

Ethics Corner: Judge Refuses to Jail House Aide in Abramoff-Related Case Because House Members Go Free

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On April 7, 2011, Judge Ellen Segal Huvelle of the U.S. District Court for the District of Columbia sentenced John Albaugh—a senior aide to former Oklahoma Congressman Ernest Istook—to five years' probation and four months in a halfway house for his admitted role in illegally assisting associates and clients of lobbyist Jack Abramoff.

In rejecting prosecutors' request to sentence Mr. Albaugh to 27 months, Judge Huvelle is quoted as stating: "There are three or four congressmen out there that will never see the light of day for actions, and we're blaming the staffers . . . The people who really benefitted from this scheme, with one exception, aren't the people in front of me." The "one exception" noted by Judge Huvelle is presumably former Congressman Bob Ney of Ohio, who, after pleading guilty, was sentenced by Judge Huvelle in 2007 to serve 30 months in prison on charges arising from the Abramoff matter.

Mr. Albaugh had pleaded guilty in June 2008 to conspiracy to commit honest services fraud and had been known to be cooperating with the government. As part of this cooperation, Mr. Albaugh had testified in the first trial of former Abramoff associate and lobbyist Kevin Ring that he had been influenced to do official favors for Mr. Ring because of "things of value" received, including meals, tickets and campaign contributions. This first trial ended in a hung jury. Before Mr. Ring's retrial in 2010, however, Mr. Albaugh notified Department of Justice prosecutors that he had reevaluated his testimony and now believed, in substance, that he would not have been influenced in his official actions if the campaign contributions had not been provided. Receipt of campaign contributions in

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connection with official actions can form the basis of criminal corruption charges, but only if the contributions and the official action are connected as an actual *quid pro quo*, a degree of connection and motivation that is very hard for prosecutors to prove.

Because of his changed testimony, at Mr. Ring's retrial prosecutors did not call Mr. Albaugh as a witness but instead relied on emails and on the testimony of other remaining witnesses. On November 15, 2010, Mr. Ring was convicted at the retrial of conspiracy, honest services fraud and paying gratuities related to an illegal lobbying scheme. Nonetheless, because of his change of mind about what motivated his official actions, prosecutors argued at Mr. Albaugh's April 2011 sentencing that he had breached his cooperation agreement and should be sentenced to more than two years in prison. As noted, Judge Huvelle declined, citing the disproportionate punishment being allotted to former staff rather than to former Members, in the Abramoff-related prosecutions.

Mr. Ring faces yet a third trial. He is currently scheduled to appear before Judge Huvelle in May for a bench trial on two counts of obstruction of justice arising from allegations that he provided materially false statements to outside counsel in an internal investigation of his then-employing firm, thereby intending to prevent information on his activities with Abramoff and others from being reported to law enforcement and Senate investigative authorities.