. Hampton’s post-employment lobbying activities.

The Ensign Family Trust is an estate planning tool that holds the significant personal assets of Michael and Sharon Ensign, the parents of Senator Ensign. Senator Ensign has no authority to order disbursements from the trust. Michael Ensign directs the management of the trust and his chief financial officer, Bruce Hampton (no relation to Doug or Cindy Hampton), executes Michael Ensign's directions.

The amount of the check surprised Ms. Hampton, as the check amount exceeded the amount that she had expected to receive pursuant to her discussions with her husband and the Senator. As of April 2008, Ms. Hampton's annual salary was approximately \$50,000, while Mr. Hampton's fiscal year 2007 salary was \$144,146.71 (averaging approximately \$12,000 per month pretax). Ms. Hampton expected a check from Senator Ensign for one year severance for herself (\$50,000) and two months severance for Doug Hampton (approximately \$24,000), or approximately \$74,000 in total.

Ms. Hampton spoke to Senator Ensign by phone and asked how he arrived at the check amount. Senator Ensign informed her that she could put the extra money toward her health insurance. Ms. Hampton also asked Senator Ensign why the check came from the Ensign Family Trust, rather than the Senator, and why her children were included as payees. Senator Ensign explained that the check fell within the maximum amounts permissible under the applicable gift and tax laws.

Following the receipt of the \$96,000 check, on April 9, 2008, Ms. Hampton left her employment at the Senator's campaign office.

G. Mr. Hampton Receives Excessive Unused Vacation Pay

Mr. Hampton's last day on the Senate payroll was May 1, 2008. Mr. Hampton received an additional \$6,000 payment in his final month of employment, which exceeded the permitted rate of pay for Senate personal offices. Senator Ensign's office released a statement stating that \$6,000 of the final payment was for "12 days of unused vacation."⁹

Several individuals provided information to the Committee staff that Mr. Hampton was not in either Senator Ensign's Washington office or any of the local state offices for the majority of April 2008, and his work attendance was significantly less in the months leading up to April 2008. Therefore, there were likely no vacation days available to Mr. Hampton upon his departure from the Senate.

⁹ Paul Kane, *Ensign Defends Payments to Woman He Had Affair With*, Washington Post Capitol Briefing, June 18, 2009.

H. Senator Ensign Takes Action Surrounding Mr. Hampton's Post-Employment Lobbying

1. Senator Ensign Takes Steps to Reduce Records Retention, Communicate Off of the Senate Server, and Minimize Contacts with the Ethics Committee

Prior to public disclosure of the affair, Senator Ensign implemented office policies that would reduce the preservation of records in the office. Senator Ensign further sought to minimize contacts with outside parties including the Senate Ethics Committee.

On March 13, 2008, Jessica Walton, Senator Ensign's Office Manager, emailed Senator Ensign's staff regarding "implementing a long overdue shredding program requested by Senator Ensign." John Lopez testified¹⁰ that Senator Ensign did indeed request the implementation of a shredding program in order to dispose of sensitive documents. At or around the same time, Senator Ensign approached John Lopez about using text messaging or PIN messaging¹¹ instead of communicating by email. According to Mr. Lopez, Senator Ensign expressed some concerns about email communications remaining on the Senate server.

Additionally, in May 2008, Mr. Lopez took steps to formalize an informal policy for Senator Ensign's staff requiring all contact with the Ethics Committee to be channeled through Lopez. This informal policy arose out of an instance in October of 2007 in which Senator Ensign attended a charity fundraiser in South Dakota, and assembled a package of Washington, D.C.-related tours and experiences. The auction raised over \$10,000 on one of the packages. Mr. Lopez recognized that such an amount would violate the gift limit. Mr. Lopez asked Ms. Jackson to inform the charity that it would need to refund the difference between what it received and the gift limit, and wrote a memo to Senator Ensign detailing these ethical concerns. After reading the memo, Senator Ensign summoned Mr. Hampton and Mr. Lopez and was "furious." According to Mr. Lopez, Senator Ensign stated "the Ethics Committee, they will always tell you no if you want to do something...they take the most conservative view about everything." Senator Ensign then stated that only Mr. Lopez should speak to the Ethics Committee, and he should clear all contacts with the Ethics Committee with Senator Ensign.

Senator Ensign's position regarding the Committee is also memorialized in an Ethics Committee Memorandum in which Senator Ensign instructed his staff to ignore and not follow Committee staff guidance on a particular issue while the Committee staff member was in the meeting. According to the Memorandum, Senator Ensign "instructed his staff to completely disregard the advice given."

¹⁰ Mr. Lopez testified before the Special Counsel under a grant of immunity.

¹¹ PIN messaging is a proprietary messaging service that allows BlackBerry users to send messages directly to one another; a PIN message is not routed through the user's email account. See BlackBerry User Manual, About PIN Messages, available at http://docs.blackberry.com/en/smartphone_users/deliverables/1487/About_PIN_messages_26344_11.jsp (last visited April 25, 2011).

On May 8, 2008, Mr. Lopez met via teleconference with the staffers in Senator Ensign's Nevada offices and informed them of the change. He also requested that the Office Manual be updated to require all contacts with the Ethics Committee to go through him. The timing of Senator Ensign's interest in the destruction of records and communication with oversight committees coincides with the affair with Cindy Hampton, and Mr. Hampton's departure.

2. Senator Ensign Takes Efforts to Persuade and Compel Constituents to Hire Mr. Hampton

Immediately following the meeting in which Senator Ensign told Mr. Hampton he could no longer work for him, Senator Ensign set out to find Mr. Hampton work. Senator Ensign met with constituents, only to see if Mr. Hampton could meet with them for an interview shortly thereafter. For example, Senator Ensign met with executives at Switch Communications, a Nevada company, on February 20, 2008, and company representatives met with Mr. Hampton on February 27, 2008.

Mr. Hampton's position as Senator Ensign's Administrative Assistant constituted his only relevant experience with respect to the federal government. While employed by Senator Ensign, Mr. Hampton had no responsibilities pertaining to policy matters. Senator Ensign's staff testified that Mr. Hampton did not show much interest in policy, did not "seem to grasp policy issues," and he lacked the "horsepower" to work on policy matters. Despite all of this, Senator Ensign marketed Mr. Hampton as someone who could provide valuable federal government relations services to Nevada constituents.

Significantly, according to Mr. Hampton's April 2, 2008 notes of the severance discussions set forth above, Senator Ensign proposed an explanation for Mr. Hampton's departure based on a "falling out" between the two men. When Mr. Hampton noted that this would hurt his ability to obtain clients, Senator Ensign agreed. Mr. Hampton's notes also indicate that Senator Ensign was assisting Mr. Hampton in finding clients. This understanding tends to show awareness, on the part of Senator Ensign, that Hampton would be lobbying Senator Ensign's office; the relationship between Hampton and Senator Ensign was only important for Mr. Hampton's business development if the pitch to clients involved that relationship.

Senator Ensign's assistance in finding clients for Mr. Hampton exceeded the typical provision of references and, on occasion, Senator Ensign used his office and staff to intimidate and cajole constituents into hiring Mr. Hampton. In one instance, Senator Ensign contacted Paul Steelman, a Las Vegas developer, to see if he would hire Mr. Hampton to do government affairs work. Mr. Steelman had previously worked with Sig Rogich, a Nevada consultant formerly of R&R Partners, on similar issues. Mr. Rogich emailed Mr. Steelman and recounted that Mr. Steelman was "not really interested in adding another staff member...consultant" and encouraged Mr. Steelman to "stay with that position." According to Mr. Lopez and others, after Senator Ensign heard that Mr. Steelman was declining to hire Mr. Hampton based on Mr. Rogich's advice, Senator Ensign had John Lopez phone Mr. Rogich and "jack him up to high heaven and tell him that he is cut off from the office and never to contact [Senator Ensign] ever again." When Mr. Lopez conveyed that message by phone to Mr. Rogich, Mr. Rogich responded that "there's nothing [Hampton] could do for us." Mr. Rogich was angry, as a supporter of

Senator Ensign's, that the Senator had not made the phone call personally, but confirmed that he understood he was not to contact Senator Ensign in the future.

Mr. Lopez, reflecting on this situation, testified that:

I just wanted to mention that when the Senator asked me to do that, I really felt like this is wrong. I remember really feeling like that was abusing the office, you know, cutting someone off from official action because he didn't hire [Hampton], I thought – I had qualms about what I was asked to do.

(emphasis added)

One executive at P2SA and Biodiesel of Las Vegas reported a similar interaction with Ms. Allmon, Senator Ensign's Director of Nevada policy, in which she pressured the companies to hire Mr. Hampton for access to Senator Ensign.¹² Although Committee Staff received conflicting testimony from witnesses, one witness, Tad Greener, stated that he spoke with Allmon about his company and its industry, and Allmon responded "I don't care about that, what are you going to do about Doug?" Mr. Greener informed CREW of this information, and he also spoke with the New York Times. Ms. Allmon denied having made such a statement, but the Committee Staff did not generally find her testimony to be credible.

Even where Senator Ensign did not resort to coercive techniques, he engaged in an extraordinary effort to market Mr. Hampton to Nevada businesses and individuals. Starting on or about February 20, 2008, three days after meeting with the Hamptons in his home, Senator Ensign called a number of entities and executives on Mr. Hampton's behalf, including but not limited to Allegiant Airlines; NV Energy; Open Range; Ecommlink; and Switch Communications. At this time, Senator Ensign served on two subcommittees on the Committee for Commerce, Science, and Transportation (the Aviation Operations, Safety and Security Subcommittee, and the Science, Technology and Innovation Subcommittee), which were influential bodies on topics significant to many of these constituents.

I. Mr. Hampton Departs and Immediately Lobbies Senator Ensign's Staff

Prior to Mr. Hampton's departure from the Senate, Allegiant Airlines agreed to hire him as an outside consultant for government affairs. Allegiant, a regional commercial airline based in Las Vegas, had a long-standing relationship with Senator Ensign through two of its executives, Maury Gallagher and Ponder Harrison.

At some point prior to April 18, 2008, Mr. Lopez learned that Mr. Hampton would be working for Allegiant, and that Senator Ensign had been "lining up work" for Hampton; he relayed this information to Mr. Quinalty, who had provided information regarding FAA reauthorization to Mr. Lopez and Mr. Hampton. Mr. Lopez does not recall when and from whom he received this information.

¹² Eric Lipton, *Investigation Shows Ensign Appealed to Company*, New York Times (April 1, 2010).

In April 2008, his last month in his position as Administrative Assistant, Mr. Hampton suddenly developed an interest in policy issues pertaining to aviation. For example, Ms. Thiessen, Legislative Director, testified that she recalled Mr. Hampton engaging in a very long discussion on a white paper related to Allegiant in his last legislative meeting. This was odd from her perspective because he had never shown interest in the issue before. The same day Mr. Hampton announced he was leaving the Senate, April 16, 2008, he sent an email to Mr. Mulvihill, one of Senator Ensign's legislative staffers and legal counsel, regarding increases in the price of oil, noting that the "airline industry is predicting 15B in losses" and seeking opportunities for Senator Ensign to intervene on the issue. Mr. Quinalty forwarded an email regarding FAA reauthorization to Mr. Hampton two days later, on April 18, 2008. The email suggests that Mr. Hampton had inquired about the issue earlier that week. All of this work on aviation issues suggests that, after Allegiant hired Mr. Hampton, he did not recuse himself from issues related to his future client as required by Senate Rules,¹³ but rather actively engaged on them where he had not before, essentially getting a head start on his lobbying career.

Mr. Hampton, because of his salary level, was required under Senate Rule 37 to notify the Ethics Committee within three days of commencing any negotiations for prospective private employment, and to immediately recuse himself from legislative matters affecting that prospective employer. Committee Staff and Special Counsel were unable to find evidence that Mr. Hampton ever filed such a notification.

On April 16, 2008, Senator Ensign announced Mr. Hampton's departure at an all-staff videoconference. Ms. Hampton's health and the need for Mr. Hampton to be closer to his family were the reasons given for the departure.

On April 29, 2008, Ms. Walton contacted Elizabeth Horton, staff counsel for the Senate Ethics Committee, regarding Hampton's departure, writing "I have an employee that is leaving the office on May 1 and he has some questions regarding the job he is leaving for," and asked Horton to draw distinctions "between government relations and lobbying." Ms. Horton noted that she would be available to speak to Mr. Hampton if he called her. There is no record of such a call, but the perceived distinction between "government relations" and "lobbying" persisted throughout Mr. Hampton's interaction with Senator Ensign's office, and the staff's subsequent explanation of that relationship once the contacts became public.

Mr. Hampton's last day at the Senate was May 1, 2008; for purposes of the one-year post-employment restrictions codified at 18 U.S.C. § 207(c), Mr. Hampton was banned from contact with the Senate effective May 2, 2008.

On May 6, 2008, *the third business day of Mr. Hampton's post-employment period*, Mr. Hampton emailed Quinalty regarding FAA reauthorization issues on behalf of Allegiant Air:

David,

¹³ See Rule 37.14(c)(3).

Maury Gallagher and Allegiant Air are a client of mine. So you now have a greater need to make more frequent trips to LV in order to best serve the Senator.

In the information I provided you last week the bottom line is Allegiant would like DOT to reconsider its position on fuel surcharge pricing. Today it is not allowed in the taxes and fees section of pricing and considered deceptive advertising practices if the price is not determined at the time a ticket is booked.

It is my understanding that Reid's office has seen the Docket I provided you as well as Rockefeller's office. Can you please confirm as well as gain an understanding as to their position on this issue. It is my understanding the Rockefeller [sic] is helpful in this matter.

Since FAA Reauthorization is not going to be the vehicle to address this issue we need to look for another way to possibly amend this issue. If not addressed the airline industry stands to lose billions as well as lose a significant number of carriers which will further impact consumer prices.

Hope this helps. *Appears from my final leg time with the team that the Senator is interested in gaining a better nderstanding [sic] of this issue as while [sic].*

Doug

(emphasis added).

Mr. Quinalty testified that "in every way I could think of, [this email] struck me as inappropriate and odd and something I should take note of." Mr. Quinalty immediately took the email to Pam Thiessen. Ms. Thiessen testified that upon review of the email, she concluded that it "look[ed] like he [Hampton] broke the law, broke the ethics ban." Ms. Thiessen had Mr. Quinalty print out multiple copies, and gave one to Mr. Mulvihill, with instructions to take it to the attention of the Ethics Committee. Ms. Thiessen then spoke with Mr. Lopez, and stated that "on its face [the email] was illegal. So I told John Lopez this is illegal activity, that it's got to stop, and that Doug Hampton was being cut off from the leg. [legislative] shop." Ms. Thiessen then announced to the entire legislative staff that Mr. Hampton had broken the law and no one was to help him. Members of Senator Ensign's legislative staff recalled this announcement in their testimony.

Mr. Lopez testified that Ms. Thiessen met with Mr. Lopez in Senator Ensign's legislative suite, and was "waving [the May 6, 2008 email] around," and that Ms. Thiessen stated "[Hampton] is lobbying [Quinalty] ... He should not be doing this." Lopez testified that he responded by saying that "[Hampton] should not be calling [Quinalty]," and that he told Mr. Quinalty not to speak with Hampton. Mr. Lopez told Ms. Thiessen that he would "handle

[Hampton]” and asked Mr. Quinalty to forward any further contact from Doug Hampton directly to Mr. Lopez.

Mr. Mulvihill testified that he referenced the May 6, 2008 email on a phone call with Matt Mesmer of the Senate Ethics Committee on May 8, 2008. Mr. Mulvihill took notes on the email itself. Those notes indicate that the Ethics Committee advised Mr. Mulvihill “*do not help*” Mr. Hampton, and that while the office was “not banned,” it was instructed “*don’t respond*” and to “*refer to Ethics*.” The Ethics Committee notes from that same phone call indicate that Mr. Mesmer told Mr. Mulvihill that “the office should not engage in a contact with someone within their ban period, should not aid in a violation of the rules.” Mr. Mulvihill testified that he informed Mr. Lopez and Ms. Thiessen of this advice, and advised Mr. Quinalty not to respond. Mr. Hampton sent an email to Mr. Quinalty on May 8, 2008, containing the identical text sent in the original May 6, 2008 email. Presumably, Mr. Hampton sent the email again because he had not received a response and wanted to ensure that Mr. Quinalty received it. There is no evidence that Mr. Quinalty ever responded, and Mr. Quinalty testified that he did not respond.

Mr. Lopez testified that he disagreed with Mr. Mulvihill’s assessment that there was to be no contact between Mr. Hampton and Senator Ensign’s staff. Mr. Lopez took the position that “giving [Hampton] information” was permitted under the rules, but admitted in his deposition that this position was “rationalizing” his conduct. Mr. Lopez asked Mr. Mulvihill for further clarification on the issue, and Mr. Mulvihill had a second conversation with Mr. Mesmer of the Senate Ethics Committee on May 14, 2008. Mr. Mesmer informed Mr. Mulvihill in that conversation that “I told him if it is purely historical in nature, can answer. Should not discuss present or future legislation/policy,” and Mr. Mulvihill was told to seek guidance as each instance arises.

Mr. Lopez and Mr. Mulvihill “agreed to disagree” on the point, and Mr. Lopez promised to bring Mr. Hampton’s email to the attention of Senator Ensign.

Mr. Lopez, while working on Capitol Hill, developed a close friendship with Brian Lewis, counsel to Senator McConnell. Mr. Lopez had a history of consulting with Mr. Lewis regarding a variety of issues related to working in the Senate, from ethical questions to ordinary office gossip. For example, Mr. Lopez spoke with Mr. Lewis after Mr. Hampton contacted Mr. Quinalty as noted above, because he was “well-versed” in changes to the post-employment restrictions. Mr. Lewis told Mr. Lopez that the post-employment restrictions were “solid” and “there’s no gray area there.”

Notably, both Mr. Lewis and Mr. Lopez testified that, despite this long-standing relationship, Mr. Lopez never told Mr. Lewis about the numerous contacts he later had with Mr. Hampton during Mr. Hampton’s one-year ban period. Mr. Lewis testified that, to his knowledge, Mr. Lopez had put the “kybosh” on contacts from Mr. Hampton. Mr. Lopez also testified that he kept his contacts with Mr. Hampton confidential:

SC: Why didn’t you tell [Mr. Lewis]?

MR. LOPEZ: Because he would be alarmed.

SC: And because you knew what you were doing was wrong?

MR. LOPEZ: Correct, that I was in over my head in what I thought I could – you know, that I could keep this all orderly in my mind. And I was just in way over my head.

SC: Orderly and under wraps so that nobody else would know that you were having the contacts other than the Senator, because this was – you were supposed to keep Doug Hampton away from other people in the office and you were supposed to handle his contacts?

MR. LOPEZ: I would say orderly and compartmentalized, for sure.

J. Senator Ensign and John Lopez Agree to Channel Mr. Hampton's Lobbying Contacts Through Mr. Lopez

On May 8, 2008, after a morning staff meeting, Mr. Lopez approached Senator Ensign in his office regarding Mr. Hampton's emails to Mr. Quinalty. According to Mr. Lopez, the result of this meeting was an understanding between Mr. Lopez and Senator Ensign that Mr. Hampton would continue to be allowed to lobby Senator Ensign's office, but to protect Senator Ensign's reputation, Mr. Lopez would handle all contacts with Mr. Hampton.

Specifically, Mr. Lopez began the May meeting by telling Senator Ensign, "you should know, [Hampton] is contacting Quinalty about Allegiant." Senator Ensign responded with a long, audible groan, which, according to Mr. Lopez, was "an acknowledgement that that was problematic." Mr. Lopez stated that "the junior staff should not be responsible for determining if his contacts violate the lobbying law. You know, he shouldn't be calling them." Senator Ensign agreed. Mr. Lopez told Senator Ensign that Ms. Thiessen had taken the position that Doug Hampton should not contact the office at all; Senator Ensign stated "that's [Thiessen] for you."

Mr. Lopez then stated, "look, in the future, just so this is handled properly, I will be in charge of dealing with [Hampton] so he doesn't do this [contact other staff members]." According to Mr. Lopez, Senator Ensign responded animatedly:

"[Y]eah, good. Yeah, yeah, yeah do that."

Mr. Lopez explained that he had made clear to Senator Ensign that Mr. Hampton's contact was a violation of both ethical rules and federal law, and that Senator Ensign "acknowledged it was problematic." Mr. Lopez testified that:

It was very typical of John Ensign to – you know, see no evil, hear no evil. It was kind of one of those things where now he didn't have to worry about the messiness of how this was done. That was – that's what I was thinking about at the time.

...

[Senator Ensign's] attitude was just – he – you know, my sense was he just didn't want to hear about it, and I didn't take anything to him because it was out of his hair, it was out of sight, out of mind, and he didn't have to be bothered with it and I was, you know, essentially taking the heat on his behalf.

...

I tried to just keep this away from [Senator Ensign] as much as possible, and I viewed myself as being loyal and handling it on my own, which is what I believe he expected of me.

(emphasis added)

Mr. Lopez explained that, despite his personal dislike of Mr. Hampton, he offered to help Mr. Hampton because “keeping [Senator Ensign’s] reputation intact and keeping [Hampton] employed would probably mean that I would have to, you know, help him, I would have to help him in order for that to be successful.” Mr. Lopez confirmed that Senator Ensign was “well aware” of the fact that Mr. Lopez was helping Mr. Hampton with his client matters, but that he did not want to know the details of that assistance. Mr. Lopez stated “I don’t know if [Senator Ensign] knew exactly what kind of communications [Hampton] was having with the office, and I just don’t think he wanted to know. So that was my understanding of kind of our agreement at the time.”

Mr. Lopez was not aware of the affair between Senator Ensign and Ms. Hampton when he discussed Mr. Hampton’s contact with the Senate office, and in fact, Mr. Lopez did not become aware of the affair until June 15, 2009 during the emergency staff meeting called by Senator Ensign.

Mr. Lopez explained that he felt intimidated to discuss the matter further due to Senator Ensign’s loyalty to Mr. Hampton and the perception that Mr. Hampton was an untouchable subject. He recalled an occasion on which a staff member, a former Marine Corps Colonel, had mentioned in his exit interview that Mr. Hampton was not well-liked among the staff, and Senator Ensign:

[gave] the colonel a look like “don’t you dare go there.” And I remember the colonel kind of squirming and the subject was dropped. But that really stuck in my mind, because I thought, you know, if a Marine Corps colonel who [Senator Ensign] respected without question can get dressed down by [Senator Ensign] for bringing up [Hampton’s] name, then certainly it would most definitely happen with me.

After Mr. Hampton’s emails to Mr. Quinalty on May 6 and 8, 2008, Mr. Hampton never contacted Mr. Quinalty again.

In late June and early July, Mr. Hampton began to contact Mr. Lopez about two separate client matters: a pending bill regarding the transition to digital television signals, and enforcement action that the DOT had initiated against Allegiant Airlines based on certain fees added to tickets purchased online. Mr. Lopez testified that “[Hampton] started calling me directly. And in my mind, it was apparent to me that *the Senator and [Hampton] had had a conversation about that*, because my recollection is I did not.”

In fact, Mr. Hampton and Senator Ensign were speaking during May and June of 2008 about Mr. Hampton’s business. Mr. Hampton emailed Senator Ensign on May 27, 2008, and

complained about the difficulty he was having finding clients; he noted that he would not draw a salary in May because he had not collected on invoices from his two clients. Mr. Hampton stated in that email that “regardless of the circumstances, you ensured me that I would not be injured as a result of leaving your organization.” Three days later, on May 30, 2008, Mr. Hampton again emailed Senator Ensign, thanked him for getting Allegiant Air as a client for November Inc., but expressed frustration with his loss of income, noting that the severance paid in April was not sufficient to compensate him for the loss of his position as administrative assistant: “I know it’s been more difficult getting clients and arranging contracts than you presented in March in the [Las Vegas] office with Slanker.” Moreover, at this time, Senator Ensign was continuing to pursue the affair with Cindy Hampton.

1. Senator Ensign and John Lopez Assist Allegiant Airlines Based on Mr. Hampton’s Lobbying

On July 7, 2008, Mr. Hampton emailed Mr. Lopez to set up a teleconference regarding Allegiant Airlines. The next day, Mr. Hampton and Mr. Lopez spoke at 11:30 a.m. EDT. Mr. Hampton explained to Mr. Lopez that DOT was investigating Allegiant “for the way it was displaying on [its] Web site its ancillary fees.” Mr. Hampton explained to Mr. Lopez that DOT was seeking a settlement that “would give [Allegiant] a huge fine.” After speaking with Mr. Hampton, Mr. Lopez called Simon Gros, an assistant secretary for governmental affairs at DOT, to discuss the matter in preparation for a meeting with Senator Ensign. Mr. Gros informed Mr. Lopez that DOT was very concerned by Allegiant’s pricing scheme, insofar as it charged a fee for booking online above the price charged at the airport ticket counter.

In response to this teleconference with Mr. Gros, Mr. Lopez met with Senator Ensign and briefed him on the issue. Mr. Lopez made clear that he had learned of the issue from Mr. Hampton. Mr. Lopez explained that DOT took a dim view of Allegiant’s pricing, and that this was not only the opinion of a civil servant, but of a political appointee. Mr. Lopez testified that Senator Ensign “became very animated and said ‘no, no, no, you don’t understand this. Clearly, this person [Gros] doesn’t understand this issue.’ *He seemed to know a lot more about the issue than I [Lopez] did at that point.*” Senator Ensign expressed a desire to call Secretary of Transportation Mary Peters about the issue, and Lopez concurred. Mr. Lopez noted that “[Senator Ensign] was very well versed on this issue, and that can only happen through a couple of ways...I assumed at the time it was a combination of him speaking with Maury Gallagher and also with Doug Hampton.”

On July 8, 2008 at 12:27 p.m. EDT, Mr. Lopez informed Mr. Hampton that Senator Ensign intended to call Secretary Peters that afternoon. Mr. Lopez also explained that Senator Ensign had, by this time, spoken with Allegiant Airlines CEO Maury Gallagher. Three minutes later, Mr. Hampton responded, thanking Mr. Lopez for “making the call happen so quickly.” That evening, Mr. Lopez, Ms. Jackson, and Ms. Roberts worked to schedule a teleconference between Senator Ensign and Secretary Peters; apparently, scheduling conflicts moved the call to the next day, July 9, 2008.

On the evening of July 8, 2008, Senator Ensign and Mr. Hampton spoke about the Allegiant Air issue by email. Senator Ensign inquired of Mr. Hampton’s job prospects with

Newcom and P2SA (two companies that interviewed Mr. Hampton at Senator Ensign's recommendation); Mr. Hampton responded and stated:

Really appreciate you jumping on the call with [Gallagher]. This deal with getting Secretary Peters to back of [sic] Allegiant for a period is really important to their health, given the severe issues facing the industry. We are asking Peters to reschedule an expedited meeting called for this Friday until Allegiant [sic].

The next morning, July 9, 2008, Mr. Lopez emailed Mr. Hampton to confirm that Senator Ensign would be speaking with Secretary Peters at 3:00 p.m. EDT. Mr. Hampton responded:

Ok thank you. With that said will you make sure the Senator knows this from Allegiant.

[DOT's enforcement action] is unacceptable and completely wrong from [Allegiant's] perspective. Action (Consent Order) should not precede the meeting to discuss the issue. Allegiant firmly believes it is not acting deceitfully in it [sic] Web business and would like the time and proper form [sic] to table the issue.

If DOT preceded [sic] with order then Allegiant will not sign and retain legal counsel to fight issue and make this a public [sic] hoping it has the full support of the Senator. DOT moving forward is not acting in a fair manner with this issue from Allegiants [sic] perspective.

The hope would be that the Senator's discussion with the Secretary causes her to ask her organization to give this due process and cease on the order until proper meetings and discussion can prevail.

Again this industry and this airline are dealing with very significant issues at the moment and DOT should be sensitive and supportive. It is unreasonable (fast tracking) to demand a decision without due process.

Look forward to hearing from you after the call[.]

(emphasis added).

Mr. Lopez responded that he agreed and that he had attempted to book a flight on Allegiant's website, and had found the relevant convenience fee clearly marked and noticed.

At 3:00 p.m. EDT on July 9, 2008, Senator Ensign had a teleconference with Secretary Peters. According to Mr. Lopez, Senator Ensign did not need any additional briefing on the issue prior to the call, given his knowledge of the issue.

On the morning of July 10, 2008, Mr. Lopez emailed Mr. Hampton to set up a time to speak by phone. Mr. Lopez intended to set up a teleconference between enforcement officials at DOT and principals at Allegiant. Such a teleconference took place Friday, July 11, 2008, between Nick Lowry (DOT Office of Aviation Enforcement and Proceedings Senior Attorney), Mr. Gros, other DOT officials, and Messrs. Gallagher, Harrison, and Lopez. Mr. Lopez could not recall whether Mr. Hampton listened to the call, but recalled that he did not say anything. Mr. Lopez attempted to moderate the discussion, and mentioned that the proposed fine was, in his view, “a little onerous.” Mr. Lopez cannot recall the dollar amount discussed. Mr. Lopez also requested certain documents referencing similarly situated airlines, on suspicion that this enforcement proceeding arose from complaints by Allegiant’s competitors.

After the teleconference, Mr. Lowry emailed Allegiant’s counsel Aaron Goerlich on July 15, 2008, and made an offer of settlement for the enforcement proceeding: Allegiant would need to change its web fare display (Mr. Lowry drafted and included proposed changes to the language and display), and would need to agree to a consent order including “substantial civil penalties,” and further discussions with DOT regarding other aspects of Allegiant’s advertising and pricing schemes. Mr. Goerlich forwarded the proposal to Messrs. Harrison and Gallagher. Mr. Harrison, in turn, forwarded Mr. Lowry’s proposal to additional Allegiant personnel as well as Mr. Hampton. Mr. Harrison made clear that the proposal was not acceptable, and that Mr. Goerlich was drafting a letter to provide to Mr. Lopez “so he can meet with DOT General Counsel (who is the boss of DOT’s Enforcement Head) and approach reconciliation from a “top / down” perspective.” Mr. Harrison noted that the “plan would be for Lopez to meet with Gen Counsel either tomorrow or at the latest on Thursday – given the quick response deadline imposed by DOT Enforcement Office.” Mr. Harrison’s inclusion of Mr. Hampton on this email, as opposed to a direct email to Mr. Lopez, indicates that Mr. Harrison expected Mr. Hampton to liaison with Mr. Lopez regarding these action items.

Mr. Hampton made contact with Senator Ensign’s office later that afternoon, by forwarding Mr. Harrison’s email to Mr. Lopez, and noting that Mr. Lopez would have a letter the next morning. Mr. Lopez testified that the letter was something he had requested, as a “CYA letter” to show that the request for assistance came from Allegiant itself rather than Mr. Hampton directly:

if I was going to be helping Allegiant and [Hampton] was in the mix, that really, you know, it was an important constituent, but, you know, I really needed that letter, not just [Hampton’s] word through e-mails that this was an issue... Because, again, [Hampton] was obviously doing stuff that was wrong, and I wanted to – I wanted to help Allegiant...to do that properly, and be able to say that yes, this airline company, not just Doug Hampton, but this airline company, they contacted us for help.

(emphasis added)

While Mr. Lopez at the time rationalized that he was just guiding Mr. Hampton and Allegiant to DOT, he testified:

[S]itting here today, it's painfully clear to me that that was – you know, we were being influenced to make a favorable outcome for Allegiant, there's no question.

(emphasis added)

On July 17, 2008, Mr. Lopez emailed Mr. Gros, expressed Allegiant's displeasure with the recent teleconference, and requested a second call between Mr. Lopez, Mr. Gros, and DOT General Counsel to discuss the issue. Mr. Lopez recognized that this was a "rare" level of intervention into executive branch business. Mr. Lopez did indeed have such a call, and wrote to Mr. Hampton at 2:26 p.m. EDT to report on the outcome:

Called [Gros] and jacked him up to high heaven. He repeated what we discussed earlier...that it was how this was being disclosed on website, not convenience fees. E-mailed him the take-it-or-leave-it e-mail from Nick Lowry and said this guy is a little tyrant. Will fill Ensign in this afternoon.

Mr. Lopez testified that this message was an "exaggeration" of his tone, "to let [Hampton] think that I had done more than I really did. Because I personally liked [Gros]. The conversation I had with [Gros] is that, you know, you basically have some bureaucrats running amok and you work for the Bush administration, and they're taking a very antibusiness position here."

Later that day, Mr. Hampton forwarded to Mr. Lopez Allegiant's counter-proposal for settlement, and stated "[w]ould sure like [Gros'] help in ensuring that their organization take a different road with Allegiant and back of [sic] timetable and any penalties or fines." Mr. Lopez responded to Messrs. Hampton, Gallagher, and Harrison, "I agree and told [Gros] that some folks needed to be taken to the woodshed... [Gros] was pretty frantic when I got off the phone with him. Trust me that I know how much pressure to apply and when." Both Mr. Gallagher and Mr. Harrison responded, thanking Lopez for his help.

The next day, Mr. Lopez emailed Mr. Hampton and requested a teleconference on Monday, July 21, 2008, noting that he had "screamed himself hoarse with those imbeciles," and that he was "too mad right now." Mr. Hampton forwarded the email to Mr. Harrison and Mr. Gallagher, who agreed to hold a teleconference on Monday. According to Mr. Lopez, at this point, Mr. Hampton desired increasing involvement from Senator Ensign, and requested that Mr. Lopez have Senator Ensign call Secretary Peters again, as well as contact White House adviser Karl Rove and inform him of the issue. Mr. Lopez thought this was a "stupid" idea, and was in this email attempting to show Mr. Hampton that he was "doing what I could."

On July 29, 2008, Mr. Lopez emailed Mr. Hampton and explained that he had received the documents he originally requested from DOT "copies of every consent order relating to Internet advertising they have entered into with various airlines since 2001." On August 5, 2008, Mr. Lopez emailed Mr. Hampton regarding these materials: "there is so much stuff I will need to FedEx to you, *probably best to send to [Harrison's] attention*. Cool? Best address to FedEx?"

Mr. Lopez confirmed that he intended to send these documents to Mr. Harrison's attention to avoid having a communication with Mr. Hampton, "especially if it's with office funds."

Mr. Lopez recalled the issue began to disappear from his vantage point around the end of July 2008, and could not recall details of the resolution of the matter. Allegiant settled with DOT via consent order on September 15, 2008.¹⁴ The consent order included a fine of \$50,000, of which only \$10,000 was to be due and paid in cash; \$15,000 of the fine was offset for expenditures related to reprogramming the website to address the pricing issue, and the remaining \$25,000 would only be imposed if Allegiant violated the consent order. Mr. Lopez testified that he was keeping Senator Ensign informed throughout his involvement in the enforcement proceeding.

Throughout the summer of 2008, Mr. Hampton contacted Senator Ensign's office on a variety of legislative matters pertaining to Allegiant and other Nevada individuals. For example, on September 11 and 12, 2008, Mr. Hampton contacted Mr. Lopez regarding the clearance of international flights through customs at McCarran Airport. On November 6, 2008, Mr. Hampton emailed Mr. Lopez from his Allegiant email address regarding the expiration of certain tax cuts.

2. John Lopez Assists Mr. Hampton's Client Entravision

In June 2008, Mr. Hampton requested that Mr. Lopez provide him information on the DTV Border Fix Act, intended to provide relief to television stations on the Mexican border from a pending switch from analog to digital signal. On June 18, 2008, Mr. Lopez forwarded to Mr. Hampton a write-up on the Act prepared by Quinalty. Mr. Lopez, in that email, tried to provide additional sources of information on the bill, but promised "to let [Hampton] know if/when it is going to move." On June 19, 2008, Mr. Lopez forwarded an article from *Roll Call* discussing related telecommunications issues. Mr. Lopez updated Mr. Hampton on the Act's progress on July 15, July 22, and July 23, 2008, explaining that there were anonymous holds preventing the Act from being passed by unanimous consent. The Act passed with an amendment on August 1, 2008; on August 6, 2008, Mr. Lopez emailed Mr. Hampton to notify him of the Act's passage and the substance of the amendment.

At the time of these communications, Mr. Hampton had solicited and received a limited contract with Entravision, a Spanish-language media company, with respect to this issue. On July 23, 2008, Mr. Hampton emailed Senator Ensign:

Just wanted to make you aware I signed a short term deal with Entravision. Lopez has been most helpful. Don't need anything just thought I should let you know.

(emphasis added).

Mr. Hampton also worked with Entravision's counsel, Barry Friedman, with respect to the Act. Mr. Lopez testified that he had no conversations with Senator Ensign about Entravision or helping Mr. Hampton regarding the Act.

¹⁴ See *Allegiant Air, LLC*, Docket OST 2008-0031, Order 2008-9-18 (DOT Sept. 15, 2008).

3. Mr. Hampton Lobbies Senator Ensign's Office on Behalf of NV Energy

On November 10, 2008, Mr. Hampton emailed Mr. Lopez to discuss the Ely Energy Center Draft Environmental Impact Statement ("EIS"). Mr. Lopez testified that this was a legislative issue for Senator Ensign since 2006. NV Energy had proposed the construction of a coal-fired power plant on public lands in Nevada; the plant would be accompanied with corridors for carrying electricity, as well as a water pumping system to transfer water from White Pine County to Las Vegas. The next day, Mr. Hampton and Mr. Lopez spoke by phone; Mr. Hampton asked for Senator Ensign's assistance in urging the Department of Interior to publish the Draft EIS in the Federal Register in a timely fashion, because only a few months remained in the Bush presidency, and the Obama White House was likely to be far less favorable to a coal-fired power plant to which Senator Harry Reid was opposed. Mr. Lopez thought this call from Mr. Hampton was odd, because NV Energy had typically relied on lobbyist Marcus Faust as its advocate on federal issues.

Nevertheless, Mr. Lopez contacted Ms. Allmon and told her that Mr. Hampton had contacted the office regarding the Ely Energy Center; he requested that she develop a memo for Senator Ensign on the issue, which she submitted on November 13, 2008. Based on that memo, Senator Ensign, along with Congressman Dean Heller, sent a letter to Secretary of the Interior Dirk Kempthorne urging him "to approve publication of the Draft [EIS] for NV Energy's proposed Ely Energy Center."

On November 21, 2008, Mr. Lopez emailed Ms. Allmon and Mr. Chatwin; Mr. Lopez asked Ms. Allmon to call Mr. Hampton and "fill[] him in" regarding the EIS, and "make sure he gets letter and press release we sent." Ms. Allmon testified that she thought Mr. Lopez was fielding a random call from Mr. Hampton.¹⁵

The same day, NV Energy officials discussed Mr. Hampton's involvement; Tony Sanchez, NV Energy's Senior Vice President for Strategy, Policy, and External Affairs, wrote that NV Energy had requested Mr. Hampton "to see if [Senator Ensign] could 'soft sell' to Interior our getting the draft EIS asap with the outgoing administration." According to Mr. Sanchez, Mr. Hampton believed the draft EIS would be issued Monday, November 24, 2008, based on conversations between Mr. Hampton and Mr. Lopez. Starla Lacy, an NV Energy employee, wrote in response, "Top secret – Evidently Ensign and Heller sent a letter to interior – so much for a soft inquiry!" Based on these communications, NV Energy expected that Hampton would seek intervention by Senator Ensign on the issue, but did not expect that Senator Ensign would write a formal letter.

November 24 came and went without the issuance of a Draft EIS. On December 12, 2008, Mr. Hampton emailed Mr. Lopez, stating, "Hate to bring you back in the loop on this...certainly no fault of [Allmon's] but still no release on this request from DOI. Can you shed some light or hope that this is going to happen?" Mr. Lopez responded that he had "been pounding Interior and can't figure out why this hasn't come out."

¹⁵ Committee Staff, who conducted Allmon's deposition, expressed doubts regarding Ms. Allmon's credibility on this point to Special Counsel.

The same day, Ms. Allmon emailed Mr. Lopez and asked if she should reach out to Mr. Hampton regarding NV Energy. Mr. Lopez agreed. Four days later, December 16, 2008, Dick Bouts at Department of Interior emailed Ms. Allmon and Mr. Lopez to confirm that the Draft EIS would be published either that week or next, and attached a copy of the signed submission. Again, Ms. Allmon asked Mr. Lopez whether she should share this information with Mr. Hampton, and Lopez told her to do so. Ms. Allmon could offer no explanation for these communications.

Mr. Lopez testified that the issuance of the Draft EIS was “a major goal of the Senator’s to get this done.” Mr. Hampton’s inquiries on this issue served as a reminder to Mr. Lopez that this was a priority. Mr. Lopez could not recall informing Senator Ensign of Hampton’s involvement on this issue.

4. Mr. Hampton Requests Help in Developing Relationships Between Allegiant Airlines and Federal Officials

On August 15, 2008, Mr. Hampton accepted an offer of employment with Allegiant Airlines as Vice President of Government Affairs.

At some point in early 2009, according to Senator Ensign’s journal entries, Mr. Hampton and Senator Ensign had a chance encounter with each other in a parking lot in Las Vegas and then had a subsequent telephone call. On January 22, 2009, likely after the meeting in the parking lot, Mr. Hampton emailed Lopez “regarding Allegiant and our desire to include [Gallagher] in as many discussions, round tables, and committee issues as possible as it relates to Aviation.” Mr. Hampton made specific requests: (1) that Senator Ensign arrange a meeting between Secretary of Transportation Ray LaHood and Allegiant officials for introductory purposes; and (2) that Senator Ensign broker a similar meeting with the as-yet-unnamed FAA Administrator. Mr. Hampton stated:

I have discussed these [requests] with [Senator Ensign] and he is aware I am coming to you.

(emphasis added).

Mr. Lopez assumed at that time that Senator Ensign and Mr. Hampton were still on good terms, as he was still unaware of the affair.

In response to this email, Mr. Lopez told Senator Ensign “that [Gallagher] and [Hampton] and others in Allegiant were going to be coming out to Washington and that I thought it was – I told him that I said to [Hampton] that I thought it was a good idea, you know, that – you know, that he should do the meeting with LaHood.” Mr. Lopez recalled that, after receiving the email from Hampton, that he was “comfortable going to the Senator on this.” Senator Ensign placed a telephone call to Secretary LaHood on January 29, 2009 to request that he take a meeting with Allegiant officials; Secretary LaHood agreed.

After that call, on January 30, 2009, Mr. Lopez emailed Ms. Roberts to ask her to follow up on behalf of Senator Ensign with Secretary LaHood’s office regarding a meeting between Gallagher and Secretary LaHood. Ms. Roberts had difficulty contacting Secretary LaHood’s

office, but eventually confirmed a meeting for March 11, 2009. Mr. Lopez also contacted Bob Herbert, Senior Policy Advisor for Senator Reid, regarding a meeting between Senator Reid, Senator Durbin, and Mr. Gallagher when Mr. Gallagher would be in town to meet with Secretary LaHood. Mr. Lopez informed Mr. Hampton the next day that Mr. Herbert was working on arranging such a meeting. Finally, Mr. Lopez set up a lunch in the Senate Dining Room on March 11, 2009 with himself, Senator Ensign, and Messrs. Hampton, Gallagher, and Harrison.

While Mr. Lopez at the time rationalized that he was just guiding Mr. Hampton and Allegiant to DOT, he testified:

[S]itting here today, it's painfully clear to me that that was – you know, we were being influenced to make a favorable outcome for Allegiant, there's no question.

(emphasis added)

Despite Mr. Hampton's statement to Mr. Lopez in January that he had spoken with Senator Ensign about Allegiant and raising its profile in Washington, a number of staffers testified that Senator Ensign expressed surprise when notified that Mr. Hampton would be accompanying him, Messrs. Lopez, Harrison and Gallagher to lunch on March 11, 2009. Senator Ensign also approached Lopez at this time and asked if Mr. Hampton had been lobbying other Senators. Mr. Lopez told Senator Ensign that he had heard that Mr. Hampton had visited Senator Thune's office. Senator Ensign "looked surprised," and Mr. Lopez testified that both he and Senator Ensign were surprised that Mr. Hampton was publicly lobbying other Senate offices. Mr. Lopez confirmed that Senator Ensign's surprise was limited to the fact that Hampton was lobbying other offices, not the fact that Mr. Hampton had lobbied Senator Ensign's own office.

Prior to the lunch, Messrs. Hampton, Gallagher, and Harrison arrived at Senator Ensign's office. Mr. Lopez asked Mr. Chatwin to escort the three men to the dining room, which he did via tram. At the lunch, Mr. Lopez sat between Senator Ensign and Hampton. Senator Ensign asked how Allegiant's meetings were going, and Mr. Harrison and Mr. Gallagher responded that the meeting with the Secretary had gone well. Senator Ensign discussed cycling, his new hobby, and asked for Mr. Gallagher to sponsor a cycling event in the Las Vegas area. Mr. Lopez recalled that Mr. Hampton was "silent" during the lunch. According to Senator Ensign's journal, he recalls having lunch with Mr. Hampton in the Senate Dining Room and that it "was a very nice time." Other attendees at the March 11, 2009 lunch had a distinctly different recollection of the tone of that lunch, namely, that Senator Ensign and Mr. Hampton were clearly not on good terms.

The next day, March 12, 2009, Messrs. Hampton, Gallagher, and Harrison attended a Welcome to Washington breakfast hosted by Senators Ensign and Reid in the Lyndon Baines Johnson room in the Capitol building.

From February through May 2009, Mr. Hampton contacted Mr. Lopez and other employees of Senator Ensign's office regarding a variety of other issues for Allegiant. On February 6, 2009, Mr. Chatwin forwarded an article on aviation to Mr. Hampton at the request of Mr. Lopez; when Mr. Hampton responded with a question about "card check" for unions,

Chatwin asked Lopez how to respond. Mr. Lopez promised that he would handle the matter, and emailed Mr. Hampton asking him to call regarding the “card check” issue. On February 18, 2009, Mr. Hampton emailed Mr. Lopez and thanked him for “all the help and good work you provide me.” On March 25, 2009, Mr. Lopez and Mr. Hampton emailed regarding the Family and Medical Leave Act. On April 1, 2009, and April 21, 2009, Mr. Lopez, in response to Mr. Hampton’s request, sent information to Mr. Hampton regarding restrictions on travel to Cuba. On April 22, 2009, in response to Mr. Hampton’s request, Mr. Lopez sent information to Mr. Hampton regarding carbon monoxide regulations.

Mr. Hampton’s one-year ban period concluded on May 1, 2009.

K. Mr. Hampton Hires a Lawyer and Raises Damage Claims; Senator Coburn Handles Negotiations with Senator Ensign

According to Mr. Hampton, by late Spring of 2009, he was “tired of living a lie.” He was also concerned that he had lied to his current employer, Maury Gallagher. Mr. Hampton became concerned that his relationship with Senator Ensign was beginning to change, and he began to feel some distance between them.

Mr. Hampton sought legal counsel. He was referred to Las Vegas attorney Daniel Albregts. Mr. Albregts, a former Public Defender who primarily handled criminal matters but also handled some civil matters, met Mr. Hampton in April 2009. According to Mr. Albregts, Mr. Hampton came in and told a “jaw dropping” story, and asked him to be his counsel to determine whether he had a cause of action against Senator Ensign. Mr. Hampton was interested in securing enough money to relocate and start over.

Mr. Albregts did not know who to contact on Senator Ensign’s behalf, so he called the Senator directly. After he introduced himself, there was a “pregnant pause.” Senator Ensign “let out a sigh and said why did he have to get lawyers involved?” Senator Ensign said he would get back to Mr. Albregts, but did not do so.

Mr. Hampton then told Mr. Albregts that Senator Coburn was expecting his call to continue the negotiations. Senator Coburn told Mr. Hampton that he wanted to get involved with the issue. Mr. Albregts recalled that the communications he had with Senator Coburn occurred the week before Memorial Day 2009. Mr. Albregts understood that Senator Coburn was going to act as an intermediary between Senator Ensign and Mr. Hampton.

Mr. Albregts spoke with Senator Coburn on three occasions, all on May 22, 2009. Mr. Albregts first had a five-minute call with Senator Coburn. Senator Coburn said that “he wanted to help Doug out.” Senator Coburn also stated that he liked Doug Hampton, felt bad about what happened, and he was glad that they retained counsel to resolve this issue. Senator Coburn told Mr. Albregts to have Mr. Hampton tell him what he thinks he needs to start over, and Senator Coburn would then take that to the Ensigs.

Mr. Albregts had an eight-minute call with Senator Coburn approximately an hour later. Senator Coburn recalled that he was on his tractor at his home mowing his lawn at the time, and was annoyed to receive the call in the middle of that task. Mr. Albregts tried to get a ballpark estimate from Senator Coburn as to the amount he would be comfortable with. Mr. Albregts

proposed \$8 million based on a document Doug Hampton prepared. According to Mr. Albregts, Senator Coburn said that the figure was “absolutely ridiculous.” Senator Coburn then stated that the Ensigs should buy the Hamptons’ home because it is so close to the Ensigs, and the Hamptons should receive an amount of money above and beyond that to start over, buy a new home, have some living money while they were looking for new employment, and possibly some seed money to send the children off to college. Senator Coburn stated that “*that’s what I’ve thought from day one would be fair,*” but said that \$8 million was nowhere close to a reasonable figure. Senator Coburn told Mr. Albregts to figure out what those amounts would be, and call him back.

Mr. Albregts then spoke with Mr. Hampton, and asked him how much it would cost to get the house paid for, and how much he needed above that figure to get started somewhere new. Mr. Hampton then came back with some figures, and estimated \$1.2 million for the home, and another \$1.6 million to get started somewhere new. Mr. Albregts called Senator Coburn back for the final time with this revised figure on the same day in a five-minute call. Per Mr. Albregts, Senator Coburn responded by stating that “okay, that’s what I had in mind and I think is fair” and said he would take the figure to the Ensigs. Mr. Albregts later heard from Mr. Hampton that Senator Ensign refused the revised offer.

Senator Coburn testified that he told Mr. Hampton’s attorney, Mr. Albregts, in May 2009 that he was not “the negotiator,” and “it’s got to be something apropos.” Senator Coburn also testified that he did not propose any resolution, but was simply going to pass information to Senator Ensign. Mr. Albregts testified that Senator Coburn took an active role in the negotiations between Mr. Hampton and Senator Ensign, and this role included proposing specific resolutions.

L. Senator Ensign Discloses the Affair to His Staff and the Public in June 2009

1. The Senator Speaks of “Making the Hamptons Whole”

After Senator Ensign refused the revised settlement offer, Mr. Hampton decided to take the matter to the media. Mr. Hampton wrote a letter to Megyn Kelly at Fox News on June 11, 2009 in which he disclosed the affair and sought a meeting with the television station. On June 15, 2009, Mr. Hampton forwarded a copy of the letter in an email to former Senator Rick Santorum, and asked Senator Santorum for help with the matter. Senator Santorum forwarded Mr. Hampton’s email and the letter to Senator Ensign at his Gmail address that evening at approximately 10:20 p.m.

Senator Ensign immediately called an emergency staff meeting in the late evening of June 15, 2009 that lasted until approximately 3:00 a.m. on June 16, 2009. During that staff meeting, Senator Ensign disclosed the affair, and also disclosed that he had made a severance payment to the Hamptons. Senator Ensign stated that he would be making a public statement the next day in Las Vegas regarding the affair.

Several staff members who attended the meeting recalled the use of the term severance or the concept of severance. Senator Ensign’s now former Communications Director Rebecca Fisher testified that Senator Ensign “said that he tried to – he wanted to make [Hampton] whole,

that he had calculated three months of pay for [Hampton] and then three months of pay for [Ms. Hampton] and had gotten a total, and then he'd also taken into account what health insurance would cost for the family, and that he had given them money to cover that." Ms. Fisher also recalled that Senator Ensign stated that the payment was an effort to "make them whole," and that he was "trying to be fair ... trying to make sure they were taken care of after [Hampton] left the office." Ms. Fisher recalled that Senator Ensign wanted to focus on the payment and the recent demands by Hampton, but Ms. Fisher believed that the media would focus as much attention to the severance payment made to the Hamptons as the affair itself.

Senator Ensign's now former Legislative Director stated that during the staff meeting, Senator Ensign referred to the payment to the Hamptons as severance, and the payment included COBRA payments. Specifically, "[h]e [Senator Ensign] said he paid severance to the Hamptons, and he talked about a number of different things it included, including enough money for COBRA benefits." Senator Ensign later told his Legislative Director during an individual meeting that he made the payment to the Hamptons because he still loved Ms. Hampton and wanted her and her family to be taken care of.

Senator Ensign's then current Deputy Chief of Staff recalled that during the staff meeting, Senator Ensign stated that he gave the Hamptons "money out of his own pocket for a few months – he said for a few months to cover his salary and COBRA payments."

Additionally, in an email written from John Lopez to Senator Ensign the day after the public statement of the affair, Mr. Lopez stated that the Senator should speak with his attorneys before "we start answering questions about "severance" [quotes in original]" and other items so you don't put yourself in a bad position.

In addition to staff testimony regarding Senator Ensign's description of the payment during the June 15, 2009 staff meeting, other witnesses provided testimony regarding the severance payment. One of Senator Ensign's long-standing spiritual advisors spoke with Senator Ensign about the payment to the Hamptons, and Senator Ensign stated "I'm going to give him as much severance as possible." Additionally, Mr. Slanker heard about the severance from Senator Ensign, Darlene Ensign, and Mr. Hampton. Mr. Slanker recalled that Senator Ensign stated that "we gave Cindy \$100,000 severance to help them."

2. Senator Ensign Makes Journal Entries Describing the Payment to the Hamptons

Senator Ensign maintained an electronic journal, which was made available to Special Counsel and Committee Staff. One of the Senator's journal entries described the lead-up to the June 16, 2009 public statement, including the affair and the severance payment made to the Hamptons. Senator Ensign's journal, entitled "June Journal 2009," explained that following the discovery of the affair, the Senator wanted to help the Hampton family as they transitioned to a new life. The Senator wrote about a discussion he had with his father about the payment:

June 5-20 Public Confession

Last year I had [sic] affair with Cindy. It lasted on and off from December of 2007 till early around the first week in August 2008.

Doug or Darlene had caught us several times and finally all agreed that Doug and Cindy would have to leave my employ....

I did not want the government to have to pay any severance pay or the campaign. So I was going to help them transition into their new life. I went to my dad and he said he would rather give them some money as a gift to help them out. He had Bruce write the check for about 100k.

3. Senator Ensign Makes Draft Public Statements Referring to a “Severance” Payment

Senator Ensign prepared drafts of his public statement on June 16, 2009. Senator Ensign prepared the initial draft of the public statement on an airplane from Washington, D.C. to Las Vegas and attempted to email the draft to Mr. Mazzola, Senator Ensign’s former communications director. Mr. Mazzola did not receive the draft statement due to technical difficulties, and the Senator and Mr. Mazzola later re-wrote the statement. A copy of the Senator’s initial draft statement, thought to be deleted, was later recovered.

In the first version of the draft statement, written by Senator Ensign and dated June 16, 2009 at 7:57 a.m., Senator Ensign wrote that he paid “severance” to Doug and Cynthia Hampton following the affair and the “unsustainable work atmosphere” that had developed as a result. Significantly, Senator Ensign sent the draft to Mr. Mazzola with a direction to “send this only on gmail to others for comments.” This direction was consistent with Senator Ensign’s policy to send emails to staff on Gmail so the documents would not be transmitted through Senate servers.

In this draft, the Senator explained that the payment was to help in the Hamptons’ transition after leaving the Senator’s employment:

Because of the affair, an unsustainable work atmosphere had developed and it became apparent they could no longer work for me. To help them transition to new work, ***we gave them what was the equivalent of 6 months severance pay and 1 year of health insurance expense***—personally, not out of campaign or official accounts.”

(emphasis added).

A second draft prepared by Senator Ensign, dated June 16, 2009 at 1:18 p.m., similarly referred to the payment of “6 months severance pay and 1 year of health insurance expense.” In both of the Senator’s versions, he wrote that the payments were made “personally” and not out of campaign or official accounts. Neither draft statement mentioned Michael or Sharon Ensign or the Ensign Family Trust; nor did the statements mention that the Hamptons’ children were also payees.

Mr. Mazzola forwarded the draft to key Ensign staff members, including John Lopez, Rebecca Fisher, Sari Mann, Pam Thiessen, and Jason Mulvihill, via email at 2:22 p.m. on

June 16, 2009. This version of the draft statement also described the 2008 payment as “severance”:

Last year, my wife and I decided to give what would be the equivalent of six months severance to each of them out of our personal funds. Let me be clear: These were strictly personal funds. This was to get them transitioned into new work.

This draft stated that Senator Ensign and his wife made the payment. As in the earlier, deleted draft statements, the draft did not mention the involvement of the Senator’s parents.

4. **Based on Advice from Senator Ensign’s Attorney, His Staff Removes All References to Payments in the Final Public Statement**

Senator Ensign’s staff worked to revise the draft statement. About one hour before the Senator’s planned press conference, Ms. Fisher conferred with attorney Chris Gober, counsel to Senator Ensign and his campaign, regarding the draft statement. Mr. Gober advised the Senator to remove all references to the payment of severance. Mr. Gober further emailed his concerns to Ms. Fisher, explaining that:

[t]he statement, as currently written, ***raises a host of potential criminal issues for the Senator. The language draws a direct connection between the affair, the termination of the staffers, and the “severance payment.”*** Although the statement attempts to legitimize the reason for the payment, it’s awfully odd that he made the payments from personal funds...***If this statement doesn’t get the attention of the U.S. Attorney’s Office, then nothing will.***

(emphasis added).

This document was withheld as privileged by Senator Ensign’s attorney for over eighteen months on the basis of an unsubstantiated claim of attorney-client privilege. The email was sent to a shared Gmail address for Senator Ensign’s then Communications Director and her husband, not to Senator Ensign. Senator Ensign did not abandon his claim of privilege until February 2011 after receiving a letter from the Committee challenging his claims of privilege. Ms. Fisher contacted the Senator by phone to inform him of Mr. Gober’s concerns. Ms. Fisher understood that Senator Ensign had already spoken with Mr. Gober, disagreed with his counsel, and wanted to proceed with the reference to money. As a result of Mr. Gober’s advice, Ms. Fisher removed all references to the exchange of money in the draft statement, and forwarded the revised draft to the Senator with copies to his staff. Unlike the earlier drafts, the revised statement made no reference to any payments made to the Hamptons or to Senator Ensign’s desire to help transition the Hamptons into new work.

The final statement delivered to the press similarly omitted the reference to the severance payment made to the Hampton family.

5. **Mr. Hampton Reveals in Public That the Senator Made Payments to the Hamptons**

After the public disclosure of the affair, Mr. Hampton was interviewed by Jon Ralston, a local journalist in Las Vegas. The interview was televised.¹⁶ In the interview, Mr. Hampton stated that his wife received more than \$25,000 from Senator Ensign when she left his employment. This statement stimulated the media's inquiries into the specifics of the payment.

The Senator first publicly acknowledged that the Hamptons received a payment of \$96,000 in a July 9, 2009 public statement released by his attorney, Paul Coggins.¹⁷ Although the Senator acknowledged that a payment had been made to the Hampton family, for the first time the statement described the payment as a "gift" from the Senator's parents to the Hampton family, as opposed to a severance payment made by the Senator and his wife. The statement further stated that the payment to the Hamptons was consistent with a "pattern of generosity by the Ensign family to the Hamptons and others."

Statement on behalf of Sen. John Ensign:

In April 2008, Senator John Ensign's parents each made gifts to Doug Hampton, Cindy Hampton, and two of their children in the form of a check totaling \$96,000. Each gift was limited to \$12,000. The payments were made as gifts, accepted as gifts and complied with tax rules governing gifts.

After the Senator told his parents about the affair, his parents decided to make the gifts out of concern for the well-being of long-time family friends during a difficult time. The gifts are consistent with a pattern of generosity by the Ensign family to the Hamptons and others.

None of the gifts came from campaign or official funds nor were they related to any campaign or official duties. Senator Ensign has complied with all applicable laws and Senate ethics rules.

Paul Coggins
Fish & Richardson P.C.
Counsel for Senator John Ensign

This statement made on behalf of the Senator gives the misleading impression that the senior Ensigs considered the Hamptons to be "long-time family friends," that the gifts were motivated by the senior Ensigs' "concern for the well-being of [these so-called] long time friends," and that the gifts were "consistent with a pattern of generosity by the Ensign family to

¹⁶ See Transcript of Jon Ralston's interview with Doug Hampton, <http://www.lasvegassun.com/news/2009/jul/08/transcript-jon-ralstons-interview-doug-hampton> (last visited April 25, 2011).

¹⁷ See New York Times, *Senator's Parents Gave Mistress Thousands*, July 10, 2009.

the Hamptons.” First, as described herein, it was no secret that Michael Ensign did not have a high regard or affection for Doug Hampton from his first encounter with him years earlier. Second, the payment had all the indicia of a generous, if illegal, severance payment made in an effort to pacify and calm the anxious Hamptons, whom Senator Ensign had just terminated from their well-paying jobs with him.

6. Michael Ensign, Sharon Ensign, and Senator Ensign Submit Affidavits to the FEC Regarding the Payment

With the \$96,000 payment a matter of public record, as noted above, CREW filed a complaint on June 24, 2009 with the Federal Election Commission, asserting that the payment amounted to an illegal campaign contribution. Mr. Gober prepared affidavits for the signature of the Senator and both of the senior Ensigns and submitted them to the FEC. According to Michael and Sharon Ensign’s substantially similar August 11, 2009 affidavits to the FEC, after Senator Ensign informed them of the affair with Ms. Hampton, and unprompted by Senator Ensign or anyone else, the parents “decided to make gifts to the Hampton family out of concern for the well-being of long-time family friends.” Senator Ensign’s August 11, 2009 affidavit made a similar claim that he “did not request that his parents make the gifts to the Hamptons,” and that, instead, he learned of their gifts when they “informed [the Senator] that they made gifts, totaling \$96,000” to the Hampton family.

When pressed by the Special Counsel about whether his son had requested him to make the payment, Michael Ensign stated, however, that Senator Ensign “may have mentioned” the Senator’s need to compensate the Hamptons.

The Ensigns stated to the FEC that they independently determined that they would make a payment to the Hamptons of approximately \$100,000, but reduced the payment to \$96,000 in order to comply with applicable gift tax laws. Michael Ensign instructed his Chief Financial Officer, Bruce Hampton, to prepare and sign a check for \$96,000, dated April 7, 2008, to Doug, Cynthia, Brandon, and Blake Hampton out of the Ensign Family Trust account.

The affidavits of Michael and Sharon Ensign explained that they had made “sizeable gifts to the Hampton family” over the 20 year friendship with the Senator. Specifically, the senior Ensigns stated that they “paid for the Hampton family to vacation in Hawaii” which, in addition to the flights on a private jet, included “a rental home with its own private 9-hole golf course, food, and recreational activities. Although I have not undertaken an accounting of the total cost of the trip, I believe the cost that could be allocated to the Hamptons was at least \$30,000.”

Both of the senior Ensigns acknowledged under questioning by the Special Counsel that they did not carefully review the affidavits before signing them and that the affidavits had been prepared by the Senator’s counsel after a short telephone call with Michael Ensign. The lawyer did not speak with Sharon Ensign before preparing her affidavit.

The FEC General Counsel urged the Commission in a report dated March 31, 2010 that the FEC find reason to believe that the \$96,000 was, in fact, an excessive campaign contribution,

and recommended an investigation into this matter. The FEC rejected the General Counsel's recommendation by a 5 to 0 vote on November 19, 2010.¹⁸

a. There Was No Evidence Supporting the Assertion in the FEC Affidavits That the Senior Ensigns Paid for the Hamptons' Trip to Hawaii

The "Ensign Family Sample Itinerary" details the arrival of the 16 individuals who attended the trip: the Ensign family, the Hampton family, members of Senator Ensign's brother Bill's family, and the Ensign family nanny. The various activities that were planned such as dinner at Spago's, a spa treatment, golf, the Maui Aquarium, scuba diving, whale watching, snorkeling, a luau, and other planned meals. Additionally, the Committee has a copy of Senator Ensign's journal entry regarding the Hawaii trip. The journal entry details some of the activities from the trip, but does not state that Michael Ensign paid for the trip.

According to the evidence, the families used a travel service called "Pure Maui," a company that provides luxury lodging and entertainment services to persons vacationing in Maui.¹⁹ The Committee does not have evidence as to the exact cost of the private homes the Ensign and the Hampton families stayed in or who paid for them. According to Senator Ensign's journal, his immediate family stayed in a private home at no cost, and his brother's family stayed with the Hamptons in a separate home that was rented. Senator Ensign's journal for the time period states that he and his family stayed at the residence of Joe and Gail Mitchell. No evidence has been presented that Senator Ensign disclosed this gift of lodging with the Senate Ethics Committee.

With respect to expenses, an invoice from Pure Maui details approximately \$9,262.00 in costs from the trip, including golf, a private boat charter and a private chef. The invoice states: "Bill to: John Ensign." The invoice, along with a second Pure Maui invoice for \$23,898.20, presumably for lodging expenses, and numerous other vacation charges totaling approximately \$10,374, was charged to a MasterCard that is believed to be Senator Ensign's. The total approximate cost of the trip for all 16 people to attend was \$43,534. The evidence suggests, however, that the focus of the Hawaii trip was not the Hamptons – they were incidental guests that attended this trip and added no real significant cost to the travel or housing expense.

The affidavits of the senior Ensigns and of Senator Ensign appear to be misleading and potentially false on the central issue of the FEC investigation – the nature of the \$96,000 payment from the senior Ensigns to the Hamptons and the purported "pattern of generosity" from the senior Ensigns to the Hamptons. The senior Ensigns' affidavits also appear to be false on their estimation that the value of the trip to the Hamptons was *at least \$30,000*, because, as noted

¹⁸ Eric Lichtblau, *F.E.C. Rejects Counsel With Its Vote on Senator*, New York Times, December 20, 2010.

¹⁹ Pure Maui currently advertises that "Hawaii's most luxurious vacation experience [i.e., Pure Kauai] is now available on Maui." "Fabulous private homes. Gourmet chefs. The island's best adventures and spa services. And personalized attention that raises the standard for luxury travel...." See www.puremaui.com.

above, the entire trip for 16 people cost approximately \$43,534, so the Hamptons' share of the expenses in Hawaii would have been less than \$14,000.

According to Michael Ensign, he allowed Senator Ensign to use the family airplane for the trip, a Gulfstream IV that is used entirely and frequently for personal Ensign family travel. Mr. Ensign was absolutely certain, however, that he did not pay for any housing accommodations, food or activities on the trip for his own adult children and his grandchildren, let alone for the Hamptons. Mr. Ensign disavowed his FEC affidavit during the deposition, stating "that's absolutely false." Specifically, Mr. Ensign stated that "Well, this payment for these things in Hawaii, that's absolutely false. *We never paid for anything.* We let them use the airplane, that's it . . . And I absolutely did not pay anything in Hawaii, talking about a home and a golf course and food. No, none of that, paid nothing."

Senator Ensign's mother testified that she did not recall paying for any expenses related to the Hawaii trip, and testified that any payment for the Hawaii trip would have come from the Ensign Family Trust Fund. Additionally, Senator Ensign's mother also did not recall giving Senator Ensign funds from accounts other than the Ensign Family Trust Fund. The Committee recently received information from Senator Ensign's mother, in the form of the scan of two checks with no written explanation, which appears to reflect that she may have deposited approximately \$50,000 into Senator Ensign's bank or credit card account around the time of this post-election, 2006 Hawaii holiday trip that her two sons took. This deposit, which was made out to Citibank, was also made around the time that Senator Ensign was charging trip expenses in Hawaii to his credit card. The Committee received no testimony from Mrs. Ensign or anyone to the effect that this giving of money to her son was unusual, extraordinary, or timed to reimburse him specifically for the Hampton expenses on the Hawaii trip. Additionally, Senator Ensign's brother's family occupied the home in Hawaii in which the Hamptons stayed, arguably making any added housing cost for the Hamptons' presence to be non-existent or negligible. Finally, based on the cost figures noted above, the \$30,000 estimation of the value of the trip to the Hamptons appears to be overstated.

The inconsistency between the facts and the FEC affidavit requires, the Special Counsel submits, further investigation by the Department of Justice and the FEC.

b. Michael and Sharon Ensign's Payment to the Hamptons Greatly Exceeds Other Gifts Given to Non-Ensign Family Members

Michael and Sharon Ensign's financial generosity towards their family, close friends and employees is extraordinary. Michael and Sharon Ensign made regular disbursements to their children and grandchildren from the Ensign Family Trust. For example, Senator Ensign and Darlene Ensign received a significant annual gift from Michael and Sharon Ensign, including \$300,000 in 2006, \$400,000 in 2007, and \$300,000 in 2008, 2009, and 2010.

The senior Ensigs also made disbursements to extended family members, to close friends of the senior Ensigs, and to the senior Ensigs' employees and the families of their employees. The gifts to the Ensign friends are typically made on an annual basis, and are usually disbursed during the holiday season. The Ensigs have demonstrated a particular loyalty to their

long-standing friends, with annual gifts to Michael Ensign's family doctor and members of his family, and to his retired priest. The gifts reviewed by the Committee in this matter do not, however, demonstrate a "patter of giving" to the Hamptons.

The total amount of gifts given by the senior Ensigns in 2010 was \$1,504,000. As of April 1, 2011, \$87,500 has been distributed to Ensign family members.

In 2009, Michael and Sharon Ensign made gifts in varying amounts, from \$5,000 to \$52,000, to a number of close personal friends. The total amount of gifts given by the senior Ensigns in 2009 was \$1,464,000.

In 2008, Michael and Sharon Ensign made a number of gifts to non-relatives, including the payment to the Hamptons. The payment in 2008 is the only payment to the Hamptons. The total amount of gifts given by the senior Ensigns in 2008 was \$1,576,339. The only non-family member who received a payment similar in size to the Hampton payment in 2008 was a former daughter-in-law that Michael Ensign stated was still considered to be a member of the family. Aside from that payment, the Hamptons' payment is double the next highest payment, which was made to the Ensigns' long-standing family doctor and friend.

M. The Senator's Chief of Staff Misleads the Public Regarding Senator Ensign's Actions and Mr. Hampton's Lobbying Efforts

As discussed above, the affair became public on June 16, 2009. After the affair became public, members of the press and public began to inquire as to the nature of the relationship between Mr. Hampton and Senator Ensign and his staff during Mr. Hampton's one-year ban period.²⁰ Senator Ensign's staff responded to these inquiries with misleading explanations. For example, Mr. Lopez told the New York Times that Senator Ensign had designated him to be the office's intermediary with Hampton "to ensure that the contacts complied with the law." Mr. Lopez later testified in his deposition by the Special Counsel that this was not true:

Q: So why did you tell the New York Times reporter that?

A: To – you know, to paint the best picture of the Senator on this. Keep in mind, I was still drinking the Kool-Aid at that point. And I mean, that – what I said was a mischaracterization of my – of the conversation I really had with the Senator, was adding in that stuff about complying with the law and so forth.

Mr. Lopez also told the New York Times that "his conversations with Mr. Hampton were simply 'informational,'" and the article quoted him as saying, "Did [Hampton] advocate and try to lobby in a couple of instances? Absolutely. But that's his problem." Mr. Lopez testified to Special Counsel that this was not a fair statement.

²⁰ See, e.g., Eric Lipton and Eric Lichtblau, *Senator's Aid After Affair Raises Flags Over Ethics*, New York Times at A1 (Oct. 1, 2009).

Similarly, Mr. Lopez told a reporter for Politico that he was required “to make sure that Hampton wasn’t breaking the law by lobbying Ensign within one year of leaving his staff.” Mr. Lopez testified that “what happened was not as – it wasn’t this way,” and that in reality, he was trying to “paint it in the best light for the Senator.” Mr. Lopez noted that any statement that Senator Ensign never directed Mr. Lopez to fulfill requests from Mr. Hampton would be untrue, “because when I said that I will deal with [Hampton] and handle his requests, [Senator Ensign] agreed to it readily. He just didn’t want to know about the rest of the details.” Mr. Lopez explained that he was asked to deal with Mr. Hampton “because I was willing to do it, and the Senator knew that I would do it for him ... and he didn’t want to know the details of what that meant.” Mr. Lopez confirmed that both he and Senator Ensign knew that Mr. Hampton would be working on behalf of clients in seeking to influence the Senate office in violation of the one-year ban:

I don’t think there’s any reasonable way you could think otherwise, so yes.

III. SUMMARY OF PRELIMINARY INQUIRY INVESTIGATION

A. The Request for Investigation of Senator Ensign

On June 16, 2009, Senator Ensign held a public press conference in which he admitted he had an extramarital affair with a member of his staff, later identified as Ms. Hampton. On June 24, 2009, the Committee received a “Request for Investigation of Senator John Ensign” from CREW. The request alleged that Senator Ensign’s conduct with Cynthia Hampton constituted employment discrimination on the basis of sex in the form of sexual harassment, and referred to a press report in which an anonymous source stated that the Senator had made a severance payment to Ms. Hampton. On July 21, 2009, Senator Ensign, through counsel, responded to CREW’s June 24, 2009 submission, and requested that the Committee dismiss CREW’s request for an investigation.

On October 6, 2009, CREW submitted a supplemental letter to the Committee outlining additional information that CREW believed relevant to an investigation of Senator Ensign.²¹ That submission raised additional questions regarding Senator Ensign’s conduct, including with respect to potential post-employment lobbying ban violations by Doug Hampton, and issues related to apparent payments to the Hamptons. It also requested an investigation into Senator Coburn’s role with respect to the settlement negotiations between Senator Ensign and Mr. Hampton.

B. The Preliminary Inquiry

The Committee authorized a Preliminary Inquiry and sent a letter to Senator Ensign’s counsel on October 21, 2009 asking the Senator to respond to specific questions and detailed

²¹ That information was derived primarily from a New York Times article regarding Senator Ensign published on or about October 2, 2009.

requests for information related to numerous issues relevant to the Preliminary Inquiry. The Committee also directed the Senator in writing to “preserve and prevent the destruction of any documents or electronic media that may contain any information which is in any way relevant to any of the . . . questions or matters mentioned therein until further notice of the Committee.”

Senator Ensign, through counsel, provided an initial response to the Committee’s specific questions and requests for information on November 20, 2009. This response also addressed CREW’s October 6 Letter. Senator Ensign, through counsel, also made an additional submission on December 16, 2009, and responded thereafter to a number of supplemental requests of the Committee staff.

1. Initial Document Productions, Witness Interviews, and Depositions

During the course of the 22 month investigation, Committee staff, later joined by Special Counsel, conducted 72 witness interviews and depositions, including members of Senator Ensign’s current and former staff and numerous third parties and reviewed over a half million documents received from numerous sources, including Senator Ensign and his staff.

Under procedures agreed to by the Senator and the Committee, images of the desktop computers, laptop computers, and BlackBerries associated with the Senator and his office were created and maintained by the Sergeant at Arms (“SAA”) in January 2010. In April 2010, the Senator disclosed that he had a home desktop computer, which had not been previously disclosed to the Committee, and images were made of that device as well. The Senator submitted an affidavit in May 2010, explaining that he “simply did not think of this computer” in connection with the earlier imaging because he used it only infrequently for work.

After lengthy negotiations with the Senator’s counsel over how these electronic documents were to be searched, productions of several hundred thousand electronic documents were made in August 2010. Production of documents from these sources continued until February 2011.²² Electronic documents received from Senator Ensign and his Senate staff were loaded into a database for review by Committee Staff. These 498,592 documents consisted of emails, calendar entries, and native documents.

The Committee staff also moved forward to obtain information from numerous third parties, including persons and companies Senator Ensign contacted in his efforts to assist Mr. Hampton in finding employment, companies for whom Mr. Hampton worked and other Senate offices that had been contacted by Mr. Hampton during his lobbying ban period, (*i.e.*, National NRSC, Republican Policy Committee and individual Senate offices). Staff also received documents from Senator Coburn. The Committee staff interviewed 40 witnesses, including the Hamptons, and then conducted a first round of 16 depositions that concluded on July 6, 2010. These witnesses included current and former Ensign Senate staff. Committee staff thereafter interviewed several additional witnesses, including three DOT officials involved in contact with

²² The Committee hired an outside vendor, CACI, to assist in processing and reviewing the electronic document production. CACI subsequently assisted both the Committee Staff and Special Counsel during the Preliminary Inquiry.

Senator Ensign's office as to matters on which Mr. Hampton was working. Committee staff also reviewed over 32,000 pages of materials produced by 32 different sources in hard copy.

As the document review continued to proceed in earnest through the Fall of 2010, Committee staff determined that a second round of depositions would be necessary. The planned depositions were complicated, however, by a parallel criminal investigation by the Public Integrity Section of the Justice Department. Five witnesses asserted or threatened to assert their Fifth Amendment rights in light of the parallel Justice Department investigation. Committee staff obtained immunity orders for certain witnesses, who were deposed in December 2010 and January 2011.²³ Depositions of other witnesses were postponed while Committee staff determined what accommodations might be made to account for the Justice Department's concerns.

2. Retention of Special Counsel to Assist with Preliminary Inquiry

At this stage, the Committee and its staff concluded that the assistance of a Special Counsel would materially advance the Preliminary Inquiry. On January 31, 2011, the Committee voted unanimously to retain as Special Counsel Carol Elder Bruce and her law firm K&L Gates LLP to assist in conducting the Preliminary Inquiry and to assist the Committee staff in making the required report of findings and recommendations upon completion of the inquiry.

Special Counsel immediately began to undertake the remaining work necessary to bring the Preliminary Inquiry to completion. Special Counsel reviewed the sets of key documents compiled by the Committee staff along with the deposition transcripts, exhibits and interview memoranda, and information from these sources was added to an initial chronology of events that had been started by Committee staff. Independent searches of the data sources were conducted by the Special Counsel's staff to supplement the previous work by SSCE and prepare for upcoming depositions.

a. Additional Document Production and Forensic Imaging

Special Counsel and Committee staff jointly concluded there was evidence of potential deletion of relevant materials, unexplained gaps in production, and serious factual and legal insufficiencies in the privilege logs Senator Ensign's counsel submitted. The Committee consequently sent letters to Senator Ensign's counsel in late February 2011 to address its concerns and to request that Senator Ensign permit the forensic imaging of devices in the possession of the SAA which might provide key information contained in the metadata and fill in possible gaps chronologically.

On March 4, 2011, counsel for Senator Ensign produced 265 documents that he had determined should have been produced on September 20, 2010, but had not been due to an error by Senator Ensign's private e-discovery vendor. Less than a week later, the Senator's counsel

²³ Committee staff undertook several other depositions at this time as well, including the Senator's press secretary and several staffers for other Senators who had been contacted by Mr. Hampton. In all, eight additional depositions were taken between November 2010 and January 2011.

produced another 760 documents, previously withheld as privileged, in response to the Committee's February 23, 2011 letter challenging prior assertions of privilege.

Special Counsel and Committee staff also obtained forensic images of Senator Ensign's two laptops and BlackBerry device and John Lopez's work laptop from the SAA. A total of 939 documents were segregated as potentially privileged and reviewed by a team of K&L Gates attorneys assisting Special Counsel. As a result, 73 documents were determined to be potentially privileged and copies of those materials were provided to Senator Ensign's counsel. A total of 49,821 documents were subsequently reviewed for relevance.

The Committee and Special Counsel also made additional efforts to identify any materials that had been deleted from the devices and potentially missed by the initial collection efforts. CACI was able to retrieve 6,268 records that had previously been deleted from the devices and retained in the unallocated space on the hard drives. Although initially it was believed that actual deletion dates of documents on Senator Ensign's computer could be obtained, CACI determined that such information could not be obtained.

Special Counsel and Committee staff also obtained other materials from John Lopez. Counsel for Mr. Lopez informed Special Counsel and SSCE that a .pst file containing emails from the time of Mr. Lopez's employment with Senator Ensign had been uploaded to his current employer's server. Four hundred and twenty-nine (429) emails were subsequently produced from this source. Mr. Lopez's counsel also informed SSCE and Special Counsel that Mr. Lopez also had a personal laptop that he utilized during his tenure as Chief of Staff for Senator Ensign that contained materials relevant to the investigation. A forensic image of this laptop was made and 1,643 emails were uploaded to the database for review.

b. Additional Depositions and Immunized Testimony

With the Committee's explicit permission and direction, Special Counsel and Committee staff worked with Senate Legal Counsel to apply for immunity for Mr. Lopez and Mr. Hampton. Special Counsel and the Committee's Chief Counsel then met with the Chief of the Public Integrity Section to impress upon him the Committee's significant interest in having all of the information necessary to fully evaluate the conduct of a sitting Senator. The Department dropped its opposition to an immunity order for Mr. Lopez, and Special Counsel proceeded to depose him under a grant of immunity. The Department indicted Mr. Hampton for alleged violations of 18 U.S.C. § 207(e)(2) on March 24, 2011.²⁴

As a consequence of that indictment, Mr. Hampton could not be deposed for the Preliminary Inquiry. However, Special Counsel did undertake the deposition of Mr. Lopez and of Yorrick Jurani, Senator Ensign's Information Systems Manager, under grants of immunity. Special Counsel also deposed eight other witnesses in the final round of Preliminary Inquiry depositions. The round of depositions was intended to conclude with the deposition of Senator Ensign on May 4 and 5, 2011.

²⁴ See *United States v. Hampton*, Case No. 1:11-cr-00085 (D.D.C. Mar. 24, 2011).

Special Counsel also undertook an independent assessment of the substantial investigative record and of the applicable law in order to make the findings and recommendations contained in this Report.

C. The Retirement and Resignation of Senator Ensign

On March 7, 2011, Senator Ensign announced he would not seek re-election in 2012. On April 21, 2011, while the Preliminary Inquiry remained ongoing, Senator Ensign announced he would resign as the 24th Senator from the State of Nevada, effective May 3, 2011. That effective date was prior to the previously scheduled deposition dates for the Senator, during which Special Counsel had intended to elicit extensive testimony on matters relevant to the Preliminary Inquiry.

IV. FINDINGS OF THE SPECIAL COUNSEL

A. There Is Substantial Credible Evidence That Senator Ensign Conspired to Violate, and Aided and Abetted Mr. Hampton's Violations of The Post Employment Contact Ban, 18 U.S.C. § 207

Special Counsel has identified at least thirty instances in which Mr. Hampton contacted a Senate official during the year after he left Senator Ensign's staff, involving twelve separate client matters. Special Counsel also considers it likely that more such contacts occurred, but were not memorialized in writing or preserved for discovery in this investigation. Senate rules have long barred Senators and their staffs from lobbying former Senate colleagues, employees, and employers for one year after leaving office.²⁵ This prohibition is also embodied in a criminal statute, 18 U.S.C. § 207.²⁶

Special Counsel submits that the record contains substantial credible evidence that Senator Ensign conspired to violate, and aided and abetted Mr. Hampton's violations of, 18 U.S.C. § 207(e)(2).

1. Mr. Hampton's Contacts Were Not Exempt as "Informational" Contacts

It was suggested by counsel for Mr. Lopez and Senator Ensign, and by Senator Ensign himself, that communications by covered former employees with Senators or Senate staff are

²⁵ Manual, at 87 (citations omitted).

²⁶ 18 U.S.C. § 207(e)(2). **(2) Officers and staff of the Senate.**— Any person who is an elected officer of the Senate, or an employee of the Senate to whom paragraph (7)(A) applies, and who, within 1 year after that person leaves office or employment, knowingly makes, with the intent to influence, any communication to or appearance before any Senator or any officer or employee of the Senate, on behalf of any other person (except the United States) in connection with any matter on which such former elected officer or former employee seeks action by a Senator or an officer or employee of the Senate, in his or her official capacity, shall be punished as provided in section 216 of this title.

permissible if they are merely informational in nature and do not seek action of the type that would be defined as “lobbying” under other statutes, and moreover that this “exemption” is widely recognized among ethics practitioners. This contention was advanced in discussions with counsel, who did not cite any case law or any legislative materials in support of it. Special Counsel submits that this contention is incorrect as to contacts involving both Mr. Lopez and Senator Ensign.

Section 207 prohibits any communications seeking official action made with the intent to influence, and does not state or imply that those communications must also meet the separate requirements of any other statute. The Manual makes this clear, as does the legislative history of Section 207(e)(2). The Manual contrasts the prohibition contained in Section 207 with the separate prohibitions of Senate Rule 37, which applies post-employment lobbying limits on every Senate Member and employee for one year after leaving the Senate, regardless of Senate salary.”²⁷ In short, as compared with Rule 37, Section 207 applies to a smaller class of persons but has a broader definition of prohibited contacts. The Manual expressly cautions that under 18 U.S.C. § 207(e) “the scope of covered activities (‘any communication to or appearance before’) is broader than the lobbying activities prohibited by the Senate Rule.”²⁸

2. Contacts by Covered Persons Are Illegal Even If the Requested Action Would Have Been Taken in Any Event

It was also suggested in the course of the Preliminary Inquiry that a contact cannot be prohibited under Section 207(e)(2), or constitute improper conduct, if the Senator or staffer contacted would have taken the action even absent the prohibited contact. This position ignores both the language and the purpose of the statute, as well as pertinent case law. Section 207 prohibits contacts by a covered person seeking official action that are made with the intent to influence, and the violation is complete once the contact with intent to influence is made. The statute makes no reference to any intention or action by the person contacted, and imposes no separate requirement that the contact lead to some kind of corrupt action.

²⁷ Senate Rule 37(13) defines “lobbying” for purposes of that Rule as “any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing report, or investigation. This definition is similar to the definition of a lobbying contact that is contained in the Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, Sec. 3(8)(A), codified at 2 U.S.C. § 1602(8).

²⁸ Manual at 89-90. The legislative history of Section 207(e)(2) confirms its intended broad scope. The Senate committee report explaining the legislation noted that it was intended to apply to all “advocacy contacts,” defined as “any contact on behalf of another for compensation.” See, S. Rep. 100-101, at 22 (1987) The House committee report likewise emphasized that “[a]ny prohibitions under 18 U.S.C. § 207 will apply to *all* representation, not just to lobbying,” and “would cover all contacts and representatives (not just lobbying) by former federal employees with the prohibited department, agency, or branch of government throughout the country and across the world.” See, H.R. Rep. 100-1068 at 12. Moreover, as the facts of this Preliminary Inquiry demonstrate, contacts by a former high-ranking employee will, as a practical matter, invariably seek some type of action. For example, Mr. Hampton’s inquiries about the status of specific matters induced Mr. Lopez to follow up on those matters. In any event, many of Mr. Hampton’s contacts fell within the definition of lobbying under Senate Rule 37 and would violate that rule as well.

This conclusion is necessary to protect against the appearance of impropriety. The statute prohibits the communication because “contact by a former colleague causes others to believe that [the] ‘fix is in.’”²⁹ There is an appearance of impropriety “when a former federal employee contacts current federal employees regarding government issues, even when no action is taken by the current employee because of that contact.”³⁰ Case law addressing the analogous situation of public officials who act after receiving an illegal gratuity fully supports this conclusion.³¹

3. Evidence of Aiding and Abetting

Aiding and abetting is a criminal standard under which any person who “aids, abets, counsels, commands, induces or procures” the commission of a crime is as culpable and punishable as one who commits the crime himself.³² The standard has three elements: (1) the principal committed a crime; (2) the abettor knowingly associated with the principal; and (3) the abettor participated in the principal’s crime with the intent to help it succeed.³³ “[T]he law is well settled that one may be found guilty of aiding and abetting another individual in his violation of a statute that the aider and abettor could not be charged personally with violating.”³⁴

An individual knowingly associates with a principal where the individual shares in the principal’s “essential criminal intent.”³⁵ Aiding and abetting requires more than mere presence;³⁶ the defendant must have taken “affirmative conduct designed to aid the venture,”³⁷ or “which at least encourages the principal offender to commit the offense.”³⁸

²⁹ H.R. Rep. 100-1068 at 12.

³⁰ *Id.* at 16.

³¹ See *May v. United States*, 175 F.2d 994, 1006 (D.C. Cir. 1949)(“If the money was received by May as compensation for acts done by him for the Garssons, it is immaterial that those acts were patriotic, legitimate and within the scope of his official duties as a Congressman.”); *United States v. Booth*, 148 F. 112, 117 (C.C.D. Or. 1906)(“The essence of the statutory offense is, not receiving, or agreeing to receive, compensation for proper or improper acts, but the receiving, or the agreeing to receive, compensation for service of any kind.”).

³² 18 U.S.C. § 2(a).

³³ *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949); *United States v. Spinney*, 65 F.3d 231, 235 (1st Cir. 1995); *United States v. Teffera*, 985 F.2d 1082 (D.C. Cir. 1993).

³⁴ *In re Nofziger*, 956 F.2d 287, 290 (D.C. Cir. 1992) (construing 18 U.S.C. § 207).

³⁵ See, e.g., *United States v. Campa*, 679 F.2d 1006, 1010 (1st Cir. 1982); *United States v. Romero-Cruz*, 201 F.3d 374, 378 (5th Cir. 2000) (citing *United States v. Sorrells*, 145 F.3d 744, 753 (5th Cir. 1998)).

³⁶ See, e.g., *United States v. Williams*, 341 U.S. 58, 65 n.4 (1951); *United States v. Ivey*, 915 F.2d 380, 384 (8th Cir. 1990).

³⁷ *United States v. Vasquez*, 953 F.2d 176, 183 (5th Cir. 1992)(citation omitted).

³⁸ *United States v. Frorup*, 963 F.2d 41, 43 (3d Cir. 1992) (quoting *United States v. Raper*, 676 F.2d 841, 850 (D.C. Cir. 1982)).

The substantial credible evidence that Senator Ensign knowingly associated with, participated in, and furthered Mr. Hampton's illegal contacts is outlined above. It includes evidence that Senator Ensign: (1) collaborated with Mr. Hampton in establishing his business as a lobbyist, brokered his installation at November Inc. with the understanding that sufficient client engagements would replace his lost salary; (2) pressured contributors and constituents to hire him in conduct that went far beyond the normal provision of references or appropriate requests and was described by Mr. Lopez as an abuse of his office; and (3) never advised any of these contacts that Mr. Hampton would be subject to a one-year ban. The Senator had a direct interest in the success of Mr. Hampton's venture. Moreover, the evidence shows that Mr. Hampton's primary, if not only, marketable asset for a lobbying practice was his relationship with Senator Ensign, and a number of persons whom Senator Ensign urged to hire Mr. Hampton testified that they considered his access to Senator Ensign and his office to be the primary reason they would consider hiring him.

Senator Ensign also encouraged Mr. Hampton to use Mr. Lopez as a conduit for all such contacts and soon after several of his staff expressed grave concerns about Mr. Hampton's initial contact, Mr. Lopez formally requested that the office policy manual be updated to reflect that Mr. Lopez alone could contact the Ethics Committee.³⁹ Finally, there is substantial credible evidence that following these communications Senator Ensign took the official actions that Mr. Hampton was requesting.

Senator Ensign, through his counsel, has asserted that he cannot properly be charged with aiding and abetting a violation of Section 207(e)(2) because he contends that Congress, by applying the statute only to the person making the contact and not the person receiving the contact, has signaled its intent that the recipient of the contact cannot be held liable either directly or indirectly through the general aiding and abetting statute. A similar contention was squarely rejected in the *Nofziger* case, cited above.⁴⁰ *May v. United States*, also discussed above, reached the same conclusion with respect to a Congressman who received an illegal gratuity.⁴¹ Consistent with this reasoning, the Justice Department obtained a guilty plea from Congressman Bob Ney for aiding and abetting his former Chief of Staff Neil Volz, who immediately began lobbying the Congressman and office after leaving his position.⁴²

³⁹ To the credit of Senator Ensign's staff, before receiving this directive they had immediately made inquiries of the Ethics Committee to clarify the nature of lobbying contacts and to clarify their obligations in dealing with a banned person.

⁴⁰ 956 F.2d at 290 ("Bragg contends that section 207(c), which is applicable only to former government employees, could not legally be utilized against "aiders and abettors" who had never been government employees. However, the law is well settled that one may be found guilty of aiding and abetting another individual in his violation of a statute that the aider and abettor could not be charged personally with violating.") (citing *Coffin v. United States*, 156 U.S. 432 (1895)).

⁴¹ 175 F.2d at 1004-05 ("To sustain appellants' contention, we would have to write, or read, such an exception into the otherwise unqualified general statute dealing with aiders and abettors. We think we cannot do that.... The same reasoning ... would point to the same conclusion in respect to all other statutes in which only one of two participants is mentioned.").

⁴² Information as to Robert W. Ney, No. 1:06-cr-00272, at 6 (D.D.C. Sept. 15, 2006) ECF No. 1.

4. Evidence of Conspiracy

A conspiracy exists where two or more persons agree to accomplish a criminal or an unlawful act, accompanied by an overt act in furtherance of that agreement.⁴³ As set out above, there is substantial credible evidence that Senator Ensign reached a number of agreements with Mr. Hampton and with Mr. Lopez to facilitate Mr. Hampton's Section 207 violations.⁴⁴ Special Counsel does not find that the evidence supports the contention that Senator Ensign intended Mr. Lopez to handle any contacts with Mr. Hampton to ensure that he complied with the law, as among other things, there is no evidence that either man took any overt action to stop these contacts.

Senator Ensign, through counsel, has also suggested that he cannot be considered to have conspired to violate Section 207(e) because the crime itself requires an agreement between two parties (the former employee making the contact, and the Senate official who is contacted). Again, the D.C. Circuit's *Nofziger* opinion disposes of this contention. In that case, as here, the alleged conspirator "was not a necessary party to [the principal's] violation of [Section 207]."⁴⁵ Mr. Hampton was able to commit a violation of Section 207 without the involvement of Senator Ensign, and the Senator's agreement to facilitate contacts with Mr. Lopez and allow them to go undetected would fall well within the permissible bounds of a conspiracy charge.⁴⁶ Moreover, imposing liability on conspirators is fully consistent with Congress' intent to protect against both the appearance and actuality of impropriety. There is no evidence of any congressional intent to protect a Senator or staffer who knowingly participates in and furthers an illegal contact.⁴⁷

Finally, even if a court might find Senator Ensign's conduct to not rise to the level of a criminal violation, the standard of conduct expected of Senators and Senate employees goes well beyond compliance with the letter of criminal statutes. Senators are expected to refrain from any improper conduct that might reflect on the Senate. Special Counsel submits that there is substantial credible evidence that the Senator's actions with respect to the contacts by Mr. Hampton fell short of this standard.

⁴³ See 2 Fed. Jury Practice & Inst. §§ 31.01-31.03 (5th Ed. 2000); *United States v. Rankin*, 870 F.2d 109, 113 (3d Cir. 1989).

⁴⁴ Even if agreements take place over a number of months and do not involve a meeting between all conspirators, they can still be a single conspiracy. See, e.g., *Blumenthal v. United States*, 332 U.S. 539 (1947); *Sigers v. United States*, 321 F.2d 843 (5th Cir. 1963).

⁴⁵ *Nofziger*, 956 F.2d at 291 (distinguishing *United States v. Nasser*, 476 F.2d 1111, 1119 (7th Cir. 1973)).

⁴⁶ See *United States v. Annunziata*, 293 F.2d 373, 380 n.4 (2d Cir. 1961) ("the Wharton rule would not be applicable here, since at least two persons other than the payor and the receiver ... knowingly participated in the criminal enterprise.").

⁴⁷ See *Id.* at 378 (where statute prohibiting union official from making payments to employer had a "dual purpose-of protecting employers against extortion and of insuring honest representation to employees," employer was liable for conspiracy for taking the payment: "He is not simply and solely a member of the class whom the statute aims to protect; he is likewise a member of a class whose activities the statute aims to curb" distinguishing *Gebardi v. United States*, 287 U.S. 112 (1932)).

B. Findings Concerning the \$96,000 Payment to the Hamptons

A key matter in the Preliminary Inquiry was whether a \$96,000 payment by Senator Ensign's parents to Mr. and Ms. Hampton and two of their three children was intended as a severance payment to Mr. and Ms. Hampton upon their leaving the Senator's employ. Before the payment became public, the Senator represented on a number of occasions that it was severance. Later, after receiving legal advice, he changed his explanation and claimed it was an unsolicited gift from his parents to the Hamptons.

There is no dispute that the payment was made. If the payment was severance to Mr. and Mrs. Hampton, and Special Counsel submits that there is substantial credible evidence that it was, then three consequences flow: (1) the Senator's statements to the contrary, including in a sworn affidavit to the Federal Election Commission, were false; (2) a portion of the payment violated federal law and the Senate Rule prohibiting unofficial accounts; and (3) a portion of the payment was an illegal campaign contribution by the Senator's parents that was not reported by the Senator's campaign committees as required by law. Finally, even if the Senator's contention that the payment was a gift were credited, the payment was not reported as required by Senate Rule 35.

1. There Is Substantial Credible Evidence That the Payment Was Severance and the Evidence Does Not Support Claims That the Payment Was a Gift

Special Counsel and Committee Staff identified a number of instances in which Senator Ensign referred to the April 2008 payment to the Hampton family as "severance." These include: (1) oral statements during the June 15, 2009 emergency staff meeting regarding severance payments, including payments for health insurance, the details of which were recalled by several staff members; (2) statements in the earlier drafts of his June 15, 2009 public statement prior to receiving advice from his counsel to take out the references to severance; (3) statements to Ms. Hampton that he was providing her and her husband with severance, with additional funds to be used for health insurance; (4) Senator Ensign's journal entry from June 2009 indicating that he did not want the government to pay the Hamptons severance but wanted to "help them transition into their new life"; (5) a statement to his spiritual advisor Marty Sherman that "I'm going to give him as much severance as possible"; and (6) the statement to his former campaign manager Mike Slanker that "we gave Cindy \$100,000 severance to help them." The fact that the payment was made two days after Ms. Hampton left her employment with the campaign also supports a finding that it was severance. Doug Hampton's handwritten notes documenting his communications with Senator Ensign regarding his departure from the Senate staff also refer to planned severance for him and Ms. Hampton, and a communication plan regarding the issues.⁴⁸

⁴⁸ Special Counsel recognizes that Mr. Hampton has been indicted for alleged violations of 18 U.S.C. § 207, but notes that Mr. Hampton has acknowledged much of the conduct that forms the basis of that indictment in the course of his interviews with Committee staff and the FBI. Special Counsel does not believe the indictment affects the evidence Mr. Hampton has provided as to whether the payment was intended as severance, particularly in light of Senator Ensign's many statements to the same effect. In addition to the \$96,000 payment to the Hamptons, Senator Ensign authorized a \$6,000 payment to Mr.

Likewise, the traditional indicia of a gift are not present here.⁴⁹ All other recipients of gifts from Michael and Sharon Ensign were their family, close friends, or employees, and the gift is double the amount of the next largest gift to a non-Ensign family member (excluding a former in-law who Michael Ensign testified was still considered a family member). In contrast, the senior Ensigs and Doug Hampton had a contentious relationship. Mr. Ensign recalled a business transaction with Mr. Hampton in which Mr. Ensign was dissatisfied, and Mrs. Ensign thought Mr. Hampton was an “opportunist.” Mr. Ensign testified that the portion of his sworn statement to the FEC intended to support the Senator’s position that the gift was part of a pattern of giving to the Hamptons was untrue. The payment was also not accompanied by any written or oral expression of concern to the Hampton family. Finally, to be a legitimate gift on the basis of a personal friendship there cannot be “reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.”⁵⁰ Here, the payment was made at the time that Mr. Hampton and the Senator were discussing Mr. Hampton leaving the Senator’s employ, and there is at the very least “reason to believe” that it was given because of his official position.

The evidence establishes that Senator Ensign portrayed the payment as severance until his counsel advised that doing so raised potential criminal issues for the Senator, and that after this advice he changed his characterization of the payment from severance to a gift. The evidence supports Senator Ensign’s many initial statements that it was severance and does not support his later characterization of it as a gift.

2. There Is Substantial Credible Evidence That Senator Ensign Made False or Misleading Statements Concerning the Payment to the Hamptons

On August 11, 2009, as part of the FEC investigation, the senior Ensigs submitted sworn affidavits stating that, on their own accord and not at the request of Senator Ensign, they made a gift of \$96,000 to the Hampton family. Senator Ensign also submitted a sworn affidavit stating that the payment was a gift from his parents to the Hamptons and that he did not request that it be made.⁵¹ These affidavits contain misleading and potentially false statements.⁵² Michael Ensign himself disavowed under oath the statements in his affidavit that he paid

Hampton when he left the Senate payroll, ostensibly for unused vacation time. The evidence suggests, however, there were likely no vacation days available to Mr. Hampton upon his departure from the Senate, but Senator Ensign nevertheless authorized the payment to be made.

⁴⁹ Senate Rule 35.1(c)(4)(B) sets out the criteria used to determine whether a gift is made on the basis of personal friendship, as Senator Ensign and his parents have asserted. These include the history of the relationship between donor and donee, including any prior history of giving.

⁵⁰ See Rule 35.1; *see also* Manual, at 26, 28.

⁵¹ Because the affidavits were substantially identical in all material respects and concerned allegations against Senator Ensign’s campaign committees, there is a reasonable inference that Senator Ensign participated in their drafting and/or review.

⁵² Special Counsel believes the facts to be contrary to the statements contained in the affidavits. It is a reasonable inference that Senator Ensign assisted in the preparation of the affidavits, and consequently involved his parents in a potential violation of law.

expenses for the Hamptons on a trip to Hawaii in December 2006. The additional information recently received by the Committee provides more uncertainty than clarity regarding who actually paid for the trip expenses. In addition, the statements in the affidavits that the payments were a gift are inconsistent with substantial credible evidence that the payments were in fact severance, including the prior written statements by the Senator himself that they were severance.

The Senator's multiple prior statements referring to severance were not available to the FEC when the agency dismissed the complaint against Senator Ensign's campaign in November 2010. The affidavits did not become available to the Committee until months later during the course of the Preliminary Inquiry. Submission of materially false affidavits implicates the false statements statute, 18 U.S.C. § 1001, and Special Counsel submits there is substantial credible evidence that this has occurred with respect to the affidavits Senator Ensign and his parents submitted to the FEC.⁵³ 18 U.S.C. § 1505 likewise imposes criminal liability on any person who "corruptly . . . obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any . . . committee of either House or any joint committee of the Congress." Special Counsel submits that there is substantial credible evidence which provides substantial cause for the Committee to conclude that Senator Ensign made false and misleading statements about the payments in violation of these statutes.

3. There Is Substantial Credible Evidence That the Payment Violated Senate Rule 38 and Statutory Prohibitions on Unofficial Accounts with Respect to Mr. Hampton

Both Senate Rule 38 and 2 U.S.C. § 59e(d) prohibit "unofficial office accounts," namely, private donations, in cash or in kind, in support of official Senate activities or expenses.⁵⁴ Employee salaries may not be paid by private parties, but must be paid out of appropriated funds or a Senator's personal funds.⁵⁵ Thus, if all or part of the \$96,000 payment to the Hamptons was severance to Doug Hampton, then as an employee salary payment it would have to be paid from appropriated or personal funds and could not be paid by private parties such as the Senator's

⁵³ The False Statements Penalty Restoration Act, Pub. L. 104-292, makes clear that 18 U.S.C. § 1001 applies to all three branches of the government, including Congress. Several Congressmen and congressional staffers have been prosecuted under 18 U.S.C. § 1001 for salary kickback schemes. See, e.g., *United States v. Rostenkowski*, 59 F.3d 1291 (D.C. Cir. 1995); *United States v. Collins*, 56 F.3d 1416 (D.C. Cir. 1995).

⁵⁴ Manual, at 105.

⁵⁵ *Id.* at 108. Rule 38.1(b) states that "official expenses may be defrayed only as provided by subsections (d) and (i) of section 311 of the Legislative Appropriations Act, 1991 (P.L. 101-520)." Subsection 311(d), codified at 2 U.S.C. § 59e(d), provides in relevant part that "No Senator . . . may maintain or use, directly or indirectly, an unofficial office account or defray official expenses for . . . employee salaries . . . from . . . (3) any other funds that are not specifically appropriated for official expenses." Section 311(i) provides that "the funds referred to in paragraph (3) of [subsection 311(d)] shall not include personal funds of a Senator or Member of the House of Representatives." 104 Stat. 2281. Thus, as stated in the Rule and the Manual, the only permissible sources of funds for employee salaries are appropriated funds (per 311(d)) and personal funds (per 311(i)).

parents.⁵⁶ A payment by a private party would violate 2 U.S.C. § 59e(d) and Senate Rule 38.1(b). There is substantial credible evidence that a portion of the payment was in fact severance for Mr. Hampton, and therefore that such a violation occurred.

This conclusion establishes a likely motive for Senator Ensign to describe the payment as a gift even if it was severance. Since the payment was from private funds, namely those of his parents, it was illegal if it was severance rather than a gift. Faced with a situation in which he had to mischaracterize either the nature of the payment or the source of the funds in order to avoid admitting a violation of law, Senator Ensign apparently chose not to say anything initially about the payment after receiving advice from his counsel that it raised potential criminal issues for the Senator. However, after Mr. Hampton disclosed the payment in a television interview, Senator Ensign released a statement describing the payment as a gift. The consequences of that choice are explained in the discussion of false statement liability above.

4. There Is Substantial Credible Evidence That the Payment with Respect to Ms. Hampton Constituted an Unlawful and Unreported Campaign Contribution

Under the Federal Election Campaign Act of 1971 (“FECA”), a third party’s payment of a political committee’s administrative expenses, including salary of a committee’s employee, is considered a contribution to the political committee.⁵⁷ Contributions are subject to amount limits, and receipt of any excessive contribution is a violation of FECA. Failure to report receiving a contribution above a certain amount is also a violation. The statutory language applies when a defendant’s funds go to a campaign either directly from him, or through an intermediary.⁵⁸

FECA restricts any person from contributing more than \$2,000 per year (adjusted for inflation) to a candidate’s authorized political committee, such as Ensign for Senate (“EFS”).⁵⁹ Contributions to other political committees are limited to \$5,000 per year.⁶⁰ BattleBorn PAC was an “other committee” for these purposes. FECA also prohibits receiving as well as making excessive contributions. “No candidate or political committee shall knowingly accept any

⁵⁶ See Manual, at 107 (“As stated in Committee Interpretative Ruling 444 interpreting Rule 38, however, neither official nor officially related expenses, goods, or services used in the operation of a Senator’s office may be provided or paid for by private parties.”).

⁵⁷ 2 U.S.C. § 431(8)(A)(defining “contribution” to include “the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.”).

⁵⁸ *Id.*

⁵⁹ 2 U.S.C. § 441a(a)(1)(A)(“Except as provided in subsection (i) of this section and section 441a–1 of this title, no person shall make contributions— (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000.”).

⁶⁰ 2 U.S.C. § 441a(a)(1)(C)(“Except as provided in subsection (i) of this section and section 441a–1 of this title, no person shall make contributions— (C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed \$5,000.”).

contribution or make any expenditure in violation of the provisions of this section.”⁶¹ The “knowing” standard that is used here, as opposed to a “knowing and willful” standard, “does not require knowledge that one is violating the law, but merely requires an intent to act.”⁶² Finally, FECA requires disclosure of the identity of any person who contributes more than \$200 per election cycle to an authorized committee of a federal candidate, or more than \$200 per year to any other political committee.⁶³ Criminal penalties apply to knowing and willful violations of the requirements on making, receiving, or reporting contributions. If Ms. Hampton’s share of the \$96,000 payment constituted severance upon her departure from her jobs at EFS and BattleBorn PAC, then the payment was an illegal and unreported contribution to each under the above legal standards. The Senator and each committee would have violated the prohibition on receipt of excessive contributions and the requirement to report the donors.

The FEC has exclusive jurisdiction with respect to civil enforcement of provisions of FECA.⁶⁴ The staff of the FEC found “reason to believe that at least part of the \$96,000 transfer was a severance payment to Ms. Hampton, and thus was an excessive contribution from Michael and Sharon Ensign. Further, this transaction was not reported by the Committee or the PAC.”⁶⁵ Although the FEC staff attorneys recommended a full FEC investigation into this matter, the FEC ultimately declined to investigate, reasoning among other things that “the Ensigs’ affidavits support Respondents’ contention that the transfer was intended as a gift and not as a severance payment.”⁶⁶ As noted above, substantial credible evidence subsequently uncovered during the Committee’s Preliminary Inquiry indicates that the payments were in fact severance. Special Counsel submits that the findings and recommendation of the FEC’s staff are persuasive in light of this substantial credible evidence, and that there is substantial and credible evidence that gives substantial cause to conclude that violations of the FECA occurred.

5. Even if Senator Ensign’s Assertions That the Payment Was a Gift Were Credible, Senate Rule 35 Would Have Been Violated

Rule 35.1(c)(4)(A) exempts from the gift limits “[a]nything provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.” Doug Hampton was a Senate employee when he received his share of the \$96,000 payment on or about April 9, 2008 and thus was subject to the gift limits. Rule 35.1(c)(4)(B) further provides that the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals, is important in determining if the gift is truly given on the basis of personal friendship.

⁶¹ 2 U.S.C. § 441a(f).

⁶² *FEC v. Malenick*, 310 F. Supp. 2d 230, 237 n.9 (D.D.C. 2004) (citing *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986).

⁶³ 2 U.S.C. § 434(b)(3)(A).

⁶⁴ *Malenick*, 310 F. Supp. 2d at 233 (citing 2 U.S.C. § 437c(b)(1)).

⁶⁵ First General Counsel Report, MUR 6200 (Mar. 31, 2010), at 2.

⁶⁶ FEC Statement of Reasons, MUR 6200 (Nov. 17, 2010), at 9.

Although gifts motivated solely by personal friendship between the giver and the Member, officer, or employee are permissible, such gifts may not be of a value greater than \$250, unless the recipient receives approval from the Committee.⁶⁷ Thus, even if the payment were a gift as Senator Ensign has asserted, it would still have violated Senate Rule 35.1(e), which requires prior approval of the Ethics Committee if a gift valued over \$250 is to be received on the basis of personal friendship.⁶⁸ Senator Ensign avers that he became aware of this payment in April 2008, yet there is no evidence that he advised either his parents or Mr. Hampton to seek the required approval of the gift, or to make the required disclosure. Special Counsel submits that there is a strong inference that the Senator had no intention of, or interest in, urging compliance with Rule 35.1(e), both because at the time he considered the payment to be severance and not a gift, and because he wanted the payment to be made in secret and kept secret. The required disclosure, and the resulting need to explain the payment to the Ethics Committee, would have been inconsistent with the pattern of concealment that surrounded the Senator's conduct with respect to this payment.

C. There Is Substantial Credible Evidence That Senator Ensign Permitted Spoliation and Engaged in Obstruction of Justice

Special Counsel submits that there is substantial credible evidence of instances of spoliation and destruction of evidence by Senator Ensign and his staff.⁶⁹ Senator Ensign and his staff were subject to a number of document preservation duties and requirements. Senator Ensign's counsel has acknowledged that he anticipated litigation with respect to the matters related to the Preliminary Inquiry as of June 16, 2009, and possibly earlier when he may have begun preparing for litigation. Senator Ensign's office issued a document preservation notice on October 13, 2009, and the Committee issued a formal document preservation notice to Senator Ensign with respect to the Preliminary Inquiry on October 21, 2009.

As further discussed above, Senator Ensign permitted his staff to delete and replace his personal Gmail account containing emails related to Senate activities on October 1, 2009, and he acknowledged in a subsequent affidavit that he had continued to routinely delete emails from his home desktop computer as well as his personal Gmail email account following the issuance of preservation notices. This is significant because the Gmail account was deleted and, therefore, not subject to review by the Committee or Special Counsel.

Additionally, forensic analysis and document review undertaken during the Preliminary Inquiry indicated that up to 174 emails may have been deleted following the issuance of the preservation notices. By the creation dates of the emails themselves, at least five (5) were

⁶⁷ Rule 35.1(e).

⁶⁸ By the same token, if the assertion is credited that Senator Ensign's parents paid the expenses of the December, 2006 Hawaii vacation, Mr. Hampton's share of that should also have been submitted to the Committee for approval, as he was a Senate employee at the time and his share was well in excess of \$250.

⁶⁹ In the civil context, spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. *See, e.g., West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999).

deleted from Senator Ensign's laptop following the preservation notice, including a draft document Senator Ensign prepared that is highly relevant to his assertion that the payment to the Hamptons was not a severance payment.⁷⁰

The apparent destruction of evidence relevant to a Senate investigation is a possible violation of 18 U.S.C. § 1505.⁷¹ Such actions also implicate 18 U.S.C. § 1519.⁷²

D. There Is Substantial Credible Evidence That Senator Ensign Engaged in Improper Conduct Reflecting Upon the Senate, Including Violations of His Own Senate Office Policies

1. The Applicable Standard

The Committee's authorizing resolution, Senate Resolution 338, empowers it to investigate not only violations of law, the Senate Code of Official Conduct, and the rules and regulations of the Senate, but also "improper conduct which may reflect upon the Senate." This improper conduct standard has formed the basis for many important actions of the Committee and of the Senate. As set out in the Senate Ethics Manual:

[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as "improper conduct which may reflect upon the Senate," and has provided the basis for the Senate's most serious disciplinary cases in modern times.⁷³

⁷⁰ See, e.g., *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001) ("The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.").

⁷¹ An individual violates 18 U.S.C. § 1505 when it is established that "1) there was a proceeding pending before a department or agency of the United States; 2) the defendant knew of or had a reasonably founded belief that the proceeding was pending; and 3) the defendant corruptly endeavored to influence, obstruct, or impede the due and proper administration of the law under which the proceeding was pending." *United States v. Sprecher*, 783 F. Supp. 133, 163 (S.D.N.Y. 1992). A defendant need not succeed in his endeavor to obstruct, and the "corrupt" nature of the endeavor simply means that he was motivated by an improper purpose. *Id.* at 164.

⁷² This statutory provision was enacted by the Sarbanes-Oxley Act of 2002. The "elements of a Section 1519 violation include (1) an investigation or other matter within the jurisdiction of a department or agency of the United States must have been pending or contemplated by such department or agency of the United States; (2) the defendant must have been aware of the pending or contemplated matter or investigation; and (3) the defendant must have knowingly altered, concealed, mutilated, or destroyed something with the intent to impede, obstruct, or influence the pending or contemplated matter or investigation, or any matter in relation to the pending or contemplated matter or investigation." *United States v. Perraud*, 672 F. Supp. 2d 1328, 1350 (S.D. Fla. 2009).

⁷³ Manual, Appendix E, at 432.

This Committee and the Senate have frequently noted that even if conduct does not constitute an actionable violation of law, Senators must meet a much higher standard of conduct.⁷⁴ Additionally, "[a] Senator is extended an extraordinary measure of trust and confidence not given to ordinary members of society. The Senate must therefore require higher standards of conduct than those generally required in the marketplace."⁷⁵

2. Application of the Improper Conduct Standard

The findings above outline substantial credible evidence that gives substantial cause to conclude that Senator Ensign violated several statutes and Senate Rules. Given that the improper conduct standard is higher than merely avoiding actionable violations of law, it necessarily follows that the standard is contravened by violations of law or Senate rule, and particularly so if, as is the case here, the law or rule is itself addressed to matters of ethics.

An example of the need for a standard of improper conduct that goes beyond compliance with the criminal law is provided by Senator Ensign's argument that the law does not in any way reach the recipient of an illegal post employment contact, and covers only the person making the contact. The Senator's counsel went so far as to suggest during the course of the Preliminary Inquiry that because there is no written rule or guidance expressly directing Senate personnel to rebuff contacts by covered former members or employees, or to avoid such contacts, they are

⁷⁴ See, e.g., Senator Roland W. Burris, Public Letter of Qualified Admonition (Nov. 20, 2009), at 1 ("While the Committee did not find that the evidence before it supported any actionable violations of law, Senators must meet a much higher standard of conduct. Senate Resolution 338 gives this Committee the authority and responsibility to investigate Members who may engage in 'improper conduct which may reflect upon the Senate.'") These standards have also been incorporated into the Senate Ethics Manual. Appendix E to the Manual notes that the Senate expressly rejected a proposal that would have given the Committee the authority to investigate only alleged violations of the rules of the Senate in favor of the language now contained in Senate Resolution 338, which allows the Committee to receive complaints of unethical, improper, or illegal conduct of members. Discussing this language, Senator Case noted that the Committee "would not be limited to alleged violations of Senate rules, but it would take into account all improper conduct of any kind whatsoever." Manual, App. E, at 432-33, citing S. Rep. 88-125 at 13 (1964).

⁷⁵ S. Rep. 90-1015, 90th Cong. 2d Sess. at 3 (1968). The Manual identifies a number of specific cases in which discipline was imposed even though no violation of a specific law or rule was found. In 1929, Senator Bingham was censured for hiring the lobbyist for a manufacturers' association as his clerk while he continued to be on salary to the association, as the conduct was "contrary to good morals and senatorial ethics" and thus tended "to bring the Senate into dishonor and disrepute. In 1954, the Senate condemned Senator Joseph McCarthy for his lack of cooperation with and abuse of two Senate committees that investigated his conduct. The conduct did not violate any law, rule, or regulation, but was deemed to violate accepted standards and values of comity and civility controlling Senators' conduct. Finally, in 1991 the Committee concluded that Senator Cranston engaged in an impermissible pattern of conduct that substantially linked fund raising and official activities, and that this "violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate." Manual, App. E at 434-35, citing S. Rep. No. 102-223 at 36 (1991). The Committee specifically found that none of Senator Cranston's activities violated any law or Senate Rule.

under no obligation to do so. However, the evidence showed that several of the Senator's staff, immediately after the first of Mr. Hampton's contacts, refused to have any contact with Mr. Hampton, alerted others on the staff not to do so, and consulted with the Ethics Committee. This standard of conduct is a fully appropriate one against which to measure Senator Ensign's actions, regardless of any separate requirements of law or rule.

Another example is offered by the allegations, raised in the initial CREW complaint in this Preliminary Inquiry, that Senator Ensign discriminated on the basis of sex in the form of sexual harassment of Ms. Hampton. Senator Ensign, through counsel, cited several procedural and jurisdictional bases on which he would not be subject to a claim under the employment laws for such conduct: (1) that Ms. Hampton was not a Senate employee so that Title VII of the Civil Rights Act of 1964 was not applicable to her through the Congressional Accountability Act ("CAA"),⁷⁶ (2) that she was not covered directly under Title VII because the offices in which she was employed had fewer than fifteen employees,⁷⁷ and (3) that neither of the Hamptons had filed a charge of discrimination within the prescribed time period.⁷⁸ While these arguments might preclude the Hamptons from invoking EEOC, judicial, or Senate remedies for employment claims, the obligation of Members to refrain from improper conduct that constitutes sex discrimination is not dependent on the various procedural and jurisdictional requirements of Title VII itself.⁷⁹ Members and employees of the Senate are also prohibited by Senate Rule 42 from engaging in employment discrimination. Similarly, although the CAA establishes a procedure outside the Senate to seek relief for violations of these provisions, that procedure does not limit the Committee's separate and independent authority to discipline a Member, officer, or employee of the Senate for a violation of these provisions. "The Ethics Committee's authority to recommend discipline of a Member, officer, or employee of the Senate is not affected by passage or implementation of the Congressional Accountability Act."⁸⁰

There would be no sound reason to conclude that a Senator who is barred from discriminating against employees in his Senate office is nonetheless free to engage in precisely the same conduct with respect to employees of his political committees, without any fear that it

⁷⁶ Under the CAA, a covered employee includes any employee of the Senate. 2 U.S.C. § 1301(2). The CAA provides that "[a]ll personnel actions affecting covered employees shall be made free from any discrimination based on— (1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2)." 2 U.S.C. § 1311(a).

⁷⁷ See 42 U.S.C. § 2000e.

⁷⁸ See 42 U.S.C. § 2000e-5(e)(1).

⁷⁹ The Supreme Court has held that a Congressman who dismissed a female staff member on the basis of her sex could be sued for a violation of the Equal Protection Component of the Due Process Clause even if he was not subject to Title VII. See *Davis v. Passman*, 442 U.S. 228 (1979). In a ruling not affected by the Supreme Court's subsequent decision, the court of appeals had held that the staffer's suit was not barred by the speech or debate clause. Because this Preliminary Inquiry is by the Senate itself, through the Committee, the Clause is not implicated at all here, because it applies only to the questioning of a Senator's legislative acts "in any other Place." See, e.g., *United States v. Brewster*, 408 U.S. 501, 541, 547 (1972) (Brennan, J., dissenting) (stating that Brewster could have been disciplined by the Senate even if he could not be prosecuted due to the Speech and Debate Clause).

⁸⁰ Manual, at 194-95.

could be considered improper conduct reflecting on the Senate. Similarly, it would make no sense to conclude that harassment that would violate Title VII when conducted in a workplace of more than fifteen employees could not violate the improper conduct standard if the workplace happened to have fourteen employees or fewer. Nothing in the improper conduct standard contains or suggests such an illogical limitation. Simply put, the Committee is protecting the interests of the Senate in enforcing appropriate standards of behavior of its Members, not adjudicating the personal rights of the wronged party.

Accordingly, if Senator Ensign's conduct would constitute sex discrimination under the standards that have been developed under Title VII, it would also constitute improper conduct reflecting on the Senate. In response to the CREW complaint, Senator Ensign, through counsel, asserted that his conduct could not constitute sexual harassment because, unlike a prior case involving Senator Packwood cited in the complaint, here there was no "forced sexual contact" with Ms. Hampton and the affair was instead consensual. Special Counsel submits that under the proper legal standards there is substantial credible evidence that gives cause to conclude that the Senator did discriminate against Ms. Hampton on the basis of sex, and that Mr. Hampton was also a victim of that discrimination.

In assessing a claim of sexual harassment, "the correct inquiry is whether respondent, by her conduct, indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."⁸¹ "'Voluntariness' in the sense of consent is not a defense to such a claim."⁸² If conduct is unwelcome, then it is sexual harassment if "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual."⁸³

There is substantial credible evidence that the Senator determined that the affair made it impossible for either of the Hamptons to continue working for him. The Senator himself drafted a written statement to that effect. If the affair was unwelcome to Ms. Hampton, that determination would thus constitute discrimination on the basis of sex.

Senator Ensign had enormous power over Ms. Hampton. He controlled the sole sources of income for both Ms. Hampton and her husband.⁸⁴ He controlled separate payments made on the Hamptons' behalf so that their children could attend an expensive private school with the

⁸¹ *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 68 (1986). Harassment on the basis of sex is a form of sex discrimination. *Id.* at 64. Sexual harassment of an employee is a violation of Senate Rule 42, the prohibitions of Title VII of the Civil Rights Act of 1964 as made applicable to the legislative branch by the Congressional Accountability Act of 1995, and of the equal protection component of the Due Process Clause.

⁸² *Id.* at 69.

⁸³ 29 C.F.R. § 1604.11(a).

⁸⁴ One prominent commentator has suggested that "there is no such thing as truly 'welcome' sex between a male boss and a female employee who needs her job," and proposed a *per se* rule prohibiting supervisors from having sexual relations with those who work directly for them. Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813 at 831, 860 (1991). The courts have not gone so far, but many employers have.

Ensign children. He had strong personal ties to the entire Hampton family as well. Ms. Hampton testified that the affair caused her considerable emotional distress, that the Senator was extremely persistent in seeking to continue it, that she never initiated any contact with the Senator, and that if he had ended his pursuit of her after they were first confronted at Christmas 2007, the affair would have ended then soon after it began. Ms. Hampton testified that she became very despondent after the affair was first discovered (a fact Mr. Hampton confirmed), and that the Senator would not stop, kept calling and calling, and would not take “no” for an answer. If the affair had ended when the Senator had first committed to end it, the likelihood that it would have led to the Hamptons being terminated from their employment would have been greatly reduced, if not entirely eliminated.

The danger inherent in such relationships is one reason why the Senate Chief Counsel for Employment makes available draft language for office anti-fraternization policies, each of which precludes a romantic relationship from continuing between a supervisor and his or her subordinate. The specific language of the policy in Senator Ensign’s office changed over time, but always precluded a supervisor and a subordinate from carrying on a romantic relationship, much less an affair.⁸⁵ Senator Ensign’s continuation of the affair with Ms. Hampton violated this principle and led to the more vulnerable party losing her job, the very consequence that the policy seeks to prevent.

Mr. Hampton was also adversely affected by the Senator’s conduct, because he was told he could not continue in the Senator’s employ as a result of the affair. Senator Ensign himself prepared a written statement that the affair was the reason Mr. Hampton could no longer work for him. The Senator has never stated that he fired Mr. Hampton for any performance-related reasons. Mr. Hampton did not consent to his wife’s affair, but to the contrary was repeatedly told it would end. Moreover, Ms. Hampton testified that Senator Ensign wanted her husband out of his office in order to facilitate continuing the affair, as among other things Mr. Hampton was aware of the Senator’s scheduling. The Supreme Court has, as recently as this term, recognized that an employee’s spouse can be the direct and intended victim of discrimination against the employee.⁸⁶

There is substantial credible evidence that Senator Ensign violated his own office policies. Special Counsel also notes that in setting out sexual harassment, nonfraternization, and

⁸⁵ See Ensign Office Manual (February 1, 2008), Section 2.29.3, at 30 (“If a romantic or sexual relationship develops between coworkers, one of those employees (to be decided mutually by the two employees) will be required to resign from the staff.”) (emphasis added); Ensign Office Manual (June 8, 2009), Section 2.29.3, at 34 (“If a supervisor and subordinate wish to date, one of them will be required to resign from the staff or to apply for a transfer to another open position, if one exists, for which the individual is qualified and for which the supervisor-subordinate relationship would no longer exist.”). Ms. Hampton made it abundantly clear she did not want to lose her job over the affair.

⁸⁶ See *Thompson v. N. Amer. Stainless, LP*, 131 S. Ct. 863, 870 (2011) (finding that fiancé fired in alleged retaliation for his fiancée’s Title VII complaint was “not an accidental victim of the retaliation—collateral damage, so to speak, of the employer’s unlawful act. To the contrary, injuring him was the employer’s intended means of harming the other [fiancée]. Hurting him was the unlawful act by which the employer punished her. In those circumstances, we think [plaintiff] well within the zone of interests sought to be protected by Title VII.”).

other important policies that Senator Ensign himself violated, the Senator's Office Manual provides for termination as a potential consequence of such violations. Special Counsel submits that conduct that would subject one of the Senator's own employees to termination should also be considered improper conduct reflecting on the Senate if engaged in by the Senator himself.

V. RECOMMENDATIONS AND CONCLUSION

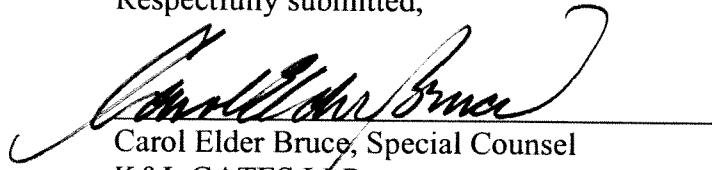
This Report also provides additional recommendations with respect to guidance the Committee should provide to each Senate office to emphasize compliance and minimize the risk that similar events reflecting negatively on the Senate might arise in the future. The Special Counsel also recommends that certain Senate policies be enhanced in order to provide clear guidance to the Senate's Members and Staff. Specifically, the Special Counsel recommends that:

1. The Senate Ethics Committee or the Senate Legal Counsel should issue clear and direct guidance that erases any question or doubt as to the scope of 18 U.S.C. § 207, including issues that have been raised in this case: (1) the "taint" of a contact when the contact comes from a prohibited person even when the contact is for a long-standing constituent; (2) eliminating any "*de minimis*" or "informational" exception that may have been informally grafted onto the statute by ethics practitioners and individuals; and (3) reinforces and/or provides guidance to each Senate Office about the law which makes clear that a Senator or a staff member can be held responsible for aiding and abetting an 18 U.S.C. § 207 violation, or conspiring to violate that statute, and can be subject to criminal prosecution for the same.
2. The Committee should provide guidance to each Senate Office about appropriate document retention policies, including policies related to electronically stored information, for all offices. Relatedly, the Committee may wish to examine what role, if any, it has in providing guidance to Senate offices about how they should structure and preserve their communications given the official nature of each office and the requirements of the law governing spoliation in civil litigation and document destruction and obstruction of justice in criminal investigations.
3. Finally, as noted above, the Committee should refer matters outlined herein to the Department of Justice and Federal Election Commission, as approved, for further investigation and consideration of whether criminal prosecution of Senator Ensign is warranted for aiding and abetting a violation of 18 U.S.C. § 207, or conspiring to violate that statute, for making false statements, for obstruction of justice, and for violations of federal campaign laws.

The Special Counsel wishes to thank the Committee for the confidence and trust it placed in her and her team to provide the assistance requested in as timely and as professional a manner as possible. She and her team worked in close coordination with the Committee's excellent staff, benefiting from the efficiencies of drawing on the staff's previous work product, their institutional and case knowledge, and their on-going efforts and insights in this important matter.

Based on the foregoing, Special Counsel respectfully submits that there is substantial credible evidence which provides substantial cause for the Committee to conclude that Senator Ensign violated Senate Rules and federal civil and criminal laws, and engaged in improper conduct reflecting upon the Senate, thus betraying the public trust and bringing discredit to the Senate.

Respectfully submitted,



Carol Elder Bruce, Special Counsel
K&L GATES LLP

Michael J. Missal
Brian W. Stolarz
John Longstreth
Brendon P. Fowler
Christopher R. Tate
Amanda Kostner
Jane E. Nilan