

MAY 04 2009

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6128

DATE COMPLAINT FILED: 11/10/08

DATE OF NOTIFICATION: 11/18/08

LAST RESPONSE RECEIVED: 12/02/08

DATE ACTIVATED: 02/03/09

STATUTE OF LIMITATIONS: 6/11/12-  
10/05/13

**COMPLAINANT:**

James Lucas

**RESPONDENTS:**

Craig for U.S. Senate and Kay O'Riordan,  
in her official capacity as treasurer  
Larry E. Craig

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 439a  
11 C.F.R. § 113.1(g)(1)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that former U.S. Senator from Idaho Larry E. Craig improperly used in excess of \$213,000 of campaign funds for personal use for legal and media relations fees stemming from an arrest that occurred June 11, 2007, at the Minneapolis International Airport. The Complaint further suggests that Craig reimburse the campaign funds or be subject to personal income tax.

In response, Craig asserts that the Commission should not take any action against him because he made a good faith effort to ascertain the legality of using campaign funds for these expenses, and submitted a letter of advice from his counsel in support of this

1 assertion.<sup>1</sup> Based upon the Complaint, Response, and other available information, it  
2 appears there is a sufficient basis to investigate this matter. Therefore, we recommend  
3 that the Commission find reason to believe that Larry E. Craig, Craig for U.S. Senate, and  
4 Kay O'Riordan, in her official capacity as treasurer, converted campaign funds to  
5 personal use in violation of 2 U.S.C. § 439a(b) and authorize the use of compulsory  
6 process.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8  
9 **A. Factual Background**

10  
11 **1. Minnesota arrest, guilty plea and sentencing**

12  
13 During the pertinent time period, Craig was a sitting U.S. Senator from Idaho. On  
14 June 11, 2007, while at the Minneapolis International Airport awaiting a scheduled flight  
15 to Washington, D.C., Craig was arrested and charged with violating Minnesota criminal  
16 statute § 609.72 disturbing the peace-disorderly conduct and § 609.746 interference with  
17 privacy. According to public records, Craig entered a guilty plea to disorderly conduct  
18 on August 8, 2007. Pursuant to the plea agreement, Craig received a sentence of 10 days  
19 jail time and a fine of \$1,000; the jail time and half of the fine were suspended  
20 conditioned upon one year of unsupervised probation. Craig was not represented by  
21 counsel during this process.

22 On August 27, 2007, the Washington, D.C. newspaper, *Roll Call* first reported the  
23 details surrounding Craig's arrest and guilty plea. See John McArdle, *Craig Arrested,*  
24 *Pleads Guilty Following Incident in Airport Restroom*, ROLL CALL, August 27, 2007,

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<sup>1</sup> Craig's response does not indicate whether he was also responding on behalf of his principal campaign committee, Craig for U.S. Senate, which was also notified of the Complaint and has not responded separately.

1 available at <http://www.rollcall.com/news/breakingnews/19763-1.html>. That same day,  
2 Craig issued a press release denying any inappropriate conduct and questioning the  
3 correctness of his guilty plea without the advice of counsel. See News Release from U.S.  
4 Senator Larry Craig: Statement of Senator Larry Craig, <http://craig.senate.gov/press/>,  
5 August 27, 2007. National media highlighted the incident and Craig held a press  
6 conference on September 1 announcing his intent to resign from the Senate effective  
7 September 30, 2007. See News Release from U.S. Senator Larry Craig: Senator Craig  
8 Announces Intent to Resign from the Senate, <http://craig.senate.gov/press/>, September 1,  
9 2007 ("News Release, September 1, 2007"). Craig also reportedly announced that he had  
10 retained the Washington, D.C. law firm Sutherland, Asbill & Brennan to serve as lead  
11 counsel in his effort to overturn the conviction, and the Minnesota firm of Kelly &  
12 Jacobson to serve as state counsel for this effort. Finally, Craig reportedly hired the crisis  
13 management firm of Impact Strategies to handle all press inquiries regarding the arrest,  
14 conviction, and the legal efforts to overturn his conviction. See *Craig Hires Attorneys,*  
15 *Well-Known Crisis Manager*, IdahoStatesman.com, September 1, 2007, available at  
16 <http://www.idahostatesman.com/larrycraig/v-print/story/147883.html>; see also News  
17 Release, September 1, 2007. Within days of Craig's September 1 announcement, the  
18 *Idaho Statesman* reported that Craig was reconsidering his decision to resign on  
19 September 30, contingent upon his ability to overturn the state conviction. See Gregory  
20 Hahn and Erika Bolstad, *Craig May Not Quit After All, if He's Cleared of Charges,*  
21 *Spokesman Says*, IdahoStatesman.com, September 4, 2007, available at  
22 <http://www.idahostatesman.com/1264/story/149810.html>.

1 Counsel filed a motion to overturn the guilty plea in Minnesota state district court,  
2 which the court rejected on October 4, 2007. Craig issued another press release noting  
3 disappointment with the state court's ruling and also providing that he would "continue  
4 [his] effort to clear [his] name in the Senate Ethics Committee -- something that is not  
5 possible if [he is] not serving in the Senate." See News Release from U.S. Senator Larry  
6 Craig: Craig Reaction to Court Ruling, <http://craig.senate.gov/press/>, October 4, 2007.  
7 Craig remained in office until the conclusion of his term and retired from the U.S. Senate  
8 in January of 2009.

9 Craig appealed the district court's decision to the Minnesota Court of Appeal,  
10 which rejected Craig's appeal on December 9, 2008. On January 9, 2009, Minnesota  
11 counsel reportedly announced that Craig would not appeal to the state Supreme Court and  
12 would cease all further efforts to withdraw his guilty plea. See Ben Pershing, *Ex-Senator*  
13 *Craig Abandons Efforts to Withdraw Guilty Plea*, WASH. POST, January 9, 2009, at A02,  
14 available at [www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/08/AR2009010803482_pf)  
15 [dyn/content/article/2009/01/08/AR2009010803482\\_pf](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/08/AR2009010803482_pf).

## 16 2. U.S. Senate Select Committee on Ethics

17 As Craig's conduct became a focus of the national media, the Republican Senate  
18 leadership reportedly requested that the U.S. Senate Select Committee on Ethics ("SCE")  
19 initiate an investigation. See Betsy Z. Russell, *ETHICS PANEL REBUFFS CRAIG*, (2008)  
20 <http://www.spokesmanreview.com/sections/larrycraig/?ID=208328> ("Russell, ETHICS  
21 PANEL REBUFFS CRAIG"). Craig announced that he had retained counsel, Stan Brand, of  
22 the Brand Law Group in Washington, D.C., to respond to the SCE inquiry. See News  
23 Release, September 1, 2007. Counsel Brand argued that Craig's arrest and conviction

1 was "purely personal conduct unrelated to the performance of official Senate duties," and  
2 that because his actions "were unrelated to his duties in Congress," the SCE did not have  
3 jurisdiction and therefore reviewing this matter would be unduly burdensome for the  
4 Committee. Letter from Stan Brand, Counsel to Larry Craig, to U.S. Senate Select  
5 Committee on Ethics (Sept. 5, 2007). The SCE reportedly rejected counsel's argument  
6 but suggested it would close its investigation if Craig resigned pursuant to his previous  
7 statements. See Russell, ETHICS PANEL REBUFFS CRAIG.

8 On February 13, 2008, the SCE issued a "Public Letter of Admonition"  
9 unanimously concluding that among other matters, Craig had violated Senate Rule 38.2,  
10 which prohibits the conversion of campaign funds to personal use. Specifically, the SCE  
11 wrote:

12 [T]he *Senate Ethics Manual* states that 'Members, officers, or employees  
13 may pay legal expenses incurred in connection with their official duties  
14 with funds of a Senator's principal campaign committee, *but only if such*  
15 *payment is approved by the Committee.*' (Emphasis added.) It appears  
16 that you have used over \$213,000 in campaign funds to pay legal (and,  
17 apparently, 'public relations') fees in connection with your appeal of  
18 your criminal conviction and in connection with the preliminary inquiry  
19 before the Committee in this matter. It appears that some portion of these  
20 expenses may not be deemed to have been incurred in connection with  
21 your official duties, either by the Committee or by the Federal Election  
22 Commission (which has concurrent jurisdiction with the Committee on the  
23 issue of conversion of a Senator's campaign funds to personal use). However,  
24 without here reaching the issue of what portion of your legal expenses in this  
25 matter may be payable with funds of your principal campaign committee, it is  
26 clear that you never sought the Committee's approval, as required, to use  
27 campaign funds for these purposes. You should also take careful note that the  
28 Committee will consider any further use of your campaign funds for legal  
29 expenses without the Committee's approval to be conduct demonstrating your  
30 continuing disregard of ethics requirements.

31  
32 See *Public Letter of Admonition*, United States Senate (Feb. 13, 2008) (Select Committee  
33 on Ethics). The SCE's letter of public admonition states that Craig had disbursed over

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1 \$213,000 on legal fees to overturn his state criminal conviction. According to Craig for  
2 U.S. Senate disclosure reports, however, by the date of Craig's admonishment,  
3 February 13, 2008, Craig had disbursed over \$300,000 in campaign funds for legal fees  
4 to the Sutherland and Kelly firms. Eight months later Craig disbursed an additional  
5 \$55,000 to Kelley & Jacobson for legal fees.<sup>2</sup>

6 3. Legal and public relations fees

7 Craig for U.S. Senate ("the Committee"), is the principal campaign committee for  
8 Larry Craig. The Committee's itemized disclosure reports reflect that from July 9, 2007,  
9 through October 5, 2008, the Committee disbursed in excess of \$480,000 for legal and  
10 media relations fees as follows.

DATE	PAYEE	AMOUNT	PURPOSE
7/09/2007	Sutherland, Asbill & Brennan	\$37,350.50	P. R. Legal Fees
9/09/2007	Brand Law Group PC	\$22,951.80	Legal Consultant
10/29/2007	Sutherland, Asbill & Brennan	\$7,373.00	Legal Fees
10/29/2007	Brand Law Group PC	\$23,384.77	Legal Fees
10/29/2007	Sutherland, Asbill & Brennan	\$74,075.84	Legal Fees
11/11/2007	Brand Law Group PC	\$30,224.70	Legal Fees
12/05/2007	Kelly & Jacobson	\$22,032.87	Legal Fees
12/17/2007	Sutherland, Asbill & Brennan	\$17,647.08	Legal Fees
1/21/2008	Brand Law Group PC	\$24,453.83	Legal Fees
1/21/2008	Sutherland, Asbill & Brennan	\$67,468.78	Legal Fees
2/03/2008	Sutherland, Asbill & Brennan	\$80,695.37	Legal Fees
10/05/2008	Kelly & Jacobson	\$55,000.00	Legal Fees
10/05/2008	Impact Strategies	\$20,000.00	Public relations consult
	Total Amount	\$482,658.54	

11  
12 The law firms reportedly retained to overturn Craig's conviction, Sutherland, Asbill  
13 & Brennan and Kelly & Jacobson, received \$361,643.44, and the Brand Law Group,

<sup>2</sup> We have not located any publicly available information on the subject of whether Craig obtained the approval of the SCE prior to this disbursement.

1 retained to address the SCE inquiry, received \$101,015.10. Finally, the Committee made  
2 a \$20,000 disbursement to Impact Strategies, the crisis management firm, on October 5,  
3 2008, reportedly for public relations services related to the Minnesota conviction.

4 **B. Legal Analysis**

5 The Federal Election Campaign Act of 1971, as amended, ("the Act") provides  
6 that contributions accepted by a candidate may be used by the candidate for ordinary and  
7 necessary expenses incurred in connection with duties of the individual as a holder of  
8 Federal office. 2 U.S.C. § 439a(a)(2). Such campaign funds, however, shall not be  
9 converted to "personal use" by any person. 2 U.S.C. § 439a(b)(1). "Personal use" is  
10 defined as the use of campaign funds of a present or former candidate "to fulfill any  
11 commitment, obligation or expense of a person that would exist irrespective of the  
12 candidate's election or individual duties as a holder of Federal office."

13 2 U.S.C. § 439a(b)(2). The Act itemizes certain uses of campaign funds that will be  
14 considered *per se* personal use, such as home mortgage, rent or utility payments; clothing  
15 purchases; vacation or other noncampaign-related trip; household food items; and tuition  
16 payments. *See id.*

17 By contrast, the Commission will analyze on a case-by-case basis whether the use  
18 of campaign account funds for the payment of legal expenses constitutes personal use.  
19 11 C.F.R. § 113.1(g)(1)(ii)(A). Expenses which the candidate can reasonably  
20 demonstrate result from campaign or officeholder duties will not be considered personal  
21 use. *See* Final Rule and Explanation and Justification, Personal Use of Campaign Funds,  
22 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) ("Personal Use E&J"). Legal fees and expenses,  
23 however, "will not be treated as though they are campaign or officeholder related merely

1 because the underlying proceedings have some impact on the campaign or officeholder's  
2 status." *Id.* at 7868. To further demonstrate this distinction, the Commission noted that  
3 "legal expenses associated with a divorce or charge of driving while under the influence  
4 of alcohol will be treated as personal, rather than campaign or officeholder related." *Id.*

5 In response to the Complaint's allegation that Craig's use of campaign funds for  
6 legal fees constituted personal use and thus violated the Act, Craig provided a letter of  
7 advice to him from his legal counsel dated October 4, 2007, that he asserts he relied upon  
8 in making the disbursements. The communication indicates that Craig requested "advice  
9 regarding [his] use of campaign funds to pay for expenses incurred for legal  
10 representation before the Senate Ethics Commission and in Minnesota State Court."

11 Response Attachment at 1. The communication also advises Craig that all matters before  
12 the Senate Ethics Committee and all proceedings in Minnesota state court involving the  
13 criminal charge may be paid wholly with campaign funds. *Id.*

14 There are three categories of campaign disbursements at issue: for legal fees in  
15 connection with the SCE inquiry, for legal fees to overturn the misdemeanor conviction,  
16 and for public relations fees. We will address each in turn.

17 1. Campaign funds used in connection with the U.S. Senate Select  
18 Committee on Ethics Inquiry  
19

20 The Committee's disclosure reports reflect that over \$100,000 in campaign funds  
21 was disbursed to the Brand Law Group for legal fees reportedly for representation in the  
22 SCE inquiry. Available information suggests that Brand's representation was limited to  
23 the SCE inquiry. The Commission has previously concluded that legal fees incurred to  
24 respond to any inquiry by the Senate Ethics Committee or the House Ethics Committee  
25 are ordinary and necessary expenses directly related to an individual's duties as a Federal



1 officeholder; accordingly, the use of campaign funds for such purposes is not conversion  
2 to personal use because these expenses would not exist "irrespective" of the  
3 officeholder's duties. See Advisory Opinions 2008-07 (Vitter) and 2006-25 (Kolbe);  
4 2 U.S.C. § 439a(a)(2) and (b)(2). Thus, to the extent that the entirety of the legal fees  
5 incurred with the Brand Law Group are directly related to the SCE inquiry, it appears that  
6 Craig's disbursement of \$101,015.10 to the Brand Law Group was a permissible use of  
7 campaign funds.

8 2. Campaign funds used to pay legal fees to overturn the  
9 misdemeanor conviction

10  
11 The Committee disbursed in excess of \$350,000 in campaign funds to Sutherland,  
12 Asbill & Brennan and Kelly & Jacobson, reportedly for legal fees associated with Craig's  
13 efforts to overturn his Minnesota conviction.<sup>3</sup> Pursuant to its regulations, the  
14 Commission has considered on a case-by-case basis whether the use of campaign funds  
15 for legal expenses constitutes personal use. See 11 C.F.R. § 113.1(g)(1)(ii).

16 In a long line of Advisory Opinions, the Commission has determined that legal  
17 fees and expenses incurred for representation in legal proceedings regarding any  
18 allegations that are not related to campaign activities or duties as a Federal officeholder  
19 would constitute an impermissible personal use of campaign funds. In Advisory Opinion  
20 1996-24 (Cooley), the Commission determined that the use of campaign funds for legal  
21 expenses "incurred to rectify, remedy, or present legal defense to, possible liabilities, or  
22 violations of law that are unrelated to his campaign or officeholder status" would be a

<sup>3</sup> This figure includes a July 9, 2007, disbursement to Sutherland, Asbill & Brennan in the amount of \$37,350.50 for "P.R. Legal Fees." The available information is limited as to what portion, if any, of the fees assessed were for legal counsel to respond to public relations inquiries, or legal representation seeking to overturn the state conviction.

1 conversion of funds for personal use. The requestor of AO 1996-24 sought the  
2 Commission's approval to use campaign funds to pay legal fees and expenses to  
3 investigate, research, and communicate with State and Federal agencies in connection  
4 with responding to press allegations of the unlawful receipt of Veterans benefits and  
5 other matters. Although the Commission concluded that it was permissible to use  
6 campaign funds for legal services to refute the press allegations, the Commission  
7 determined that campaign funds could not be spent to defend or respond to the underlying  
8 Veterans Affairs controversy because the purpose was not campaign-related or office-  
9 related, and any obligations regarding that effort would exist irrespective of officeholder  
10 status and so the use of campaign funds for that purpose was impermissible. AO 1996-  
11 24. In Advisory Opinion 2005-11 (Cunningham), the Commission reiterated the  
12 permissible use of campaign funds to pay legal fees stemming from a grand jury  
13 investigation into the candidate's fundraising activity and conduct in office because the  
14 allegations were directly related to the candidate's campaign and status as a Federal  
15 officeholder. However, the Commission cautioned that the use of campaign funds in  
16 defense of any investigation findings that were unrelated to candidate/officeholder duties  
17 would be an impermissible use. *See also* Advisory Opinion 2003-17 (Treffinger).

18 According to the letter of advice Senator Craig received from his legal counsel,  
19 Craig could use campaign funds to pay legal fees incurred to overturn the Minnesota  
20 conviction because, "any obligations or expenses incurred as a result of that official  
21 travel, including any legal fees stemming from events that occurred during the trip, would  
22 not exist irrespective of Senator Craig's duties as a federal officeholder." Response  
23 Attachment at 1 [Emphasis in original]. Specifically, Craig was in the Minneapolis

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1 airport en route to his Senate Office in Washington, D.C. According to counsel, but for  
2 actions taken in furtherance of performing his senatorial duties, he would not have been  
3 in the airport and therefore would not have been arrested. *Id.* at 2. However, even if  
4 Craig's presence in Minnesota was in connection with travel to Washington, D.C., the  
5 conduct that is the subject of his arrest and conviction and his spending on legal fees  
6 lacked the necessary nexus to Craig's campaign activities or his duties as a Federal  
7 officeholder, or both. *See* AO 2005-11 (Cunningham).

8 According to the Committee's disclosure reports, the Committee disbursed  
9 \$361,643.44 to the Sutherland and Kelly firms for "legal fees." The available  
10 information suggests that both firms' legal representation were limited to overturning the  
11 Minnesota state conviction. The campaign funds disbursed by Craig to the Sutherland  
12 and Kelly firms to overturn the conviction are similar to "legal expenses associated with a  
13 divorce or charge of driving while under the influence of alcohol," expenses that the  
14 Commission stated "will be treated as personal, rather than campaign or officeholder  
15 related." *See* Personal Use E&J at 7868. The Commission determined that such  
16 expenses would exist irrespective of the status of the individual as a candidate or  
17 officeholder, and so would not be a permissible use of campaign funds even though the  
18 underlying legal proceedings may affect an officeholder's status. *See id.* As such, Craig  
19 could not use campaign funds to pay the Sutherland and Kelly firms' legal fees even if  
20 the arrest and conviction impacted his status as a Federal officeholder. *Id.* This  
21 conclusion is consistent with the Commission's advisory opinions determining that any  
22 use of campaign funds to pay for legal fees that are not campaign or Federal officeholder  
23 related, and would exist irrespective of officeholder status, constitute an impermissible

1 use of campaign funds for personal use and therefore violate the Act. *See* AO 1996-24.  
2 As such, any use of campaign funds by Craig to pay for obligations or expenses he  
3 incurred to overturn the conviction would be a conversion of campaign funds to personal  
4 use. Thus, to the extent that the entirety of the campaign funds disbursed to the law firms  
5 Sutherland, Asbill & Brennan and Kelly & Jacobson were used to pay legal fees to  
6 overturn the Minnesota state conviction, they constitute impermissible use and were  
7 converted to personal use in violation of 2 U.S.C. § 439a(b)(1).

8 3. Campaign funds used to pay public relations fees

9 The Committee also disclosed paying \$20,000 to Impact Strategies for public  
10 relations services. The letter of advice Craig received from his legal counsel does not  
11 address this spending, which took place on October 5, 2008, a year after the date of the  
12 communication. Impact Strategies is a corporate communications firm specializing in  
13 strategic and crisis communication services. *See* <http://www.impactstrategiesllc.com/>.  
14 Impact Strategies was reportedly retained to address press inquiries regarding Craig's  
15 state conviction and the legal efforts to overturn this conviction. *See Craig Hires*  
16 *Attorneys, Well-Known Crisis Manager*, IdahoStatesman.com, September 1, 2007,  
17 available at <http://www.idahostatesman.com/larrycraig/v-print/story/147883.html>; *see*  
18 *also* News Release, September 1, 2007. The available information does not suggest that  
19 Impact Strategies was retained to provide legal services to Craig or the Committee.

20 The Commission has determined that authorized committees may use campaign  
21 funds to pay legal fees and expenses incurred to prepare substantive responses to the  
22 press including preparing press releases, monitoring media allegations, and responding to  
23 media requests for comments, in view of the fact that the activities of candidates and

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1 officeholders may receive heightened scrutiny and attention in the news media because of  
2 their status as candidates and officeholders. *See* Advisory Opinion 1998-01 (Hilliard).  
3 However, when the press-reported matter is not directly related to the campaign or  
4 Federal officeholder's duties, the Commission has determined that legal fees and  
5 expenses incurred in preparing substantive press responses are at most 50% payable with  
6 campaign funds. *See id.* Here, the Committee paid Impact Strategies for public relations  
7 consulting. Although the Commission has not opined directly on the use of campaign  
8 funds for the payment of fees for public relations specialists (as opposed to attorneys  
9 playing a public relations role) to provide substantive responses to press inquiries, this  
10 expense may be analogous to the permissible use of campaign funds for legal fees and  
11 expenses for this purpose. Thus, it appears that a portion of the Committee's funds  
12 disbursed to Impact Strategies for public relations consulting may be payable with  
13 campaign funds.

14 Finally, Craig asserts that the Commission should take no action against him  
15 because he relied upon the advice of counsel regarding the legality of using campaign  
16 funds to pay all legal and media fees stemming from the arrest and conviction. Reliance  
17 upon the advice of counsel does not relieve Craig of liability. *See FEC v. Friends of Jane*  
18 *Harman*, 59 F. Supp. 2d 1046, 1058 (C.D. Cal. 1999). However, reliance upon counsel  
19 would usually prevent a determination that a violation is knowing and willful, which we  
20 are not recommending in this matter. *See* 2 U.S.C. § 437g(a)(5)(B). Craig's reliance  
21 upon counsel may be considered as a mitigating factor during conciliation. *See* MUR  
22 5321 (Minnesotans for Janet Robert) (Commission approved 50% reduction in civil  
23 penalty based on reliance on advice of counsel).

1       Based on the foregoing, we recommend that the Commission find reason to  
2 believe that Larry E. Craig, Craig for U.S. Senate, and Kay O'Riordan in her official  
3 capacity as treasurer, violated 2 U.S.C. § 439a(b) by converting campaign funds to  
4 personal use.

5       **III.   INVESTIGATION**

6       This matter will require a limited investigation in order to ascertain the exact  
7 amount in violation, i.e., to what extent the Committee's disbursements for legal fees to  
8 Sutherland, Asbill & Brennen and Kelly & Jacobson (\$361,643.44) paid for legal  
9 representation to overturn Senator Craig's August 8, 2007, conviction and thus were  
10 converted to personal use. We will seek to ascertain the amount in violation arising from  
11 the Committee's payment to Impact Strategies for public relations consulting fees  
12 (\$20,000) and confirm what portion, if any, of the Committee's July 9, 2007,  
13 disbursement to Sutherland, Asbill & Brennen (\$37,350.50) for "P.R. Legal Fees" paid  
14 for legal representation to overturn Senator Craig's conviction and thus was converted to  
15 personal use. We would also ascertain to what extent the disbursements paid for  
16 substantive responses to press inquiries regarding the legal efforts to overturn the  
17 criminal conviction and thus, at least partly, were converted to personal use. We will also  
18 seek to confirm that the entirety of the fees disbursed by Craig to the Brand Law Group  
19 was related solely to the U.S. Senate Select Committee on Ethics Inquiry. We would  
20 attempt to conduct this investigation informally by sending written inquiries to Senator  
21 Craig and requesting that he provide any documents detailing the disbursements made to  
22 Sutherland, Asbill & Brennen; Kelly & Jacobson; and Impact Strategies. As the  
23 investigation proceeds, it may become necessary to issue the appropriate interrogatories,

document subpoenas, and deposition subpoenas. Therefore, we recommend that the Commission authorize the use of compulsory process.

**IV. RECOMMENDATIONS**

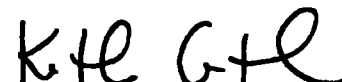
1. Find reason to believe that Larry E. Craig, Craig for U.S. Senate and Kay O'Riordan, in her official capacity as treasurer, violated 2 U.S.C. § 439a(b).
2. Approve the attached Factual and Legal Analyses.
3. Authorize the use of compulsory process as to all Respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
4. Approve the appropriate letters.


Thomasenia P. Duncan  
General Counsel

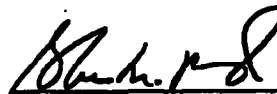
Date

5-4-09

BY:

  
Kathleen M. Guith  
Deputy Associate General Counsel  
for Enforcement

  
Mark Allen  
Assistant General Counsel

  
Shana M. Broussard  
Attorney

**Attachments:**

1. Larry E. Craig Factual and Legal Analysis
2. Craig for U.S. Senate Factual and Legal Analysis