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May 8, 2003

*AOR 2003-17*

Via Federal Express  
Jonathan Levin, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Mr. Levin:

This firm represents defendant, James W. Treffinger, in United States v. James W. Treffinger, Crim. No. 02-795 (JWB), pending in the United States District Court for the District of New Jersey. Mr. Treffinger was a Republican candidate from New Jersey in the primary elections for the nomination for United States Senator in 2000 and 2002. Mr. Treffinger's principal campaign committee is entitled Treffinger For Senate, Inc. ("TFS"). He was also, until recently, the County Executive for Essex County, New Jersey. Mr. Treffinger is under indictment in the District of New Jersey and is presently awaiting trial. All but one of the charges against Mr. Treffinger directly relate to his candidacy for United States Senate. Mr. Treffinger has pleaded "not guilty" and strenuously disputes the charges against him.

We are writing to request an advisory opinion from the Federal Election Commission ("FEC") that the legal fees incurred by Mr. Treffinger in defending the charges against him may be paid by funds contained in Mr. Treffinger's 2000 and 2002 TFS Campaign funds under the Federal Election Campaign Act of 1971, as amended ("the Act"). The TFS Campaign Funds contain excess contributions of approximately \$60,000 in the 2000 Fund<sup>1</sup> and \$110,000 in 2002 Fund. A more detailed discussion is set forth below.

<sup>1</sup> During the summer of 2002, representatives of TFS, including the Fund Treasurer met with FEC officials to discuss the inadvertent co-mingling of primary election and general election funds in the 2000 Campaign Fund. Since then, the Fund Treasurer, Robert Mathers, indicates that he has reimbursed all contributions designated general election funds, leaving approximately \$60,000 remaining in the Fund.

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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### Facts

Mr. Treffinger is currently under indictment for charges relating to his candidacy for United States Senate. The Indictment is over 50 pages in length and contains 20 counts. A true copy of the Indictment is annexed hereto as Exhibit A. Most of the factual allegations and counts directly relate to Mr. Treffinger's 2000 and 2002 Senate campaigns, and would not exist but for his status as a candidate for federal office.

For example, Counts 1 to 6 of the Indictment arise from an alleged scheme by Mr. Treffinger to award Essex County government contracts to a particular construction contractor in exchange for political contributions, allegedly totalling \$15,000, from the contractor to Mr. Treffinger's 2000 Senate campaign. See Indictment, ¶¶ 8-10, pp. 4-5; ¶ 11(A)-(M), pp. 5-9. The charges include allegations that, in furtherance of the scheme, Mr. Treffinger caused to be filed a false and/or misleading Quarterly Report to the FEC in April, 2000. See Indictment, ¶ 12(C), pp.10-11; Count 4, p. 18.

Counts 7 to 10 of the Indictment arise from Mr. Treffinger's purported attempts to conceal the alleged scheme to award government contracts in exchange for political contributions to the 2000 Senate Campaign. See Indictment, Counts 7-10, pp. 20-29.

Count 11 of the Indictment arises from allegations that Mr. Treffinger attempted to extort contributions in the amount of \$5,000 for his 2002 Senate campaign from a financial advisory company that did business with Essex County. See Indictment, Count 11, pp. 30-35.

Counts 12 to 14 arise from allegations that Mr. Treffinger paid for Senate campaign-related services with Essex County Government funds. Specifically, the counts allege that Mr. Treffinger hired two individuals as Essex County employees, and utilized their services to provide support for his 2000 campaign for the Republican nomination for United States Senator. See Indictment, Counts 12-14, pp. 36-43. The Indictment further alleges that Mr. Treffinger submitted false reports to the FEC that omitted the receipt and contribution of payment for the two individuals. Indictment, ¶ 3(H), pp. 40-41.

Counts 15 to 18 specifically alleged that Mr. Treffinger made false statements and documents to the FEC in connection with the 2000 campaign. For example, Mr. Treffinger is alleged to have used the services of a catering company for campaign events, which services were paid by Essex County, not campaign funds, and failed to report such services as non-monetary campaign contributions in FEC quarterly, pre-primary, and year-end reports from the third quarter 1999 through the fourth quarter of 2000. Indictment, ¶ 4, pp. 44-45; Counts 16-18, p. 46. The counts further allege that Mr.

Treffinger failed to report the contribution of services he received from the two individuals described above. Indictment, ¶ 5, p. 45; Counts 15-18, p. 46.

Count 20 charges a direct violation of the Act, namely, conspiracy to fraudulently misrepresent campaign authority, during the course of the 2002 primary campaign, in violation of 2 U.S.C. § 441h(2).

Thus, all of the allegations in the indictment, other than a single count (Count 19) of the 20-Count Indictment, directly relate to and arise out of Mr. Treffinger's status as a candidate for federal office and his alleged conduct in the course of such candidacy.

### Discussion

Pursuant to 21 U.S.C. 439a, a federal candidate has wide latitude to use excess campaign contributions "for any other lawful purpose" after expenditures have been paid. For instance, a candidate for federal office may use excess campaign funds to pay legal expenses, to the extent that such legal expenses do not constitute personal use. 11 CFR 113.1(g)(1)(ii)(A). The determination whether particular legal fees constitute a personal use shall be made on a case-by-case basis. 11 CFR 113.1(g)(1)(ii). "Personal use" is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign." 11 CFR 113.1(g).

Conversely, the use of campaign funds to pay legal fees that would not exist but for a candidate's running for office are not personal use, and would be permissible expenditures. See AO 1997-12. Indeed, "any legal expense that relates directly to allegations arising from campaign or officeholder activity would qualify for 100% payment with campaign funds." AO 1997-12.

A number of Advisory Opinions are factually analogous to the instant situation and provide guidance.

In AO 1995-23, Congressman Christopher Shays, when running for Congress in 1994, sought an advisory opinion as to whether he could utilize funds from his principal campaign committee to pay legal expenses for his defense of a lawsuit in which he was accused of removing his opponent's campaign signs during the final weeks of the 1994 campaign. The FEC opined that the legal expenses arose directly from Mr. Shays's campaign activity and status as a candidate and were thus directly attributable to the campaign committee. AO 1995-23. As such, Mr. Shays was permitted to pay the cost of defending the lawsuit with funds from the campaign committee. AO 1995-23.

In AO 1998-1, Congressman Hilliard sought an Advisory Opinion regarding the payment of legal fees with campaign funds, where a series of newspaper articles alleged various improprieties in the conduct of his campaign committee, his district office and Mr. Hilliard personally. A law firm represented the Congressman before the media, law enforcement, an oversight committee and the ethics committee. The FEC permitted the campaign committee to pay 100% of all fees associated with responding to the allegations it determined arose directly out of Mr. Hilliard's status and conduct as a federal candidate, including the allegations of improprieties regarding: disclosures to the FEC and to the House Ethics Committee; the operation of Mr. Hilliard's congressional office, and; various funding activities. AO 1998-1.

In AO 1977-39, the FEC indicated that the use of campaign funds to defray legal expenses for the defense of a criminal prosecution should not be treated any differently than the defense of a civil lawsuit. Congressman Clay requested an advisory opinion regarding the payment of legal fees to defend "a criminal prosecution relative to official conduct in office." AO 1977-39. The FEC permitted the expenditure for legal fees, analogizing the use of excess campaign funds to defend a criminal prosecution to the defense of a civil prosecution. Thus, that Mr. Treffinger's legal fees are being expended in the defense of a criminal suit rather than a civil suit should have no bearing on the analysis. The relevant inquiry is whether the criminal suit is related to Mr. Treffinger's status and conduct as a candidate for federal office, which it unquestionably is.

The Advisory Opinions cited all involve allegations of wrongdoing by a federal candidate or officeholder, whether in a criminal or a civil context, in which the allegations relate directly to the practices and conduct of a federal candidate or officeholder, and the FEC permitted the use of campaign funds to pay for legal fees associated with defending the actions or allegations.

As in the opinions cited, the allegations against Mr. Treffinger in this case could not more squarely relate to his conduct as a candidate for federal office. He is alleged to have 1) improperly obtained or sought campaign contributions with respect to both the 2000 and 2002 campaigns; 2) orchestrated a cover-up of the improperly obtained contributions; 3) filed false and/or misleading required FEC reports and documents; and 3) fraudulently misrepresented campaign authority in direct violation of the Act.

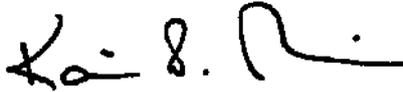
As such, Mr. Treffinger should be permitted to use the excess contributions contained in both the 2000 and 2002 TFS campaign funds to pay the legal fees incurred to date, as well as legal fees still to be generated, for his defense of the criminal action.

**Conclusion**

In accordance with the above, kindly provide an Advisory Opinion as to whether Mr. Treffinger may use federal campaign funds from his 2000 and 2002 Senate Campaign to pay for legal fees associated with the defense of Mr. Treffinger in the criminal matter of United States v. James W. Treffinger, Crim. No. 02-795 (JWB).

Respectfully submitted,

KLINGEMAN TURANO LLC

A handwritten signature in black ink, appearing to read "Karin S. Riecker". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

KARIN S. RIECKER, ESQ.

cc: Hon. James W. Treffinger

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
v.	:	Crim. No.
JAMES W. TREFFINGER	:	18 U.S.C. §§ 371, 666, 1001, 1341, 1343, 1346, 1512, 1951 and 2; Title 2 U.S.C. § 441h.

INDICTMENT

The Grand Jury, in and for the District of New Jersey,  
sitting at Newark, charges:

COUNTS 1 to 5

(Scheme to Defraud the Public of  
Honest Services, Money and Property)

Defendant, Individuals and Entities

1. On or about November 8, 1994, defendant JAMES W. TREFFINGER was elected Essex County Executive and was sworn in on January 1, 1995. He was re-elected on or about November 3, 1998 to serve a second, four-year term. As the Essex County Executive, defendant JAMES W. TREFFINGER had a duty to (A) control all disbursements and expenditures and (B) sign and negotiate all contracts and make recommendations concerning the nature and location of all improvements. Defendant JAMES W. TREFFINGER'S executive powers also included the power to: (A) supervise, direct and control all of the County's administrative departments; (B) appoint a County Counsel, Administrator, the

heads of departments and divisions and members of boards, such as the Essex County Improvement Authority (the "ECIA"); (C) appoint and remove employees; (D) require reports and examine accounts, records and operations of Essex County Government agencies; (E) approve or veto ordinances passed by the Freeholder Board and (F) order the cessation of expenditures by any agency when that agency was not appropriately using funds. Defendant JAMES W. TREFFINGER had been a practicing attorney from in or about 1976 to in or about 1995.

2. From in or about September, 1999 to in or about June, 2000, defendant JAMES W. TREFFINGER was a candidate for United States Senate. As part of his campaign for Senate, defendant JAMES W. TREFFINGER established a formal campaign, appointed a treasurer, opened bank accounts, received contributions and expended funds. As a candidate, defendant JAMES W. TREFFINGER was required by federal law to file periodic reports with the Federal Election Commission (the "FEC"). The FEC required all campaign treasurers to file detailed truthful and accurate reports disclosing financial activity of the campaign, including the amount and source of certain contributions and the amount and payee receiving payments for expenses.

3. There was an individual who was the Essex County Engineer and the head of the Essex County Engineering Department [hereinafter, the "County Engineer"]. The County Engineer's

duties included: (A) identifying and prioritizing engineering projects within the County; (B) designing specifications for work needed to be performed; (C) reviewing contractor bids to determine which vendors met the County's specifications; (D) monitoring the progress of engineering projects and (E) recommending that contracts be declared emergencies and, therefore, exempt from the public bidding laws. Defendant JAMES W. TREFFINGER expected and directed the County Engineer and other Essex County employees to solicit contributions from contractors for his various campaigns.

4. There was an individual who: (A) was an attorney; (B) was a close advisor to defendant JAMES W. TREFFINGER and acted as a troubleshooter for defendant JAMES W. TREFFINGER in political and other matters and (C) received a salary from Essex County Government [hereinafter, "Treffinger's Associate"].

5. There was an individual who was an attorney and advisor to defendant JAMES W. TREFFINGER and his campaign treasurer during his 2000 and 2002 bids for United States Senate [hereinafter, the "Treasurer"].

6. United Gunite Construction, Inc. ("UGC") was a national corporation headquartered in Irvington, New Jersey that was engaged in interstate commerce. UGC provided gunite and concrete products to its customers and specialized in publicly-funded projects.

7. Gerald David Free [hereinafter, "Jerry Free"] was the vice-president of marketing for UGC. Free was responsible for selling UGC's services to local governments throughout New Jersey, and along with the principals of UGC, for entering into contracts with those entities.

Public's Right to, and Officials' Duty of, Honest Services

8. At all times relevant to Counts 1 to 5 of this Indictment, the County of Essex and its citizens had an intangible right to the honest services of their public officials. As public officials for the County of Essex, defendant JAMES W. TREFFINGER and the Essex County Engineer owed the County of Essex and its citizens a duty to, among other things, (A) refrain from soliciting and receiving campaign contributions in exchange for the award of county contracts and (B) disclose conflicts of interest and other material information in matters over which these officials had authority and discretion and to not cover up such material information.

Scheme and Artifice to Defraud Public of Honest Services, Money and Property

9. From in or about December, 1999 to in or about June, 2000, in Essex County, in the District of New Jersey, and elsewhere, defendant

JAMES W. TREFFINGER

and others knowingly and willfully did devise and intend to devise a scheme and artifice to defraud the County of Essex and its citizens of the right to defendant JAMES W. TREFFINGER'S and the County Engineer's honest services in the affairs of Essex County Government and of money and property by means of materially false and fraudulent pretenses, representations and promises.

10. The object of this scheme and artifice to defraud was to award contracts to UGC in exchange for approximately \$15,000 in political contributions from UGC that were illegally funneled to defendant JAMES W. TREFFINGER'S 2000 Senate campaign and to take steps to affirmatively conceal this material information from other Essex County Government officials and employees and the public.

\$15,000 in Concealed Political Contributions from UGC in Exchange for Essex County Contracts

11. It was a part of this scheme and artifice to defraud that:

(A) In or about late November or early December, 1999, the County Engineer was introduced to Jerry Free. During their ensuing discussions, Jerry Free told the County Engineer that UGC was seeking work in Essex County and would contribute money to defendant JAMES W. TREFFINGER in exchange for the award of such contracts. The County Engineer relayed this message to defendant

JAMES W. TREFFINGER who asked to meet with Jerry Free.

(B) On or about December 21, 1999, at the direction of defendant JAMES W. TREFFINGER, the County Engineer telephoned Jerry Free at his office to arrange a meeting between defendant JAMES W. TREFFINGER and Jerry Free.

(C) On or about December 22, 1999, defendant JAMES W. TREFFINGER and the County Engineer went to Jerry Free's office. During this meeting, defendant JAMES W. TREFFINGER and Jerry Free agreed that Free would make campaign contributions in exchange for Essex County contracts. Free handed the County Engineer and defendant JAMES W. TREFFINGER an envelope containing a \$1,000 check made payable to "Treffinger for Senate." After defendant JAMES W. TREFFINGER and the County Engineer left the UGC offices, they opened the envelope, finding the \$1,000 contribution. Several minutes later, the County Engineer telephoned Jerry Free, telling him that he had a project ready for UGC, but expressing disappointment with the amount of the check and suggesting that Free do better.

(D) On or about December 23, 1999, the County Engineer called Jerry Free and told him that he would award him a contract to repair a damaged culvert in Caldwell, New Jersey [hereinafter, "Contract No. 1"]. The County Engineer reminded him that he could count on defendant JAMES W. TREFFINGER. Jerry Free agreed to provide additional sizeable contributions.

(E) On or about January 3, 2000, Jerry Free called an Assistant Essex County Engineer, quoting him a price of \$74,900 to repair the culvert in Caldwell, New Jersey. Several minutes later, the County Engineer called Jerry Free, telling him to ensure that he charged enough for the repair so that he could make the promised contributions to defendant JAMES W.

TREFFINGER'S campaign. Several minutes later, Jerry Free called the Assistant County Engineer again, raising the price on the contract to \$79,900--\$5,000 higher than his prior quote--to offset the cost of the contributions.

(F) Before the contract was awarded, defendant JAMES W. TREFFINGER advised the County Engineer that the contract would not be awarded to UGC unless Jerry Free promised to fulfill his commitment to make contributions. Once Jerry Free had agreed to make the additional contributions, defendant JAMES W. TREFFINGER instructed the Essex County Director of Purchasing, whose approval was required for this no-bid contract, to approve Contract No. 1 in the amount of \$83,900.

(G) On or about January 5, 2000, UGC was notified that it had been awarded Contract No. 1. On or about January 7, 2000, Jerry Free gave the County Engineer another \$1,000 check payable to "Treffinger for Senate."

(H) On or about January 13, 2000, the County Engineer called Jerry Free on behalf of defendant JAMES W. TREFFINGER,

asking him when he could expect the rest of the contributions. Jerry Free told the County Engineer that if he could get another contract, then he would be able to turn over more contributions to defendant JAMES W. TREFFINGER.

(I) On or about January 17, 2000, the County Engineer again called Jerry Free on behalf of defendant JAMES W. TREFFINGER, asking for the contributions that Free had promised. Later that day, Jerry Free told the County Engineer that he had \$5,000 in contributions and could probably get another \$5,000, if they could find another emergency repair job.

(J) On or about January 21, 2000, a UGC employee delivered several thousand dollars in contribution checks from UGC employees to the County Engineer's Office in Verona, New Jersey.

(K) On or about February 5, 2000, defendant JAMES W. TREFFINGER awarded UGC a second, no-bid emergency contract in the amount of \$59,400 to repair a storm sewer in Caldwell, New Jersey [hereinafter, "Contract No. 2"].

(L) From in or about January, 2000 to in or about April, 2000, Jerry Free requested that Essex County Government award UGC an open-ended contract that would permit UGC to do certain jobs for Essex County Government without bidding for each job [hereinafter, "Contract No. 3"]. On or about April 6, 2000, Contract No. 3 was awarded to UGC to perform sewer and bridge repair at various unspecified locations within Essex County in

amounts up to \$185,550 at the discretion of the Essex County Director of Purchasing. The contract was awarded after a lower bid submitted by a competitor was disqualified.

(M) From on or about December 22, 1999 to on or about March 13, 2000, defendant JAMES W. TREFFINGER received a total of approximately \$15,000 in contributions from UGC in exchange for the award of these contracts, as follows:

DATE	CONTRIBUTION AMOUNT
12-22-99	\$1,000
01-07-00	\$1,000
01-11-00	\$2,000
01-12-00	\$2,000
01-21-00	\$2,000
01-25-00	\$2,000
03-13-00	\$1,500
03-13-00	\$1,500
03-13-00	\$2,000

In order to conceal the \$15,000 in illegal corporate campaign contributions from UGC, Jerry Free and another officer of UGC caused friends and employees and their spouses to write checks to defendant JAMES W. TREFFINGER'S campaign in their own names. These coschemers then reimbursed the contributors with UGC funds.

Concealment of this Corrupt Activity

12. It was a further part of this scheme and artifice to defraud that, to conceal this corrupt activity from Essex County

Government officials and employees and the public, defendant JAMES W. TREFFINGER and others engaged in the following acts:

Concealment of Arrangement from County Employees

(A) On or about January 3, 2000, the County Engineer instructed Jerry Free not to disclose his fundraising or friendship with defendant JAMES W. TREFFINGER to any Essex County Government employee.

Submission of False Forms and Conduit Political Contributions

(B) In or about April, 2000, the president of UGC and a coschemer submitted a false political contribution disclosure form to Essex County Government. As a precondition to the award of Contract No. 3, UGC was required to submit this form along with a bid proposal. Although the form required the disclosure by the bidder of the date, amount and county official to whom any political contribution was made in excess of \$500, it failed to disclose any of the \$15,000 in political contributions that UGC made to defendant JAMES W. TREFFINGER'S Senate campaign.

(C) The Treasurer submitted through the U.S. mail a false quarterly report to the FEC reflecting that the conduit contributions were made by friends and employees, concealing the true source of the contributions. Under Federal law, corporate contributions to a federal candidate were prohibited and the

maximum allowable contribution from a contributor to a candidate was \$1,000 for an election cycle. Funneling contributions from an individual or corporation through a conduit or nominee for the purpose of evading the contribution limit also was prohibited.

Concealment by Attempting to Paper the County's Files

(D) On or about May 10, 2000, an aide to defendant JAMES W. TREFFINGER summoned the County Engineer to attend a meeting at a secluded, county-owned building in Cedar Grove, New Jersey. Defendant JAMES W. TREFFINGER called the meeting to discuss a pending federal investigation of the award of municipal contracts to UGC. Defendant JAMES W. TREFFINGER, the County Engineer (who was cooperating with federal authorities and covertly tape recording this meeting), Treffinger's Associate, the Treasurer and the aide to defendant JAMES W. TREFFINGER attended the meeting.

(E) During the meeting, defendant JAMES W. TREFFINGER and the County Engineer reconstructed the events surrounding their meetings and conversations with Jerry Free and discussed in detail the Essex County contracts that were awarded to UGC. Defendant JAMES W. TREFFINGER recounted how he and the County Engineer had met Jerry Free in his office, where Jerry Free gave defendant JAMES W. TREFFINGER a portion of the \$15,000 in campaign contributions. The County Engineer also stated that

during his conversations with Jerry Free, Free had explained that he would give the contributions in exchange for Essex County Government contracts. Defendant JAMES W. TREFFINGER expressed his concern that Jerry Free was cooperating with federal law enforcement and was recording his conversations.

(F) During the May 10, 2000 meeting, defendant JAMES W. TREFFINGER specifically coached the County Engineer to mislead others if asked about his discussions with Jerry Free. Rehearsing an anticipated interview with law enforcement officials, defendant JAMES W. TREFFINGER told the County Engineer to pretend that defendant JAMES W. TREFFINGER was a prosecutor. Playing the role of a prosecutor, defendant JAMES W. TREFFINGER then asked the County Engineer whether he had ever discussed with Jerry Free giving him county work in exchange for contributions, prodding the County Engineer to respond no, when defendant JAMES W. TREFFINGER knew that the answer was yes.

(G) During this meeting, defendant JAMES W. TREFFINGER also counseled the County Engineer to create misleading and backdated memos to be placed in the Essex County Government files that were calculated to look like they were generated at the time that Contract Nos. 1 and 2 were awarded to UGC, to justify the selection of UGC and to declare the contracts emergencies. To further have the memos look authentic and to conceal the corrupt activity, defendant JAMES W. TREFFINGER also suggested that one

of the memos falsely indicate that it was sent to the Director of Public Works. Defendant JAMES W. TREFFINGER further falsely suggested that they would explain the absence of the memo from the file of the Director of Public Works by claiming that she probably did not keep a copy, when defendant JAMES W. TREFFINGER knew that the memo had not previously existed and, therefore, that the Director never had been copied on it.

(H) Between on or about May 12, 2000 and on or about May 16, 2000, defendant JAMES W. TREFFINGER himself drafted a three-page memo to the County Counsel. Defendant JAMES W. TREFFINGER generated this memo to create the false impression that he had almost no knowledge of UGC and Jerry Free, including: (i) that he could not even recall accurately their names; (ii) that the name "Jerry Fried" did not "strike a bell;" (iii) that defendant JAMES W. TREFFINGER believed that the company may have done some work recently; (iv) that he did not know what gunite meant and (v) that he did not know the value of the contracts. The memo concluded with a request that the County Counsel speak with the County Engineer to get the specifics on UGC for defendant JAMES W. TREFFINGER, even though defendant JAMES W. TREFFINGER already had detailed personal knowledge of the transactions involving UGC.

(I) Defendant JAMES W. TREFFINGER attached to this three-page memo a handwritten note to Treffinger's Associate:

Please review enclosed. Talk to him about the next step & call to meet with [the County Engineer] about the role he's to play. Show my memo to no one--and suggest any changes you think I should make in the Memo. Thanks. Jim.

On or about May 16, 2000, defendant JAMES W. TREFFINGER faxed this note and the three-page memo to Treffinger's Associate.

(J) After discussing this three-page memo with the County Counsel, defendant JAMES W. TREFFINGER caused to be drafted a replacement one-paragraph memo, backdated to May 12<sup>th</sup>, to be placed in Essex County Government files, regarding "National Gunnite Corp." [sic] stating:

There is a rumor that the U.S. Attorneys' Office is investigating some politician regarding his connection with a man named Jerry Fried (?) and his company, the National Gunnite Corp. While the individual and companies name do not strike a bell, I would appreciate if you could look into whether or not these individuals do any business for the County of Essex. Additionally, I would like you to research whether or not we could legally institute background checks to prevent the County from hiring companies that may be "shady". Your immediate attention is appreciated.

This version of the memo was calculated to mislead by: (i) feigning unfamiliarity with Jerry Free and UGC by making mistakes with their names; (ii) conveying the false impression that defendant JAMES W. TREFFINGER never met Jerry Free when, in fact, he had and (iii) conveying the false impression that defendant JAMES W. TREFFINGER did not know that UGC had done business with the County when, in fact, he did.

(K) On or about May 18, 2000, Treffinger's Associate telephoned the County Engineer as directed by defendant JAMES W.

TREFFINGER and explained JAMES W. TREFFINGER'S plan to create a misleading paper trail. Treffinger's Associate explained to the County Engineer that a memo had been created from defendant JAMES W. TREFFINGER to the County Counsel and read the County Engineer the one-paragraph memo. They arranged to meet on May 22, 2000, at the same secluded county-owned building in Cedar Grove, New Jersey, so that Treffinger's Associate could assist the County Engineer in structuring the misleading written material that defendant JAMES W. TREFFINGER had suggested during the May 10<sup>th</sup> meeting that the County Engineer place in the file.

(L) On or about May 22, 2000, Treffinger's Associate met with the County Engineer to coach him on creating the phony paper trail as directed by defendant JAMES W. TREFFINGER. Treffinger's Associate produced a copy of the one-paragraph memo at the meeting and again read it to the County Engineer explaining that "we need to cover the Exec"--a reference to defendant JAMES W. TREFFINGER. Treffinger's Associate then directed the County Engineer to create and backdate a memo to be placed in the file, detailing UGC's qualifications in an attempt to justify the contract award to UGC, and to create another memo describing the work performed by UGC on Contract Nos. 1 through 3. In generating this documentation, Treffinger's Associate instructed the County Engineer to omit any reference to UGC's contributions, indicating that the contributions would be explained as

coincidence. Treffinger's Associate further told him that if law enforcement were monitoring conversations between Jerry Free and the County Engineer or defendant JAMES W. TREFFINGER, then there would be nothing that anyone could do and that they would all be "going to the wolves." Treffinger's Associate instructed the County Engineer to backdate the memo detailing UGC's qualifications and to leave defendant JAMES W. TREFFINGER'S name out of the memos completely. Treffinger's Associate explained to the County Engineer that the purpose of creating these misleading documents and "cleaning up" the file was to ensure that those reviewing the file would see nothing out of the ordinary because they would not know how and when these documents were generated simply from reviewing the file. Based on the direction of defendant JAMES W. TREFFINGER and Treffinger's Associate, the County Engineer then drafted these memos.

(M) On or about May 24, 2000, Treffinger's Associate telephoned the County Engineer after reviewing the draft memos. Treffinger's Associate instructed the County Engineer: (i) to edit his draft of the backdated memo detailing UGC's qualifications to take out the reference to carbon copying defendant JAMES W. TREFFINGER; (ii) to ensure that this backdated memo falsely reflected that it had been sent to the Director of Public Works, emphasizing, in accordance with defendant JAMES W. TREFFINGER'S instructions, that the County Engineer actually

should not send her a copy and (iii) to delete the reference to defendant JAMES W. TREFFINGER'S presence at a meeting with Jerry Free from the documentation.

(N) On or about May 25, 2000, the County Engineer forwarded the misleading and backdated memo to the County Counsel as directed. On or about June 2, 2000, the County Counsel forwarded a memo to defendant JAMES W. TREFFINGER, as previously instructed by defendant JAMES W. TREFFINGER, that stated in part that "this memo is in response to your request concerning 'National Gunite' and whether or not the County does any business with the entity. The only entity that comes near matching that name is United Gunite Construction, Inc. which has been retained to perform services through our County Engineer []." A copy of the misleading and backdated memos received from the County Engineer were attached.

#### Mailings

13. On or about the dates listed below, in Essex County, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, defendant

JAMES W. TREFFINGER

and others, knowingly and willfully placed and caused to be placed in a post office and authorized depository for mail, and

caused to be delivered thereon, certain mail matter, to be sent and delivered by the United States Postal Service, as described below:

COUNT	DATE	MAILING
1	January 11, 2000	Purchase Order for Contract No. 1
2	February 4, 2000	Purchase Order for Contract No. 2
3	March 31, 2000	Check from Essex County Government to UGC in the amount of \$141,888.32
4	April 15, 2000	Quarterly Report to the FEC
5	April 19, 2000	Political Contribution Disclosure Form

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

COUNT 6

(Extortion of UGC)

1. Paragraphs 1 to 3, 6 to 7 and 11 of Counts 1 to 5 of this Indictment are repeated and realleged as if set forth in full herein.

2. From in or about December, 1999 to in or about April, 2000 in Essex County, in the District of New Jersey, and elsewhere, defendant

**JAMES W. TREFFINGER**

knowingly and willfully did obstruct, delay and affect interstate commerce by extortion--that is, obtaining campaign contributions from UGC with consent and under color of official right.

In violation of Title 18, United States Code, Sections 1951(a) and 2.

COUNT 7

(Conspiracy to Corruptly Persuade and Mislead Others)

1. Paragraphs 1 to 7 and 12(D) to (N) of Counts 1 to 5 of this Indictment are repeated and realleged as if set forth in full herein.

2. From in or about May, 2000 to in or about March, 2001, in Essex County, in the District of New Jersey and elsewhere, defendant

**JAMES W. TREFFINGER**

did knowingly and willfully conspire with Treffinger's Associate and others to corruptly persuade other persons and engage in misleading conduct toward other persons, with the intent to hinder, delay and prevent the communication to law enforcement officers of information relating to the commission and possible commission of federal offenses, contrary to Title 18, United States Code, Section 1512(b)(3).

3. The object of the conspiracy was for defendant **JAMES W. TREFFINGER** and others to hinder, delay and prevent federal authorities from uncovering information pertaining to the possible commission of bribery, extortion and fraud by: (A) coaching the Essex County Engineer, Treffinger's Associate and the County Counsel to provide false and misleading information; (B) creating and causing the creation of misleading and backdated documents related to contact with, and the award of contracts to, UGC; (C) instructing the Treasurer to destroy documents in

anticipation of a grand jury subpoena for Treffinger for Senate campaign records; (D) failing to produce documents in response to grand jury subpoenas; (E) seeking appointment to the Office of the United States Attorney for the District of New Jersey in order to terminate favorably the investigation and (F) making personnel decisions designed to coax Essex County employees to remain loyal to defendant JAMES W. TREFFINGER.

Coaching Others to Provide False and Misleading Information and Creating Documents to Mislead Others

4. Between on or about May 10, 2000 and on or about June 2, 2000, defendant JAMES W. TREFFINGER and others (A) coached the Essex County Engineer to provide false and misleading information to others and (B) created and caused the creation of misleading and backdated documents related to contact with, and the award of contracts to, UGC as set forth in paragraphs 12(D) to (N) of Counts 1 to 5 of this Indictment.

5. On or about October 11, 2000, federal grand jury subpoenas were served on the Offices of the Essex County Department of Public Works, the Essex County Executive and the Essex County Counsel seeking, among other things, all documents and records relating to UGC or any related entity or individual. That same day, defendant JAMES W. TREFFINGER, Treffinger's Associate and the County Counsel discussed the subpoenas with the County Engineer, trying to allay the County Engineer's expressed concern that the corrupt activity had been uncovered. During

this meeting, Treffinger's Associate advised the County Engineer not to bring up the backdating, if questioned. Treffinger's Associate further cautioned the County Engineer not to become unnerved and that "the tiles on the game board had to stay in place," as he had explained in his May 22, 2000 conversation with the County Engineer.

6. At the conclusion of the October 11, 2000 meeting, defendant JAMES W. TREFFINGER, Treffinger's Associate and the County Counsel met privately. During that meeting, defendant JAMES W. TREFFINGER instructed the County Counsel to say, if asked, that the County Engineer never told them that there was a connection between the award of the contracts to UGC and the contributions made to defendant JAMES W. TREFFINGER'S campaign. When the County Counsel advised defendant JAMES W. TREFFINGER that the County Engineer told him that the contracts were in fact awarded in exchange for the contributions, defendant JAMES W. TREFFINGER remarked that he would pretend that he never heard that.

7. On or about November 6, 2000, a custodian for the production of documents responsive to the subpoenas appeared before the grand jury. Both the backdated memo prepared by the County Engineer and the false and misleading one-paragraph memo from defendant JAMES W. TREFFINGER were produced to the grand jury. The three-page memo that defendant JAMES W. TREFFINGER initially had prepared prior to the one-paragraph memo and the

June 2, 2000 memo from the County Counsel to defendant JAMES W. TREFFINGER were not produced to the grand jury, despite the fact that the grand jury had subpoenaed these documents from the office of the Essex County Executive on October 11, 2000.

8. On or about January 23, 2001, Treffinger's Associate (who was by then cooperating with federal authorities and covertly tape-recording this meeting) met with defendant JAMES W. TREFFINGER at his Essex County Government office. Defendant JAMES W. TREFFINGER insisted that the two leave his office and walk down the hall where they could talk privately. Speaking in hushed tones to conceal the conversation from others, defendant JAMES W. TREFFINGER coached Treffinger's Associate to provide a false version of how Treffinger's Associate got involved in helping the County Engineer draft the misleading and backdated memos, falsely stating that Treffinger's Associate became involved because of the County Engineer's allegedly poor command of the written English language. When Treffinger's Associate expressed concern to defendant JAMES W. TREFFINGER about the two versions of his May 12, 2000 memo, defendant JAMES W. TREFFINGER acknowledged that if anyone ever checked his computer hard drive, they would see that there were two versions of the memo.

TREFFINGER Instructs the Treasurer to Sanitize the Campaign File

9. In or about October, 2000, shortly after the three grand jury subpoenas were served on Essex County Government,

defendant JAMES W. TREFFINGER expressed concern to Treffinger's Associate and the Treasurer that federal authorities would next seek his campaign records. Defendant JAMES W. TREFFINGER directed the Treasurer to review the file and destroy documents in the file in anticipation of a grand jury subpoena.

TREFFINGER'S Intent to Quash the Investigation if Appointed United States Attorney

10. From approximately in or about January, 2001 to in or about July, 2001, defendant JAMES W. TREFFINGER indicated to others that he was taking steps to seek a presidential appointment to the Office of the United States Attorney for the District of New Jersey.

11. On or about January 15, 2001, during a covertly recorded conversation with Treffinger's Associate, defendant JAMES W. TREFFINGER discussed the pending federal investigation and his efforts to become the U.S. Attorney. Defendant JAMES W. TREFFINGER told Treffinger's Associate that "all this becomes moot if I get to be made U.S. Attorney," and that they would "rest easy for a long time to come" because, he explained, "[t]hen this whole thing goes away." Defendant JAMES W. TREFFINGER further explained that if he became U.S. Attorney, then others, including himself, would be off limits to law enforcement, stating: "[there are] plenty of mobsters to go after, you don't have to go after all these poor politicians trying to ply their trade . . ."

Rehiring and Promoting Witnesses to Conceal the Corrupt Activity

12. Defendant JAMES W. TREFFINGER further sought to conceal the corrupt activity by making favorable personnel decisions in order to control Essex County employees with knowledge of portions of the scheme.

13. By in or about the end of September, 2000, the County Counsel, who had assisted defendant JAMES W. TREFFINGER to create the misleading paper trail, was no longer employed by Essex County Government. After the Federal Grand Jury had subpoenaed records relating to UGC on October 11, 2000, defendant JAMES W. TREFFINGER rehired the County Counsel, but gave him few responsibilities, in order to ensure his cooperation. On or about March 22, 2001, in a covertly recorded meeting with Treffinger's Associate, defendant JAMES W. TREFFINGER admitted that the County Counsel was providing no services to the County, and explained that he could not fire him because the County Counsel "was there that day," referring to the October 11, 2000 meeting where defendant JAMES W. TREFFINGER instructed the County Counsel to falsely state that the County Engineer never told them that the award of the contracts was linked to UGC contributions.

14. After the grand jury subpoenas were served on October 11, 2000, defendant JAMES W. TREFFINGER expressed concern to his Associate that the Essex County Director of Purchasing would disclose that defendant JAMES W. TREFFINGER personally directed him to award the no-bid contract to UGC. On or about January 23,

2001, during a covertly recorded conversation, Treffinger's Associate asked defendant JAMES W. TREFFINGER whether he had spoken with the Director of Purchasing about the situation and whether the Director of Purchasing was under control. Defendant JAMES W. TREFFINGER replied affirmatively, stating that he had promoted him.

#### OVERT ACTS

In furtherance of this conspiracy and to effect its objects, defendant JAMES W. TREFFINGER committed and caused to be committed the following overt acts in the District of New Jersey and elsewhere:

1. On or about May 10, 2000, defendant JAMES W. TREFFINGER coached the County Engineer to mislead federal investigators if asked about his discussions with Jerry Free.

2. Between on or about May 12, 2000 and on or about May 16, 2000, defendant JAMES W. TREFFINGER drafted a misleading three-page memo to the County Counsel.

3. On or about May 16, 2000, defendant JAMES W. TREFFINGER caused the three-page memo to be faxed to Treffinger's Associate with a handwritten note instructing Treffinger's Associate to contact the County Engineer.

4. In or about the third week in May, 2000, defendant JAMES W. TREFFINGER caused to be drafted a misleading one-paragraph memo which was backdated to May 12, 2000.

5. On or about May 18, 2000, Treffinger's Associate telephoned the County Engineer at the direction of defendant JAMES W. TREFFINGER, explaining their plan to create a misleading paper trail to be placed in Essex County Government files.

6. On or about May 22, 2000, Treffinger's Associate met with the County Engineer as directed by defendant JAMES W. TREFFINGER, counseling the County Engineer on creating and backdating misleading documentation.

7. On or about May 24, 2000, Treffinger's Associate telephoned the County Engineer, directing him to remove defendant JAMES W. TREFFINGER'S name from the misleading documentation.

8. On or about June 2, 2000, the County Counsel sent a memo to defendant JAMES W. TREFFINGER, attaching the misleading and backdated memos from the County Engineer.

9. On or about October 11, 2000, defendant JAMES W. TREFFINGER advised the County Counsel to falsely say that they were unaware that the award of contracts to UGC had been conditioned on the receipt of campaign contributions.

10. On or about January 23, 2001, defendant JAMES W. TREFFINGER coached Treffinger's Associate to provide misleading information to investigators if questioned, by proposing a false version of how Treffinger's Associate became involved in helping the County Engineer draft the misleading and backdated memos.

In violation of Title 18, United States Code, Section 371.

COUNTS 8-9

(Attempt to Corruptly Persuade Others)

1. On or about the dates set forth below, in Essex County, in the District of New Jersey, and elsewhere, defendant

**JAMES W. TREFFINGER**

did knowingly, willfully and corruptly attempt to persuade another person, with the intent to hinder, delay and prevent the communication to a law enforcement officer of information relating to the commission and possible commission of federal offenses, by:

COUNT	DATE	CONDUCT
8	May 10, 2000	coaching the County Engineer to provide false and misleading information
9	January 23, 2001	coaching Treffinger's Associate to provide false and misleading information

In violation of Title 18, United States Code, Sections 1512(b)(3) and 2.

COUNT 10

(Misleading Conduct to Hinder and Prevent Communication)

1. Paragraphs 12(G) to (N) of Counts 1 to 5 of this Indictment are repeated and realleged as if set forth in full herein.

2. From on or about May 10, 2000 to on or about June 2, 2000, in Essex County, in the District of New Jersey, and elsewhere, defendant

**JAMES W. TREFFINGER**

aided and assisted by others, did knowingly and willfully engage in misleading conduct toward other persons, with the intent to hinder, delay and prevent the communication to a law enforcement officer of information relating to the commission and possible commission of federal offenses, by causing the creation of misleading and backdated documents to be placed in Essex County files to deceive others.

In violation of Title 18, United States Code, Sections 1512(b)(3) and 2.

COUNT 11

(Attempt to Extort Campaign Contributions)

Individuals and Entities

1. Paragraph 1 of Counts 1 to 5 of this Indictment is repeated and realleged as if set forth in full herein.

2. At all times relevant to this Count of this Indictment:

(A) The Essex County Improvement Authority ("ECIA") was a political subdivision of the State of New Jersey that had the power to, among other things, acquire, construct, renovate and install public facilities and issue and purchase bonds, notes and other obligations. The ECIA's primary activities included (i) administering and developing loan and leasing programs and (ii) administering and creating industrial development bond financing. ECIA Employee Numbers 1 and 2 were executive-level employees at the ECIA responsible for, among other things, issues related to agreements with professional-service contractors and the payment of such contractors [hereinafter, Employee Nos. 1 and 2].

Defendant JAMES W. TREFFINGER had caused both Employees to be installed in their positions at the ECIA.

(B) There was a financial advisory firm that was engaged in interstate commerce and specialized in financial advisory services related to debt management, bond issuance and budgeting for public-sector issues [hereinafter, "the Financial Advisory Company"]. There also was an individual who was the president of the Financial Advisory Company [hereinafter, "the Contractor"].

The Financial Advisory Company provided services to the ECIA, including advice with respect to the negotiation, entering into, management and maintenance of bond issues. The Contractor also was a friend of ECIA Employee No. 2.

(C) Treffinger for Senate, Inc. ("TFS") was a principal campaign committee registered with the FEC. Defendant JAMES W. TREFFINGER caused TFS to be established to receive contributions and other funds and defray expenses related to the candidacy of defendant JAMES W. TREFFINGER for the Republican Party nomination for United States Senate in the June, 2002 primary election.

#### Background

3. On or about February 12, 2002, the Contractor attended a meeting in Montclair, New Jersey where the Contractor was informed that a fundraising event would be held to benefit defendant JAMES W. TREFFINGER'S candidacy. The fundraising event was entitled the "Road to the Senate," scheduled for March 26, 2002 from 6:00 p.m. to 8:00 p.m. at an establishment in Whippany, New Jersey at a cost of \$500 per person.

4. After on or about February 12, 2002, and sometime in or about February, 2002, a representative from defendant JAMES W. TREFFINGER'S campaign informed the Contractor via a telephone call that the campaign was looking for the Contractor to raise \$5,000 and that defendant JAMES W. TREFFINGER had told this representative to call the Contractor. The Contractor did not

commit to raising \$5,000 at that time.

5. On or about February 27, 2002, the Contractor caused a \$5,232.50 invoice to be sent to the ECIA in Fairfield, New Jersey, billing the ECIA for services that the Financial Advisory Company had rendered on a proposed project, including a review of the project's financial feasibility.

#### The Attempted Extortion

6. In or about early to mid-March, 2002, approximately several weeks before the March 26<sup>th</sup> fundraising event, defendant JAMES W. TREFFINGER caused ECIA Employee No. 2 to meet with him at his Essex County Government office in Newark, New Jersey. Defendant JAMES W. TREFFINGER told ECIA Employee No. 2 that he needed three of ECIA Employee No. 2's friends (all contractors who, from time to time, rendered professional services to Essex County Government and its agencies), including the Contractor, to contribute to the March 26<sup>th</sup> fundraiser. Defendant JAMES W. TREFFINGER told ECIA Employee No. 2 that these individuals had not done enough to support his campaign. Defendant JAMES W. TREFFINGER further told ECIA Employee No. 2 that these individuals would have to support the fundraiser, or he would direct County business elsewhere. Defendant JAMES W. TREFFINGER further told ECIA Employee No. 2 to deliver this message to these individuals, which included the Contractor.

7. Between on or about mid-March, 2002 and on or about

March 21, 2002, at his Essex County Government office in Newark, New Jersey, defendant JAMES W. TREFFINGER ordered ECIA Employee No. 1 to hold up the ECIA's payment of the Financial Advisory Company's \$5,232.50 invoice for no legitimate reason.

8. Between on or about March 21, 2002 and on or about March 22, 2002, the Contractor received information that the Financial Advisory Company's \$5,232.50 invoice had not been placed on the agenda for consideration at the March 26, 2002 regular meeting of the ECIA Board of Commissioners.

9. Between on or about March 22, 2002 and on or about March 23, 2002, upon the Contractor's inquiry and after leaving a telephone message on the Contractor's voicemail, ECIA Employee No. 1 confirmed during a telephone conversation with the Contractor that the \$5,232.50 invoice had not been placed on the agenda. ECIA Employee No. 1 further informed the Contractor that his hands were tied because defendant JAMES W. TREFFINGER had directed him to hold up the payment of the \$5,232.50 invoice.

10. Between on or about March 23, 2002 and on or about March 26, 2002, and after the Contractor indicated to ECIA Employee No. 1 that the Contractor would continue to support defendant JAMES W. TREFFINGER'S campaign, defendant JAMES W. TREFFINGER instructed ECIA Employee No. 1 to put the invoice on the March 26<sup>th</sup> meeting agenda for approval. ECIA Employee No. 1 followed these instructions, placing a proposed resolution authorizing payment to the Contractor on the March 26th meeting

agenda.

11. On or about March 26, 2002, at their regular meeting, the ECIA Commissioners approved a resolution authorizing the payment of the Financial Advisory Company's \$5,232.50 invoice.

12. On or about March 26, 2002, after the ECIA meeting, the Contractor turned over \$5,000 in campaign-contribution checks (two \$2,000 checks from others, including one check drawn on a New York bank account, and another \$1,000 check) to a TFS representative at the door of defendant JAMES W. TREFFINGER'S fundraising event.

13. On or about March 28, 2002, these campaign contribution checks (totaling \$5,000) were deposited into a TFS bank account at First Union National Bank, New Jersey.

14. On or about April 11, 2002, the ECIA issued a \$5,232.50 check to the Financial Advisory Company, which was deposited in the Company's bank account in Ramsey, New Jersey.

#### The Charge

15. From in or about February, 2002 to in or about April, 2002, in Essex County, in the District of New Jersey, and elsewhere, defendant

**JAMES W. TREFFINGER**

knowingly and willfully did attempt to obstruct, delay and affect interstate commerce by extortion--that is, attempting to obtain approximately \$5,000 in campaign contributions from the

Contractor with consent (A) induced by wrongful and threatened use of fear and (B) under color of official right.

In violation of Title 18, United States Code, Sections 1951(a) and 2.

COUNTS 12-14

(Scheme to Defraud Essex County and its Citizens by Paying for Campaign-Related Services With Essex County Government Funds)

1. Paragraphs 1, 2 and 5 of Counts 1 to 5 are repeated and realleged as if set forth in full herein.

2. From in or about September, 1999 to in or about September, 2001, in the District of New Jersey, and elsewhere, defendant

JAMES W. TREFFINGER

and others knowingly and willfully did devise and intend to devise a scheme and artifice to defraud and to obtain money and property from the County of Essex and its citizens and to deprive the County of Essex and its citizens of defendant JAMES W. TREFFINGER and two Essex County employees' honest services by means of materially false and fraudulent pretenses, representations and promises.

3. The object of this scheme and artifice to defraud was for defendant JAMES W. TREFFINGER: (A) consistently to use the services of two individuals to provide support for his campaign for the Calendar Year 2000 Republican primary election for the nomination for United States Senator and the campaign of another for election to the Essex County Board of Chosen Freeholders (District 4) in November, 1999; (B) to compensate these two individuals with Essex County salaries for this campaign-related assistance and (C) to conceal this arrangement from the public.

4. It was a part of this scheme and artifice to defraud that:

(A) In or about September, 1999, during a telephone conversation between New Jersey and Virginia, defendant JAMES W. TREFFINGER asked Individual No. 1 to work on his 2000 Senate campaign at a salary of approximately \$30,000. On or about September 20, 1999, defendant JAMES W. TREFFINGER caused Individual No. 1 to be placed on the Essex County Government payroll, under the title of data processing programmer trainee, at a starting salary of approximately \$35,000 per year.

(B) On or about October 4, 1999, defendant JAMES W. TREFFINGER caused Individual No. 2 to be placed on the Essex County Government payroll, under the title of data programmer trainee, at a starting salary of \$26,000 per year, after extending Individual No. 2 an offer of employment to conduct campaign-related tasks for defendant JAMES W. TREFFINGER.

(C) From in or about October, 1999 to on or about November 2, 1999, defendant JAMES W. TREFFINGER caused Individual Nos. 1 and 2 to perform tasks to assist the campaign of the Republican candidate for Essex County Freeholder (District 4), who defendant JAMES W. TREFFINGER actively was supporting, including assisting: (i) in the dissemination and mailing of campaign literature; (ii) in the design of maps for Get-Out-The-Vote efforts; (iii) in the design of maps for Election Day activities and (iv) in clerical work (including scheduling, answering telephones and copying) at

the campaign headquarters in West Orange, New Jersey. During this time period, Individual Nos. 1 and 2 provided little meaningful services to Essex County Government.

(D) From in or about November, 1999 to on or about June 6, 2000, defendant JAMES W. TREFFINGER caused Individual Nos. 1 and 2 to perform tasks to assist his own campaign for the Senate nomination, including assisting: (i) in gathering and databasing information regarding Republican political officials, local parties, clubs and committees and potential and actual campaign contributors; (ii) in the dissemination and mailing of campaign literature and (iii) in clerical work (including mail intake, scheduling, answering telephones and copying) at the campaign headquarters in Verona, New Jersey. Individual Nos. 1 and 2 also attended defendant JAMES W. TREFFINGER'S Senate-campaign staff meetings. During this time period, Individual Nos. 1 and 2 provided little meaningful services to Essex County Government.

(E) From in or about January, 2000 to on or about June 6, 2000, to carry out their tasks related to defendant JAMES W. TREFFINGER'S Senate campaign, defendant JAMES W. TREFFINGER caused Individual Nos. 1 and 2 to be situated at his campaign headquarters in Verona, New Jersey. During this time period, Individual Nos. 1 and 2 spent little meaningful time at their Essex County Government work areas at the Essex County Hall of Records in Newark, New Jersey.

(F) From in or about January, 2000 to on or about June 6,

2000, to conceal the fact that Individual Nos. 1 and 2 were working on the campaign during their regular Essex County Government business hours, defendant JAMES W. TREFFINGER caused and permitted Individual Nos. 1 and 2 to use false names during telephone contact (i) with individuals at defendant JAMES W. TREFFINGER'S campaign headquarters and (ii) with government agencies. To further conceal the fact that Individual Nos. 1 and 2 were working on the campaign during times when they should have been working on Essex County Government matters, Individual Nos. 1 and 2 were instructed to remain in the basement of the campaign headquarters during their regular Essex County Government business hours.

(G) From in or about October, 1999 to in or about June 2000, Individual Nos. 1 and 2 received approximately \$29,471 in net salary checks from Essex County Government as detailed below:

DATE	PAYEE	AMOUNT (\$)
10-01-99	Individual No. 1	522.96
10-15-99	Individual No. 1	1,048.93
10-29-99	Individual No. 1	1,048.93
10-29-99	Individual No. 2	1,077.51
11-12-99	Individual No. 1	1,048.93
11-12-99	Individual No. 2	551.90
11-24-99	Individual No. 1	1,048.93
11-24-99	Individual No. 2	551.90
12-10-99	Individual No. 1	1,048.93
12-10-99	Individual No. 2	551.90
12-23-99	Individual No. 1	1,048.93

12-23-99	Individual No. 2	551.90
01-07-00	Individual No. 1	1,051.68
01-07-00	Individual No. 2	551.90
01-21-00	Individual No. 1	1,051.68
01-21-00	Individual No. 2	755.90
02-04-00	Individual No. 1	1,171.00
02-04-00	Individual No. 2	653.90
02-18-00	Individual No. 1	1,051.68
02-18-00	Individual No. 2	653.90
03-03-00	Individual No. 1	1,051.68
03-03-00	Individual No. 2	653.90
03-17-00	Individual No. 1	1,051.68
03-17-00	Individual No. 2	494.37
03-31-00	Individual No. 1	1,051.68
03-31-00	Individual No. 2	494.37
04-14-00	Individual No. 1	1,051.68
04-14-00	Individual No. 2	494.37
04-28-00	Individual No. 1	1,051.68
04-28-00	Individual No. 2	494.37
05-12-00	Individual No. 1	1,051.68
05-12-00	Individual No. 2	494.37
05-26-00	Individual No. 1	1,051.68
05-26-00	Individual No. 2	494.37
06-09-00	Individual No. 1	1,051.68
06-09-00	Individual No. 2	494.37

Individual No. 2 caused his payroll checks to be negotiated through a bank in Texas, primarily by United States Mail.

(H) From in or about January, 2000 to in or about July, 2000, to further conceal Individual Nos. 1 and 2's true roles from the public, defendant JAMES W. TREFFINGER caused reports of his campaign's receipts and disbursements to be filed with government authorities, including the FEC, by United States Mail

that intentionally omitted the receipt and contribution of payment for Individual Nos. 1 and 2's services related to his campaign, including:

Recipient Government Authority	Reporting Period	Mailing Date	Mailing
Secretary of the U.S. Senate	Sept. 26, 1999 to Dec. 31, 1999	Jan. 31, 2000	certified mail
Secretary of the U.S. Senate	Jan. 1, 2000 to March 31, 2000	April 15, 2000	certified mail
Secretary of the U.S. Senate	April 1, 2000 to June 30, 2000	July 15, 2000	certified mail

(I) In or about June, 2000, despite the fact that Individual Nos. 1 and 2 had provided little meaningful services to Essex County Government from September, 1999 to on or about June 6, 2000 and in light of the fact that Individual Nos. 1 and 2 had worked on campaign-related matters for defendant JAMES W. TREFFINGER, defendant JAMES W. TREFFINGER caused Individual Nos. 1 and 2 to receive pay raises--Individual No. 2 received a \$13,000 per year raise to a base salary of \$38,000 and Individual No. 1 received a \$3,000 per year raise to a base salary of \$38,000, both effective on or about July 3, 2000. Defendant JAMES W. TREFFINGER told Individual Nos. 1 and 2 that they were receiving such raises at a luncheon gathering at a restaurant in Verona, New Jersey shortly after the June 6, 2000 primary election.

(J) In or about September, 2001, to further conceal Individual Nos. 1 and 2's true roles, defendant JAMES W.

TREFFINGER caused Individual Nos. 1 and 2 to be issued an award for their perfect attendance during the calendar year 2000, despite the fact that Individual Nos. 1 and 2 had spent no meaningful time at their Essex County Government work areas or on Essex County Government business from in or about January, 2000 to on or about June 6, 2000. To this end, defendant JAMES W. TREFFINGER wrote a September 26, 2001 letter notifying them of this award and caused that letter to be placed in their personnel files.

5. On or about the dates listed below, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, defendant

**JAMES W. TREFFINGER**

knowingly and willfully placed and caused to be placed in a post office and authorized depository for mail, and caused to be delivered thereon, certain mail matter, to be sent and delivered by the United States Postal Service, and transmitted and caused to be transmitted in interstate commerce by means of wire communications certain signs, signals and sounds, as described below:

COUNT	DATES	MAILINGS OR WIRE TRANSMISSIONS
12	In or about September, 1999	Interstate telephone call
13	From on or about November 1, 1999 to on or about May 26, 2000	16 instances of mailing or transmitting via interstate wire from New Jersey Individual No. 2's salary checks to be deposited into a bank account of a Texas bank

14	From on or about Jan. 31, 2000 to on or about July 15, 2000	3 instances of certified mailings of reports pertaining to defendant JAMES W. TREFFINGER'S campaign's receipts and disbursements from New Jersey to Washington D.C.
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In violation of Title 18, United States Code, Sections 1341, 1343, 1346 and 2.

COUNTS 15-18

(Making False Statements and Documents in FEC Matters)

1. Paragraphs 1, 2 and 5 of Counts 1 to 5 and paragraph 4 of Counts 12 to 14 of this Indictment are repeated and realleged as if set forth in full herein.

2. There was a family-owned and operated group of catering businesses headquartered in various locations in Essex County [hereinafter, "the Caterers"]. One of the Caterers' corporations contracted with Essex County to provide meals and other food services to the Essex County Courthouse, the Essex County College, the Essex County Jail and the Essex County Hospital. This Caterer received at least approximately \$7 million of its annual revenues from its contract with Essex County Government.

3. The Treasurer filed quarterly, pre-primary and year-end reports from the third quarter of 1999 through the fourth quarter of 2000. FEC regulations (i) required that all non-monetary contributions that had value were to be reported as contributions and (ii) prohibited corporate contributions. Catering services and the services of campaign workers paid for by the County of Essex were contributions that were required to be reported to the FEC.

Free Catering Services

4. From in or about February, 2000 to in or about June, 2000, the Caterer's corporation provided free food and catering

services to defendant JAMES W. TREFFINGER'S 2000 Senate campaign as set forth below:

DATE	EVENT/SERVICES PROVIDED	APPROX. COST
02-03-00	1,500 box lunches for Chamber of Commerce Train Trip with Logo, "Paid For by Treffinger for Senate, Inc."	\$6,495
03-13-00	Gourmet breakfast for approximately 20 people	\$1,007
03-21-00	Gourmet hors d'oeuvres for approximately 200 people	\$3,000
05-21-00	Gourmet hors d'oeuvres with open bar and carving station for approximately 50 people	\$1,600
05-23-00	Buffet dinner with drinks for fundraiser/birthday party for defendant JAMES W. TREFFINGER for approximately 450 at Caldwell Community College	\$6,000
06-06-00	approximately 120 box lunches for campaign headquarters	\$810
06-06-00	Election night buffet, hors d'oeuvres, drinks and dinner for approximately 300 people, including tent rental, special phone banks and private dinners	\$4,638

Campaign Support Services

5. From in or about November, 1999 to on or about June 6, 2000, defendant JAMES W. TREFFINGER arranged for, facilitated and permitted Individual Nos. 1 and 2 to provide services to his campaign in exchange for salary payments from Essex County Government as set forth in paragraph 4 of Counts 12 to 14 of this Indictment.

The Charges

6. On or about the following issue dates, in the District

of New Jersey and elsewhere, in a matter within the jurisdiction of the Executive Branch of the Government of the United States, defendant

**JAMES W. TREFFINGER**

knowingly and willfully aided, assisted and caused another to make materially false, fictitious and fraudulent statements and representations and to make and use false writings and documents knowing the same to contain materially false, fictitious and fraudulent statements and entries--namely, the Treasurer's declarations that the reports described below were true, correct and complete, when, in fact, the contributions described below intentionally were omitted:

COUNT	REPORTING PERIOD	ISSUE DATE	OMITTED CONTRIBUTIONS
15	Sept. 26, 1999 to Dec. 31, 1999	Jan. 31, 2000	campaign support services
16	Jan. 1, 2000 to March 31, 2000	April 14, 2000	campaign support and catering services
17	April 1, 2000 to May 17, 2000	May 24, 2000	campaign support and catering services
18	April 1, 2000 to June 30, 2000	July 14, 2000	campaign support and catering services

In violation of Title 18, United States Code, Sections 1001 and 2.

COUNT 19

(Conspiracy to Permit TREFFINGER'S Hair Stylist to Obtain a County of Essex Salary in Exchange for no Meaningful Services)

1. Paragraph 1 of Counts 1 to 5 of this Indictment is repeated and realleged as if set forth in full herein.

2. At all times relevant to this Count of this Indictment:

(A) There was an individual who was the proprietor of a popular hair salon for men in Cedar Grove, New Jersey [hereinafter, the "Hair Stylist"]. The Hair Stylist was a long-time friend of defendant JAMES W. TREFFINGER, having vacationed together in Italy with defendant JAMES W. TREFFINGER and others in or about November, 1998, and was his hair stylist.

(B) In or about June, 1995, the Hair Stylist: (i) obtained the position of part-time hair dresser in the Essex County Department of Health & Rehabilitation; (ii) was assigned to the Essex County Hospital Center in Cedar Grove, New Jersey and (iii) was supposed to work at the Hospital Center for approximately 19 to 23 hours per week.

3. During the one-year periods relevant to this Count of this Indictment, Essex County Government and the Hospital Center received benefits under Federal programs that involved a grant, contract, subsidy and other forms of Federal assistance in an amount in excess of \$10,000.

4. From in or about February, 1995 to on or about April 22, 2002, in Essex County, in the District of New Jersey and elsewhere, defendant

**JAMES W. TREFFINGER**

did knowingly and willfully conspire with the Hair Stylist and others to embezzle, steal, obtain by fraud, and otherwise without authority convert to their own use, and to intentionally misapply money and property--namely, the Hair Stylist's Essex County Government pay checks which amounted to \$5,000 or more each year--that was owned by and under the care, custody and control of Essex County Government and the Essex County Hospital Center, and which fraudulent activity implicated a federal interest, contrary to Title 18, United States Code, Section 666(a)(1)(A).

5. It was the object of the conspiracy that defendant **JAMES W. TREFFINGER** agreed with others, including the Hair Stylist, to have the Hair Stylist obtain a non-bona fide Essex County Government salary while providing no meaningful services to Essex County Government.

6. It was a part of the conspiracy that the Hair Stylist provided no meaningful services as a hair dresser but still collected his Essex County salary, which ranged from approximately \$14,000 to \$17,000 per year plus benefits.

7. It was a further part of the conspiracy that false documents, purporting to detail the Hair Stylist's work hours and favorable employee performance reviews were generated and kept at Essex County Government offices.

8. It was a further part of the conspiracy that defendant **JAMES W. TREFFINGER** permitted the Hair Stylist to continue to draw this Essex County Government salary despite knowing that the

Hair Stylist was providing no meaningful services.

OVERT ACTS

In furtherance of this conspiracy and to effect its objects, the following overt acts were committed in the District of New Jersey and elsewhere:

A. [Overt Act Numbers 1 to 117] From on or about October 31, 1997 to on or about April 12, 2002, defendant JAMES W. TREFFINGER caused 117 biweekly payroll checks to be issued to the Hair Stylist under defendant JAMES W. TREFFINGER'S facsimile signature.

B. [Overt Act Numbers 118 to 234] The Hair Stylist caused these payroll checks to be negotiated at various New Jersey banks.

In violation of Title 18, United States Code, Section 371.

Count 20

(Conspiracy to Fraudulently Misrepresent Campaign Authority)

1. Paragraph 1 of Counts 1 to 5 and paragraph 2(C) of Count 11 of this Indictment are repeated and realleged as if set forth in full herein.

2. At all times relevant to this Count of this Indictment:

(A) There was a senior Campaign Staff Member who worked for defendant JAMES W. TREFFINGER'S 2002 campaign for Senate organization, Treffinger for Senate [hereinafter, "the Campaign Staffer"].

(B) There were multiple candidates for the Republican nomination for United States Senate in 2002, including Candidate Nos. 1 and 2 who were from southern New Jersey.

(C) There was a Consultant who was in the business of assisting political candidates by placing high-volume political telephone messages to private residences [hereinafter, "the Consultant"].

3. From on or about January 31, 2002 to on or about February 4, 2002, in Essex County, in the District of New Jersey and elsewhere, defendant

**JAMES W. TREFFINGER**

did knowingly and willfully conspire with the Campaign Staffer and others to fraudulently misrepresent himself and a committee and organization acting under his control as speaking and otherwise acting for and on behalf of Candidate No. 1 on a matter which was damaging to Candidate No. 1.

4. It was the object of the conspiracy that defendant JAMES W. TREFFINGER and others, including the Campaign Staffer, with the intent to create discontent and negative opinion among southern New-Jersey Republican voters toward their regional candidates, Candidate Nos. 1 and 2, caused thousands of telephone calls to be placed to southern New Jersey Republican voters, which calls were fraudulently misrepresented to be placed for, and on behalf of, Candidate No. 1 and which calls were intended to be damaging to Candidate No. 1.

5. It was a part of the conspiracy that:

(A) Defendant JAMES W. TREFFINGER agreed that the telephone calls would consist of a recorded message by a female caller reading a script developed by defendant JAMES W. TREFFINGER and others, which message would consist of an "attack ad" intended negatively to portray Candidate No. 2.

(B) Defendant JAMES W. TREFFINGER agreed to cause the recipients of the calls to form a negative opinion of Candidate No. 1 by timing the calls to occur during the 2002 Super Bowl game and to mislead the recipients of the calls into believing that Candidate No. 1 was engaging in negative campaigning against Candidate No. 2.

(C) In order to further mislead the recipients of the telephone calls into believing that the calls had been placed for, and on behalf of, Candidate No. 1, the script developed by defendant JAMES W. TREFFINGER and others negatively attacked Candidate No. 2 on specific issues.

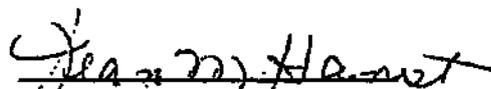
(D) Defendant JAMES W. TREFFINGER and others caused the caller to use a pseudonym to conceal the caller's identity and affiliation with defendant JAMES W. TREFFINGER and his committee and organization.

(E) To conceal defendant JAMES W. TREFFINGER'S and his committee's and organization's identity as the source of the telephone calls, defendant JAMES W. TREFFINGER and others planned to hide the payment of the Consultant's invoice for placing the calls by (i) delaying the reporting of the expenditure to the FEC until the following reporting period and (ii) concealing the existence of the Consultant's charges for this service by hiding it within a larger future invoice.

(F) To conceal defendant JAMES W. TREFFINGER'S committee's and organization's identity as the source of the telephone calls, defendant JAMES W. TREFFINGER and others publicly denied any responsibility for placing the calls and issued a "Clean Campaign Pledge."

In violation of Title 2, United States Code, Section 441h(2).

  
CHRISTOPHER J. CHRISTIE  
UNITED STATES ATTORNEY

  
FOREPERSON



Karin Riecker <ksr@ktlawyers.com> on 05/12/2003 05:08:13 PM

To: mmarinelli@fec.gov  
cc:

Subject: Request for Advisory Opinion -- James Treffinger

Mr. Marinelli,

Pursuant to our telephone conversation today, I am writing to confirm that Mr. James W. Treffinger is not presently a candidate for federal office, nor is he contemplating running for federal office in the future.

I hope this information is of assistance to you. Please do not hesitate to contact me again if I can provide you with any further relevant information.

Very truly yours,

Karin Riecker

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