

October 13, 2004

Noel Hillman, Chief
Department of Justice
Criminal Division
Public Integrity Section
1400 New York Ave NW
Washington, D.C. 20005

RE: Additional information on behalf of Public Citizen's June 17, 2003, complaint concerning Westar Energy, Inc., campaign contributions

Dear Mr. Hillman:

On June 17, 2003, Public Citizen submitted a complaint concerning possible criminal violations of 18 U.S.C. § 201 ("Bribery of public officials and witnesses") by lobbyist Richard H. Bornemann, Westar Energy (previously known as Western Resources) executives David C. Wittig, Douglas T. Lake, Douglas R. Sterbenz, Douglas R. Lawrence, Anita Jo Hunt, Caroline A. Williams, Richard A. Dixon, Kelly B. Harrison, Larry D. Irick, Peggy Loyd, Bruce Akin, Paul R. Geist and U.S. Representatives Tom DeLay (R-Texas), W.J. "Billy" Tauzin (R-La.) and Joe Barton (R-Texas).

The basis of the complaint stemmed from internal communications released by Westar Energy (Westar) in May 2002. These communications explicitly detail efforts by the named Westar executives and Bornemann, their chief DC-lobbyist, to buy "a seat at the table" at Congressional conference committee negotiations, seeking the insertion of legislation favorable to the company.

Our June 17, 2003 letter to you provided documentation of possible violations of 18 U.S.C. § 201, which included a schedule of campaign contributions made to secure the company's "seat at the table" that was granted when members of the House, led by Rep. Barton, provided Westar with the exemption it sought.

But brand-new documents, released last week as part of an investigation by the House Committee on Standards of Official Conduct, more strongly implicate Westar's DC lobbyist, Bornemann and top Westar executives in this plan to make campaign contributions for the sole purpose of obtaining access and preferential treatment. This new evidence therefore warrants a formal investigation into possible violations of the anti-bribery statute.

This additional information includes:

- An April 2002 memorandum from Westar lobbyist Richard Bornemann to Westar Vice President Doug Lawrence recommending that the company pursue a “Platinum Package” of campaign contributions, including a \$25,000 soft money contribution to Texans for a Republican Majority (TRMPAC), a leadership PAC of Rep. DeLay, and \$31,500 in additional “hard” money contributions to a list of candidates associated with Reps. Barton and Tauzin for the purpose of gaining a “place at the table” during the House conference committee.
- A May 2002 email from Bornemann to Lawrence, stating that “I absolutely detest asking you for money. We all prefer to think that our powerful personalities and strategic brilliance transcend such grubbiness. Anyway, let’s sum up the needs discussed in our conversation today. They keep to the boundaries of the ‘platinum’ budget as approved.”
- A May 2002 memo from Lawrence accepting the campaign contribution “budget allocation according to current needs as recommended by our Washington Lobbyist...the estimated needs (first page) summarizes the total budget for our Washington efforts regarding the Federal Energy Bill and its impact on our financial restructuring plan.” The Lawrence email details the responsibilities assigned to top Westar executives to contribute money to campaigns associated with Barton and Tauzin in exchange for passage of a company-specific exemption from federal government oversight.
- A May 2002 e-mail from former DeLay staffer Drew Maloney to DeLay’s ARMPAC staffer Chris Perkins explaining Westar’s desired special exemption (“a unique problem that was addressed in the House bill”) in the energy bill. Westar executives presented their exemption request to the House Majority leader at a DeLay golf outing that was a reward for the company’s \$25,000 soft money contribution to TRMPAC.
- A June 2002 memorandum from Westar Vice President Doug Lawrence to company executives explaining that the Platinum Package has paid off in getting Reps. DeLay and Barton to sponsor Westar’s special exemption from the energy bill (“The contributions made in the first round were successful in opening the appropriate dialogue”).
- An August 2002 e-mail from TRMPAC fundraiser Susan Lilly soliciting a joint fundraiser with Rep. Billy Tauzin, explaining that DeLay is personally involved with TRMPAC’s operations.
- A September 2002 e-mail from Lawrence stating that, after news of a securities fraud investigation of Westar, “DeLay staff has asked us to release people from their commitment to support” Westar’s special exemption from the energy bill.

Although the House Committee on Standards of Official Conduct (“ethics committee”) investigation did not charge DeLay with quid pro quo corruption, the ethics committee reserved the right to return to some of the issues under investigation pending the results of a grand jury investigation. Furthermore, the scope of the ethics committee was limited, and did not investigate potential wrongdoing of other House members (like Barton or Tauzin) or of outside parties like Bornemann and Westar executives. The documents released as part of the ethics committee inquiry, along with the on-going grand jury investigation of laundered corporate money into Texas state elections, has uncovered new and significant evidence suggesting that Bornemann

and Westar executives may have contributed over \$60,000 to campaigns associated with DeLay, Barton and Tauzin for the sole purpose of obtaining a specific legislative favor.

A. The Platinum Package

The ethics committee issued a 38-page report that documents that executives and lobbyists for Westar were able to plead for a special legislative favor with Barton, Tauzin, DeLay and his top aides after anteing up substantial campaign contributions for Republican candidates associated with the representatives. For example, a May 14, 2002, soft money contribution of \$25,000 to TRMPAC, was the price of admission for two Westar executives to attend a DeLay golfing retreat with other energy company executives at the Homestead in West Virginia.

According to an April 23, 2002, confidential memorandum from Westar lobbyist Richard Bornemann to Westar Vice President Doug Lawrence, the company was pursuing Bornemann's "Platinum Package" for buying influence with the House Republican leadership, which included a \$25,000 soft money contribution to TRMPAC and \$31,500 in hard money contributions to candidates associated with Barton and Tauzin. Bornemann emphasized that the proposed schedule of contributions "is not a random wish list that simply matches titles with solicitations. We have thought this through..."

The memorandum continued to say:

"Rep. Tauzin is chairman of the full House Energy and Commerce Committee. His priority right now is using his position to help secure the re-election of some of his key allies and friends. In fact, he and Rep. Joe Barton (R-TX), who chairs the full committee's Energy and Air Quality Subcommittee, are hosting and cooking for a series of eight 'Tex-Cajun Cookouts' over the next couple of months. We strongly recommend participation in all eight at the solicited \$1,000 level."

In fact, Westar executives ended up contributing to seven of the eight listed candidates associated with Tauzin and Barton: Rep. John Shimkus (Westar Vice President Douglas Lake gave \$1,000); Rep. Sam Graves (Westar CEO Wittig gave \$1,000); Rep. Anne Northup (Wittig gave \$500 and Westar's General Counsel, Larry Irick, gave \$350); Rep. Shelley Moore Capito (Richard Dixon gave \$650 and Peggy Loyd—identifying her employer as Bornemann's lobbying firm, rather than Westar—gave \$350); Rep. Bob Simmons (Lawrence and Vice President Leroy Wages each gave \$500); Rep. Tom Latham (Westar VP Bruce Akin and Larry Irick gave \$500 apiece); and Rep. Robin Hayes (Westar VPs Caroline Williams and Peggy Loyd's husband Herbert gave \$500 each).

Furthermore, Bornemann wrote in his memo that: "Lastly with regard to Chairman Tauzin, we need to mention his own personal 'big one.' His leadership PAC—'Bayou Leader PAC'—holds an annual summer event in New Orleans. The cost is \$5,000..." Four Westar executives ended up contributing a total of \$2,800 to Tauzin's leadership PAC. Tauzin voted to protect Westar's single company exemption on September 19, 2002.

Bornemann also wrote that “Rep. Barton chairs the ‘utility’ subcommittee of the full Energy and Commerce Committee: the Subcommittee on Energy and Air Quality. He has a personal campaign kitty and his own leadership PAC. We recommend supporting each at the \$2,000 level.” And, as outlined, three different Westar executives gave both Barton’s campaign and his leadership PAC a total of \$4,000. Barton voted to protect Westar’s single-company exemption on September 19, 2002.

While Bornemann’s memo also recommended “a \$2,000 contribution” to Rep. Richard Burr, Wittig’s \$1,000 contribution to Burr’s Next Century Fund leadership PAC was the only Westar contribution to Burr. Burr voted to protect Westar’s exemption on September 19, 2002.

According to the memorandum:

“We believe that the most beneficial way to spend corporate dollars – as opposed to cutting personal or PAC checks – is with the House leadership. That means joining the fold, so to speak, of House Majority Leader Tom DeLay (R-TX).

“We have been looking for an effective, but relatively inexpensive way to do this because the conventional route is near-prohibitive cost.

“For example, Mr. DeLay has two leadership PACs – the reportable ‘Americans for a Republican Majority (ARM),’ and the non-reportable Texans for a Republican Majority (TRM).’ But as near as we can tell, checks in the range of \$50-\$100K seem the norm here....

“We may have an opportunity, later this summer, for an energy industry ‘roundtable’ golf match at the Homestead for a ‘mere’ \$25,000.” [*See* Attachment A, “Confidential Memorandum,” April 23, 2002]

DeLay voted to protect Westar’s single-company exemption on September 19, 2002.

The soft money contribution to TRMPAC was made and two Westar executives were invited to the golf outing organized by lobbyist and former DeLay energy aide Drew Maloney in coordination with ARMPAC staff. Mr. Maloney spelled out to DeLay’s staff the special interests each corporate participant was seeking from DeLay. For Westar, Maloney wrote: “It has one big concern that does not conflict with the others – it wants to repeal the Public Utility Holding Company Act.” [*See* Attachment B, E-Mail from Drew Maloney to Chris Perkins, May 30, 2002]

A Westar executive shared a golf cart with a DeLay aide for a round of golf on June 3, 2002, and discussed the company’s interest in the energy bill. The executive then attended a luncheon at which he “restated Westar’s position” to DeLay regarding the special exemption the company sought in the legislation.

B. The Westar Exemption Delivered

TRMPAC was of special concern to Rep. DeLay. As its founder, DeLay envisioned TRMPAC as playing a key role in promoting a Republican majority in the Texas state legislature in 2002 and, ultimately, paving the way for an unprecedented second congressional redistricting drive in Texas in as few as two years.

An August 2002 e-mail from Susan Lilly, a fundraiser for TRMPAC, soliciting a joint fundraising event with Rep. Billy Tauzin, described the personal significance of the soft money committee to DeLay and his involvement in the group's operations. According to Lilly: "This election cycle represents a tremendous opportunity for Republicans to finally seize control and elect a Republican speaker of the Texas House.... To that end, Congressman DeLay is extremely committed to TRMPAC and suggested that we contact Congressman Tauzin to enlist his support for our organization." [August 2002 e-mail from Susan Lilly, reported in the Houston Chronicle (Oct. 7, 2004)]¹

Bornemann's Platinum Package for securing the support of Barton, Tauzin, DeLay and other House Republican members deciding the fate of the energy bill paid off. "The good news is that we were successful in getting language providing the appropriate relief in the House version of the bill," wrote Doug Lawrence to his fellow company executives. "Right now, we have made significant progress with House Majority Whip Tom DeLay, and Energy Subcommittee chairman Joe Barton. The contributions made in the first round were successful in opening the appropriate dialogue." [See Attachment C, Memorandum from Doug Lawrence to officers, June 25, 2002] Westar had now entered round two of campaign contributions to seal the deal.

Between June and the end of September 2002, Westar officials met privately at least once with DeLay and Barton and twice with DeLay's energy specialist. Barton had included the Westar exemption into the energy bill beginning in 2001. The Westar provision was slipped into the House energy conference language in early September 2002, and on September 19 Barton (and, by proxy, DeLay and Tauzin) opposed a Democratic move to delete it from a House-Senate compromise version of the energy legislation. The Republican leaders had defended the Westar exemption even in the face of vociferous attacks from the Kansas Corporation Commission (KCC) and fellow members of the conference committee as serving no positive policy purpose, other than to give Westar a special break.

As Rep. Edward Markey (D-Mass.) stated in the conference committee:

"Now we are told that this is only a special interest provision that is aimed at benefiting a single company, a Kansas-based company known as Westar Energy ... If this company has a legitimate case to make as to why they are only incidentally or temporarily an investment company or why they should be exempted from the act, why aren't they successful making that case today at the Securities and Exchange Commission? ... They should not be wasting our time with a legislative fix.

¹ TRMPAC's role in allegedly funneling soft money into Texas state elections, which is illegal under Texas law, is currently the subject of several criminal indictments and an on-going grand jury investigation, two civil lawsuits, and a complaint filed with the House ethics committee.

“The fact that they are doing so raises some alarm bells for me as to what their real motives are....

“I would like to remind my colleagues that we went down this path before of considering legislative exemptions from the 1940 act and pressuring the Securities and Exchange Commission to grant administrative exemptions in 1996. Enron came to Congress when we were working on the National Securities Markets Improvement Act, and they sought an exemption from the Investment Company Act, the same act.” [See Attachment D, Transcripts of the House-Senate Joint Conference on H.R. 4, Sept. 19, 2002]

C. Circling the Wagons

Despite the opposition to the Westar exemption, Barton voted to keep it in the energy bill and cast proxy votes in support of the exemption on behalf of DeLay, Tauzin and five other Republican members of Congress. Their support for the exemption was only withdrawn in early October 2002 after John Wine of the KCC informed the committee that Westar was under investigation for securities fraud. The investigation by KCC quickly branched into a broader investigation by the Department of Justice and the Securities and Exchange Commission as well.

Barton, Tauzin, DeLay and other Republican House members now wanted to renege on their commitment to vote for the Westar exemption. As noted in an e-mail by Westar Vice President Doug Lawrence:

“Things are grim in D.C. The DeLay staff has asked us to release people from their commitment to support our provision. The Wine letter has killed us, it has been circulated along with last week’s 8k. We only had a one vote margin to hold this, even if we tell them to hold tight [we] will certainly lose two. At this point my recommendation is to release them, with a request to assist on the SEC effort.... I also want to deliver a message to Moline that we are pulling the amendment, but insist that the commission understand that it is expected to help us get the exemption that John Wine screwed up.” [See Attachment E, e-mail from Doug Lawrence, Sept. 30, 2002]

DeLay, Barton, Tauzin and others were now freed from their obligation to promote the Westar exemption, and it was dropped from the energy bill.

D. Conclusion: The Westar Scandal Warrants Investigations of Election, as well as Corporate, Fraud

The Department of Justice has already pursued an investigation, and is now seeking criminal convictions, against two former Westar executives for corporate fraud. Westar executives David Wittig and David Lake are now on trial for 40 charges of securities violations and corporate fraud in what has become known as the “Enron of Kansas.”²

² Carrie Johnson, “‘Enron of Kansas’ Trial Begins,” *Washington Post* (Oct. 12, 2004).

But the possible *political* corruption has not yet been adequately addressed. On October 6, 2004, the House ethics committee issued its third admonishment of Rep. DeLay for improper ethical behavior, the second in a week. The committee's chair and ranking member, Rep. Joel Hefley (R-Colo.) and Alan Mollohan (D-W.Va.) wrote to DeLay that "in view of the number of instances to date in which the Committee has found it necessary to comment on conduct in which you have engaged, it is clearly necessary for you to temper your future actions to assure that you are in full compliance at all times with the applicable House rules and standards of conduct." [See Attachment F, Joel Hefley and Alan Mollohan, Letter to Tom DeLay (Oct. 6, 2004)]

While the House ethics committee deserves praise for not ignoring DeLay's ethical lapses, it has chosen to chastise DeLay in extraordinarily soft terms. Admonishment is not even listed in the House ethics manual as an official sanction. While the letter of admonishment charges DeLay with "creating the appearance" that Westar lobbyists were gaining special favors through campaign contributions, the committee did not find sufficient evidence to charge DeLay with *quid pro quo* corruption. Nevertheless, the letter of admonishment reserved the right of the committee to revisit some of these issues following the Texas grand jury findings. Just as importantly, the House ethics committee investigation stopped short of investigating the role of others intimately involved in the scandal.

In light of the new evidence that money may have been exchanged for preferential legislative treatment for Westar, along with the evidence submitted earlier in Public Citizen's original complaint, we request once again that the Department of Justice conduct a formal investigation of possible violations of federal anti-bribery statutes.

Westar's lobbyists – particularly, Richard Bornemann – and its executives who may have participated in the Platinum Package scheme, and Reps. DeLay, Barton and Tauzin who were the recipients of Westar's campaign contributions and who delivered the special interest legislation sought by Westar, should be the subject of a thorough investigation by the Department of Justice.

Current and former Westar lobbyists Richard Bornemann and William Kenworthy, as well as Westar executives David C. Wittig, Douglas Lawrence, Douglas T. Lake, Douglas R. Sterbenz, Douglas R. Lawrence, Anita Jo Hunt, Caroline A. Williams, Richard A. Dixon, Kelly B. Harrison, Larry D. Irick, Peggy Loyd, Bruce Akin and Paul R. Geist may have violated 18 U.S.C. § 201(b)(1) for offering or promising something of value to a member of Congress in exchange for a favor.

In addition, 18 U.S.C. 201(b)(2) provides that whoever "being a public official [including Members of Congress] or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act" has violated the statute. The evidence warrants an investigation by the Department of Justice as to whether Reps. Barton, Tauzin and DeLay may have violated this section of the code and provided legislative favors in exchange for campaign contributions.

Please keep us informed of any decision by the Department of Justice whether to investigate these allegations of impropriety.

Sincerely,