

BRAND LAW GROUP

A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

September 5, 2007

HAND DELIVERED

The Honorable Barbara Boxer
Chairwoman
Senate Select Committee on Ethics
SH-220 Hart Senate Office Building
Washington, D.C. 20510

Re: The Honorable Larry E. Craig

Dear Madame Chairwoman:

We represent Senator Larry Craig in connection with what we understand from media reports is a complaint filed with the Ethics Committee by members of the Senate Republican leadership on August 29, 2007. See "Ethics Panel Investigation of Craig Has Little Precedent," *Roll Call*, Aug. 30, 2007. This complaint was based on Senator Craig's plea to a misdemeanor charge in Minneapolis, Minnesota. While we have not been provided the opportunity to review the complaint itself, we believe sufficient facts are available from the proffered basis for the complaint – a misdemeanor for disorderly conduct wholly unrelated to the performance of official duties – for the Committee to conclude that there is no precedent for asserting jurisdiction over such conduct. We request that the Committee conclude so forthwith. Despite Senator Craig's announcement of his intention to resign from the Senate on September 30, 2007 and to not seek re-election in 2008, there are equitable reasons for the Committee to reach such a conclusion, both as to Senator Craig and to avoid creating precedence for the filing of future complaints over purely personal conduct unrelated to the performance of official Senate duties.

Assertion of jurisdiction over this matter by the Committee would be literally unprecedented and would create deleterious consequences for the Senate as a whole. To wit, we are unaware of a single case where either the full Senate or the Ethics Committee has taken cognizance of a complaint, or facts publicly disclosed in the media, to consider conduct – here a misdemeanor – which in no way implicated official action by the subject Senator. Indeed, in the recorded precedents of the Senate the

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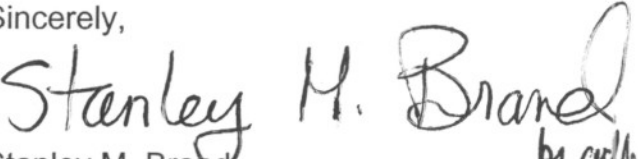
The Honorable Barbara Boxer
September 5, 2007
Page 2

behavior of all the Senators whose cases were considered by the Senate involved some direct connection to their official duties, even where the conduct at issue did not contravene a specific statute, Senate Rule, or regulation. See, e.g. *In the Matter of Senator Herman Talmadge*, S. REP. NO. 96-337, 96th CONG. 1st Sess. 1979 (inaccurate financial disclosure, personal use of campaign funds); *In the Matter of Senator Thomas J. Dodd*, S. REP. NO. 90-193, 90th CONG., 1st Sess. (1967) (acceptance of gifts and reimbursements from private sources); *In the Matter of Senator Harrison A. Williams, Jr.*, S. REP. NO. 97-187, 97th CONG., 1st Sess. (1981) (conviction for acceptance of bribes for official actions in ABSCAM investigation); *In the Matter of Senator Allan Cranston*, S. REP. No. 102-223, 102nd CONG., 1st Sess. (1991) (soliciting contributions at a time when he was contacting government agencies on behalf of donor).

These precedents establish that while the "improper conduct" reflecting upon the Senate need not be specifically delineated in a statute, rule, or standard of conduct applicable to Members of the Senate, the Senate has exercised jurisdiction only in circumstances involving the performance of official duties or actions implicating a Member's office. This is precisely because of the Senate's understandable reluctance to police purely private conduct that in no way affects or arises from the office of a Senator. The Senate would be drawn into reviewing and adjudging a host of minor misdemeanors and transgressions were it to assert jurisdiction in such matters, from traffic violations to petty offenses. These investigations would burden the Committee and subject Members to inconsistent standards and burdensome proceedings which would not vindicate any legitimate Senate interest. They would also leave Members vulnerable for almost any legal transgression no matter how minor or professionally irrelevant. It is noteworthy that the Senate Ethics Manual recognizes that the Code of Ethics for Government Service, which applies to Members, includes an admonition to adhere to the "highest moral principles" even if the conduct at issues does not violate a specific law, rule or regulation, but acknowledges that "a violation of this Code has *not*, to date, been used as a basis for disciplinary action."

In sum, it is vital that the Senate Ethics Committee vindicate the interests of both Senator Craig and the Senate as a whole by expeditiously stating that the Committee lacks jurisdiction over any complaint related to this matter.

Sincerely,


Stanley M. Brand
Andrew D. Herman
by adh

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