



## National Association of Assistant United States Attorneys

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March 2, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

### Re: Public Corruption Prosecution Improvements Act, S. 49

Dear Chairman Leahy:

On behalf of the National Association of Assistant United States Attorneys, I write to extend our endorsement of the Public Corruption Prosecution Improvements Act, S. 49, as detailed below. Our organization represents the interests of the 5,400 Assistant United States Attorneys, the front-line litigators responsible for enforcement of the nation's laws and the pursuit of justice on behalf of the American people. Their responsibilities include the prosecution of corrupt public officials who have violated federal law.

Respect for our nation's laws is critically diminished when public officials are found to have accepted bribes or to have participated in criminal behavior that violates the sacred trust our nation's people have placed in them. We support the Public Corruption Prosecution Improvements Act because it will give federal prosecutors and law enforcement officials the legal tools and resources to better detect and prosecute public corruption. The measure strengthens and clarifies existing law in important ways and better defines the difference between ethical malfeasance and criminal acts. These reforms will assist federal prosecutors in the pursuit of significant numbers of public corruption cases.

Many of the provisions in the bill respond to errant case law that has hindered or created confusion in the prosecution of public officials, like *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999) and *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc). *Sun-Diamond* severely restricted the application of the illegal gratuities statute and *Valdes* has clouded understanding of what it means for a public official to engage in an "official act," for purposes of the federal bribery and gratuities statutes.

In addition, we urge the Committee to address the errant case law arising in the Sixth Circuit Court of Appeals, as a result of *United States v. Brock*, 501 F.3d 762 (6th

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**President:**  
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Cir. 2007). As a result of *Brock*, bribe payors who use their own funds to furnish kickbacks to public officials cannot be prosecuted under the Hobbs Act in the Sixth Circuit. In fact, the Sixth Circuit found that “neither the Supreme Court nor our court has construed [the Hobbs Act] to cover private individuals who offer a bribe to public officials.” The *Brock* case has created significant restrictions in prosecuting Hobbs Act violations because bribe payors in many cases cannot be charged with federal offenses, and public officials cannot be charged with Hobbs Act conspiracy if bribed by one using his/her own funds, which then limits the scope of admissible evidence. The *Brock* decision has been criticized in *United States v. Kott*, 2007 WL 3337440 (D. Alaska, Nov. 8, 2007), which found *Brock* to be inconsistent with *Evans v. United States*, 504 U.S. 255 (1992).

The *Brock* court held that the payor of a bribe to a state official cannot conspire with that official to extort property from himself in violation of the Hobbs Act. In so ruling, the court examined the portion of the Hobbs Act that defined “extortion” as “the obtaining of property from another, with his consent.” The court held that “property from another” meant someone “outside the conspiracy.” The court further noted that the Hobbs Act “requires conspirators to obtain that property with the other’s consent. How do (or why would) people conspire to obtain their own consent?” The court concluded that since the defendants, two bail bond company owners who bribed a court clerk to prevent the collection of bonds when their criminal defendant clients absconded, used their own funds to bribe public officials, their conduct fell outside the scope of the Hobbs Act.

The following statutory approaches could close the *Brock* loophole:

(1) Add the term “bribery” to § 1951(a), to revise the statute to read in relevant part, “. . . movement of any article or commodity in commerce, by robbery, extortion, or bribery . . .” This would require adding a definition of “bribery”.

(2) Redefine “extortion” in § 1951(b)(2) to include bribery. For example, the definition of “extortion” could read: “(1) the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right or (2) corruptly soliciting or demanding for the benefit of any person, or accepting or agreeing to accept anything of value from any person, intending be influenced or rewarded in connection with any business, transaction or series of transactions.”

(3) Define the phrase “from another with his consent” (as taken from § 1951(b)(2)), as “To obtain property ‘from another with his consent,’ means to obtain property from any person other than the recipient of the property, without actual or threatened force or violence or fear of injury, including conspirators.”

In conclusion, thank you for your leadership in securing improvements in the prosecution of public corruption through the Public Corruption Prosecution Improvements Act. Your efforts are important because public corruption undermines

respect for the rule of law and our institutions of government. We look forward to continuing to work with you and the Committee in the passage of this important legislation.

Sincerely yours,

*Richard L. Delonis*

Richard Delonis  
President