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USDA Hotline Program

P.O. Box 23399

Washington, DC 20026

The following information outlines what we believe to be a clear and blatant case of willful interference in an official U.S. Department of Agriculture (USDA), Forest Service (FS) criminal investigation (and subsequent civil action) that involves a current United States House of Representatives member, Congressman Henry E. Brown, Jr. (R, 1st District, SC), and other USDA and FS personnel named herein. It is our opinion that these actions have violated Federal laws, regulations and agency policies with regard to such, including the obstruction of justice statute appearing at 18 U.S.C 1512(b)(3), a felony, and the interference statute appearing at 36 CFR 261.3(a), a Class B.

Misdemeanor. Additionally, the threat made by Congressman Brown on March 26, 2004, to Government officials of the FS to "scrutinize FS programs more closely" if criminal action and/or a civil billing was undertaken, appears to violate the extortion statute at 18 U.S.C. 872 and/or the bribery statute at 18 U.S.C. 201(b)(1), (2), also both felonies.

There are likely violations of USDA and congressional ethics rules as well. The two persons whose names appear below, are Federal employees within the USDA, FS, Law Enforcement and Investigations Staff Unit, and submit it to the USDA Inspector General, pursuant to the protections and other provisions of the Whistleblower Protection Act of 1989, as amended, and under other applicable disclosure statutes.

/s/ John L. Gregory

/s/ John A. Sadler

JOHN L. GREGORY

JOHN A. SADLER

Special Agent in Charge

Patrol Captain

Southern Region, USDA, FS

Southern Region, USDA, FS

Enclosure

cc: Ms. Legna Segovia

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Synopsis of Facts Associated with the Complaint

At approximately 2:35 p.m. on Friday, March 5, 2004, a private helicopter operating under contract to the USDA Forest Service (FS) observed a column of smoke in the area of Cordesville, SC. Since this area contains National Forest System (NFS) lands, the helicopter conducted a reconnaissance of the area and determined that a wild fire was burning on NFS lands in Compartment 89 of the Francis Marion National Forest (a unit of the Francis Marion and Sumter National Forests (FMSNF's)) in Berkeley County, South Carolina. Most of the available FS fire suppression personnel were working in Compartments 186, 194, and 195 approximately 16 miles ESE of the reported fire. The FS was conducting a prescribed burn in these Compartments. After the wild fire was reported, FS employee Danny Carlson, three (3) engines, and a dozer, in addition to the helicopter, were dispatched from Compartment 194 to the wildfire location at about 3:00 p.m. The ground personnel arrived in the area at approximately 3:25 p.m. Mr. Carlson was the Incident Commander for this fire. As Mr. Carlson was searching for an access route to the fire, he met the landowner, United States Congressman Henry E. Brown, Jr. (R, 1st District, SC; first elected in 2000), who was also conducting a prescribed burn on his private land adjoining NFS lands in Compartment 89. The area in which the fire that had been detected on NFS lands indicated that the fire had probably spread from the prescribed fire on Congressman Brown's property. Congressman Brown and one (1) other individual were burning Congressman Brown's property and their fire had not only escaped onto NFS land, but onto additional land owned by Congressman Brown. Mr. Carlson drove his FS assigned vehicle as far as he could through Congressman Brown's property utilizing roads and pushed/dozed plow lines, but the condition of these travel corridors became so difficult that Mr. Carlson had to then walk the about ¼ mile to assess the fire on NFS land at the point where it was adjacent to Congressman Brown's land. When Mr. Carlson arrived at that point, he observed that Congressman Brown's fire had jumped a recently dozed/pushed line constructed by the South Carolina Forestry Commission for Congressman Brown on his property in preparation for Congressman Brown's burn. The escaped fire then had burned across a narrow strip of land containing the actual landline between Congressman Brown's property and NFS lands. In addition to burning this narrow strip of land, the escaped fire had jumped an additional dozed line on the NFS side of this narrow strip. This dozed line had been constructed by the FS in preparation for a planned prescribed burn in Compartment 89 by the FS at a later date. As the helicopter continued to drop water on the escaped fire, Mr. Carlson directed that the dozer construct a line on NFS lands and tie it into Congressman Brown's burn area. Another dozer from the South Carolina Forestry Commission arrived and assisted Congressman Brown in containing the escaped portion of the fire on his property.

Congressman Brown had obtained a burn permit from the South Carolina Forestry Commission to conduct his burn on March 5. The permit indicated that Congressman Brown intended on burning about 25 acres that day. The issuance of a burn permit

does not relieve the permit holder of the responsibility of controlling their fire until it is completely safe. During the day, weather conditions changed such that a Red Flag Alert was issued by the South Carolina Forestry Commission (SCFC) that prohibits most outdoor burning. However, since Congressman Brown's fire, as well as the FS prescribed fire, were underway, these prescribed fires were not affected by this alert. Mr. Carlson observed that the only control tools Congressman Brown and his assistant had available for his prescribed fire were garbage cans filled with water on the back of a 2 wheel drive pickup truck. They had buckets to dip the water. They also had pine tops to attempt to beat out flames. Mr. Carlson observed that no other fire control equipment, including any hand tools, were available. Because of the conditions of the pushed/dozed line, the 2 wheel drive pickup vehicle Congressman Brown was driving could not have even accessed the northeast side of his prescribed burn where the fire escaped onto NFS lands.

When Mr. Carlson arrived in the area of the fire and met Congressman Brown, he (Congressman Brown) was not aware that his fire had escaped onto NFS lands. As noted above, the fire had also escaped onto portions of Congressman Brown's land that he had not intended on burning.

The fire burn patterns, Mr. Carlson's observations, as well as a field investigation prepared by a Fire Behavior Analyst stationed at the Southern Research Station (see below), all indicate that the prescribed fire that Congressman Brown and his assistant started was not set as a backing fire away from the area of NFS land, but rather, as a fire running toward NFS land. As the prescribed fire was driven by generally southwesterly winds, it caused fuels to dry out in front of the flames thereby increasing the available fuels which in turn created a hotter fire. At least two distinct "hot spots" occurred immediately adjacent to the pushed/dozed line on Congressman Brown's property next to NFS lands. Had the prescribed fire been set to burn away from Congressman Brown's pushed/dozed lines instead of burning towards that line, the fire intensity would have been less in those areas. The escaped portion of the fire onto NFS lands totaled approximately 20 acres. Approximately 238 acres of land were burned on Congressman Brown's property.

As is the practice for all escaped fires on the FMSNF's, FS Law Enforcement Officer (LEO) Mark Heitzman was contacted by FS Fire Dispatch and notified of the fire. As LEO Heitzman was en route to the fire, he was contacted by South Carolina Forestry Commission Officer Gray Valentine who informed him that Congressman Brown owned the property from which the fire escaped. Valentine also informed LEO Heitzman that he (Valentine) had spoken to Congressman Brown earlier in the day and advised the Congressman that although he (Congressman Brown) had obtained an authorization from the South Carolina Forestry Commission to conduct a prescribed burn on that day, the weather conditions were such that it would not be a good day to conduct the burn. When LEO Heitzman arrived at the fire, he contacted Congressman Brown who told LEO Heitzman that he (Congressman Brown) had started his prescribed burn at approximately 9:45 a.m. that day and at about 1:30 p.m. the wind picked up and the fire jumped the pushed/dozed lines. At that time, Congressman Brown was still unaware that his fire had escaped onto NFS lands.

After talking to Congressman Brown, LEO Heitzman contacted his supervisor, Patrol Captain (PC) Andy Sadler in Columbia, SC, and explained the situation. LEO Heitzman told PC Sadler that based on the circumstances, he felt that a FS Violation Notice (VN) should be issued to Congressman Brown for allowing his fire to escape

control onto NFS lands (a criminal violation of Title 36 of the Code of Federal Regulations (CFR) section 261.5(e)). This violation is legally defined as a "general intent" of "strict liability" Class B Misdemeanor (it applies regardless of the willfulness or intent of the violator) and is punishable by a fine of not more than \$5,000 or imprisonment for not more than six months or both. It was promulgated to protect the national forests from damage when an individual allows a fire to escape from his or her control; as compared with the felony statute found at 18 U.S.C. 1855, which deals with the willful and intentional setting of fires on NFS lands (arson). Even when a fire escapes control unintentionally, the person who starts the fire is both criminally responsible under 261.5(e) and, in addition, bears a civil liability for the costs associated with extinguishing the fire. Issuing said VN would be consistent with previous actions taken on other escaped fires on this Forest and indeed in the Southern Region (R-8). It has always been the policy of this Forest to issue VN's to anyone that the FS determined to be responsible for allowing a fire to escape from private lands onto NFS lands. This has included the past issuance of a number of VN's to a former U.S. Congressman (and current SC State Senator) on several occasions (in these cases the VN's were paid each time and the criminal cases subsequently closed). For the two fiscal year (FY) period from October 1, 2001 through September 30, 2003, there were 15 incidents on the FMSNF's involving violations of the above. Of those 15 incidents, LE&I was able to determine a responsible party in four of the cases and subsequently collateral forfeiture VN's were issued to four different individuals. During FY 04, LE&I personnel working on this Forest have issued an additional six collateral forfeiture VN's for the above violation.

Because of referral requirements involving members of Congress found at section 9-7.302 of the U.S. Attorney's Manual, PC Sadler contacted Special Agent in Charge (SAC) Jack Gregory, R-8, prior to having LEO Heitzman issue the VN. SAC Gregory directed that LEO Heitzman not issue a VN, but rather collect the necessary information and then present it to the United States Attorney's (USA's) Office, District of South Carolina, for consideration and/or any special procedures that they wished to be followed. PC Sadler related this information to LEO Heitzman.

On March 9, FS Special Agent (SA) Kevin Bishop presented the details of the escaped fire to Assistant United States Attorney (AUSA) Rhett DeHart. On March 14, AUSA Dehart responded back to SA Bishop that the USA's Office took the position that Congressman Brown should be treated like any other person and issued a "pay by mail" collateral forfeiture VN, if warranted. The particular offense has a \$250 fine associated with it. The case was formally opened through a Supplemental Incident Report on March 15, 2004.

Also on March 15, FMSNF's Forest Supervisor Jerome Thomas signed a "Trespass Fire Policy" for the Forest. This policy had been in development since November 2002. The policy stated that if LE&I personnel issued a VN, a Bill for Collection for recovering the costs of suppression would also be issued. In cases where a VN was not issued, a "panel" would review the fire costs and a "recommendation" would be made to the Forest Supervisor as to whether a responsible party will be billed or issued a warning letter. Even though this memo contained substantial errors in law (see below), under the provisions of this policy, if Congressman Brown were issued a VN, he would almost automatically be subject to receiving a Bill for Collection for the

suppression costs incurred by the FS. Immediately following the suppression of the escaped fire, the suppression costs incurred were reported to be approximately \$7000.

During this same week, SAC Gregory was asked to attend a meeting in the Regional Office that had been called by Roberta Moltzen, Deputy Regional Forester for Resources, to further discuss this case. Also attending were Angela Coleman, Director for Public Affairs, and Dan Olsen, Assistant Director for Planning, Fire. At the meeting Ms. Moltzen asked SAC Gregory what LE&I intended to do about the fire. SAC Gregory explained that the USA had accepted the case insofar as the issuance of a VN went and that the FS also needed to administratively bill Congressman Brown for any valid suppression costs. Ms. Moltzen immediately requested that LE&I take no action, because, according to her, if LE&I did, the FS would not be viewed as "good neighbors." When SAC Gregory continued to state that LE&I would not deviate from its intended action, Ms. Moltzen turned to Mr. Olsen and stated to the effect that under the Healthy Forest Restoration Act, the FS should encourage Congressman Brown to apply for grant monies, as it could be argued that his prescribed fires on his private land benefited NFS lands. Ms. Moltzen then stated that the grant money could then help pay for both the VN fine as well as the anticipated billing for the suppression costs. At this point SAC Gregory became thoroughly frustrated with the direction of this meeting and excused himself shortly thereafter.

On March 16, Assistant Special Agent in Charge (ASAC) Tracy Perry provided direction to PC Sadler that the VN be issued to Congressman Brown. PC Sadler was instructed to inform Forest Supervisor Thomas and District Ranger Orlando Sutton of the intention of LE&I to issue a VN. Forest Supervisor Thomas requested that Congressman Brown be given a "courtesy contact" prior to being issued a VN and the process explained to Congressman Brown.

On March 26, Forest Supervisor Thomas initiated a call to Congressman Brown. PC Sadler was present with Forest Supervisor Thomas during this call, which was conducted over a speaker on a cellular telephone. Congressman Brown stated that he did not feel responsible for the escaped fire that crossed onto NFS lands, attributing the fire to "an act of God." PC Sadler explained to Congressman Brown that he was indeed responsible for the escaped fire that he had intentionally began as a prescribed fire. PC Sadler also explained the process of how a collateral forfeiture VN "worked" and the options available. PC Sadler explained that payment of the \$250 fine would close the case and that a court appearance would not be required. Congressman Brown expressed concern that his political opponents would somehow find out and use the VN against him and that he would be forced to disclose the VN on his ethics updates. Congressman Brown stated that if he were issued a VN, he would be compelled to make a court appearance in order to clear himself and avoid the ethics reporting requirement. During this call, Congressman Brown stated that if the FS persisted and issued a VN, FS programs might need to be scrutinized more closely. Because Congressman Brown sits on the House Budget Committee, this statement caused concern for Forest Supervisor Thomas. Congressman Brown was asked to contact Forest Supervisor Thomas the next time that he was physically present in South Carolina so arrangements could be made for the issuance of the VN by PC Sadler.

On March 31, PC Sadler was contacted by SAC Gregory and asked for past statistics regarding escaped fires on the FMSNF's. Director of LE&I Ron Sprinkle had requested this information because the Office of the Chief, FS, Washington Office (WO), specifically Bob Swinford, Special Assistant, was now interested in this case. SAC Gregory responded that in each situation where a responsible party was determined, a VN had been issued. In answer to one of Director Sprinkle's questions (which were later provided to Special Assistant Swinford) SAC Gregory stated the following:

To put this in some sort of perspective, escaped fire cases in SC have amounted to less than 1/2 of 1% of all the Violation Notices issued in SC in the last 2 years. In each and every case where past Violation Notices were issued for escaped fires, the cited individuals either paid the fine, sans one case, where that individual chose to have the case heard before the local U.S. Magistrate Judge. In that situation the defendant presented facts and circumstances, not unlike what Congressman Brown has articulated...and was found guilty.

The absolutely worst thing we could do from an LE standpoint is to create a situation where LEO's start to question themselves as to whether they should be enforcing the CFR provisions, as they have historically done, or to first ask permission when the case involves a VIP, and the probable cause is the same as or greater for a Violation Notice that would be issued to anyone else. As much as I hate to even say this, this situation is beginning to look and sound like the "old" days prior to the straight line reporting structure and I would direct interested parties to take an objective reading of FSM 5303.1 which states that " The ability of law enforcement personnel to conduct investigations and enforcement activities, free of pressure or inappropriate constraint, is essential to achieving the law enforcement mission." and FSM 5320.3(6) which states "Agency officials must ensure that law enforcement personnel have the independence necessary to conduct any investigation in confidentiality and without interference. Employees must not attempt to overrule or influence the extent and thoroughness of an investigation by agency law enforcement personnel."

On April 30, Janet Shehan, Claims Specialist, Financial and Accounting Operations, WO, discussed with Rose Rowe, Claims Specialist, Financial Management, R-8, the above March 15 memo issued by Forest Supervisor Thomas. Ms. Shehan recommended that Ms. Rowe immediately bring to the attention of Regional Financial Management Director Terry Cooper that this direction was incorrect and not in compliance with Federal debt collection laws and regulations or with agency policy. Ms. Shehan advised Ms. Rowe that she should consider a site visit to the Forest for training in debt collection and management laws and policies, in order to correct inappropriate previous actions and decisions to prevent further non-compliance and unauthorized decisions by the Forest Supervisor.

Between April 20 and April 22, personnel from the FMSNF's conducted their annual "Hill visits" during which time certain staff travel to Washington, D.C., and meet with the various Congressional members to share information relating to FS activities in the state and particularly their specific districts. On April 21, during the course of the visit to Congressman Brown's office, Forest Supervisor Thomas and Gary Yeck,

Legislative Affairs Specialist, WO, hand carried a letter from FS Chief Dale Bosworth to Congressman Brown. The letter stated, in part:

Unfortunately, as we discussed by phone, the Code currently does not contain much flexibility. Over the last couple of years four other citations were issued to individuals in situations similar to yours for fires that escaped and burned into the Francis Marion and Sumter National Forests. Under this section of the Code, there have been fifteen citations issued during this same timeframe throughout the Southern Region of the Forest Service. This year an additional five violation notices of the same type have been issued, with another one under investigation by law enforcement and investigations personnel from the Francis Marion and Sumter National Forests.

Notwithstanding the above, the letter then stated in the next paragraph:

I plan to have discussions with my Law Enforcement and Investigations Staff, the Office of General Counsel, and others to examine the reasonableness of this section of the Code and see if there is any opportunity to allow more discretion when it is apparent that the escaped fire was entirely inadvertent or resulted from unanticipated weather changes.

During this meeting, Congressman Brown indicated that he did not understand why the FS would not use discretion in issuing him a VN, but if wording in the Code of Federal Regulations was what was driving this, he wanted the FS to change the wording in the Code of Federal Regulations and make it retroactive so that no offense would have occurred at the time Congressman Brown's fire escaped his control. Efforts were made to explain to Congressman Brown that what he was requesting in all probability could not be done.

On April 22, PC Sadler was contacted by SAC Gregory and informed that in about 2 weeks when Congressman Brown was back home in South Carolina, a VN could be issued to him. This was to occur only after additional discussions between the FS WO and Congressman Brown and after the approval of the Chief.

On April 23 SAC Gregory, acting under his delegated authority, wrote to the Atlanta Regional Office of the USDA Office of General Counsel (OGC) asking for their interpretation of a South Carolina criminal statute; Section 16-11-180 - Negligently allowing fire to spread to lands or property of another. SAC Gregory wanted to know if Congressman Brown's actions could be viewed as either "careless" or "negligent", under this law. Both terms were both required elements contained within the statute. Additionally, he wanted to know if there was enough information to initiate a civil collection action for the suppression costs. SAC Gregory sent a copy of this transmittal to several Regional Office Management team members who had been given the assignment to "monitor" what LE&I was doing with the case. On that same date, in a forwarding message to Special Assistant Swinford, Regional Forester, R-8, Robert Jacobs wrote:

Bob, Jack Gregory made this request of OGC (see trailing message) without any dialog with anyone else here or on the Forest (and he only cc'd the forest besides the LE&I folks). My antennae are flying high because I don't feel like

this is a team player request. Jack is good at boxing folks in and that is what this feels like to me, an attempt to limit our options. This is FYI only."

On April 29, Ms. Shehan transmitted by email to various WO FS officials involved in this case, the Federal, USDA, and FS policies that needed to be followed associated with civil billings for fire suppression costs. Ms. Shehan made clear that no authority existed to either "waive" or to not bill Congressman Brown (or anyone else) for fire suppression costs that they were responsible for. Ms. Shehan stated:

Pursuant to the Debt Collection Act, the Debt Collection Improvement Act, and the Federal Claims Collection Standards, we have no authority to not bill for these suppression costs. Neither the Forest, the Region, nor the WO can make that decision. Whether the Agency, Region, or Forest has consistently billed for these types of debts in the past does not give us license for noncompliance with the provisions of the DCA, DCIA, FCCS, etc. Then, dependent upon the amount of the debt, only certain individuals have the authority to subsequently compromise, suspend, or terminate collection action, and only under certain circumstances.

This information was predicated on the issuance of the March 15 memo and the fact that on September 18, 2002, Forest Supervisor Thomas had inappropriately, and without authority, canceled a bill for fire suppression costs that had been issued SC State Senator Arthur Ravenel, Jr. This cancellation occurred after Congressman Brown had written a letter to Supervisor Thomas, requesting that the bill be canceled for Senator Ravenel.

On May 4, Ms. Shehan discussed this case with Chris Pyron, Deputy Chief for Business Operations, WO. Mr. Pyron asked if the Chief had the authority to advise an individual that the agency would not bill him. Ms. Shehan replied to Mr. Pyron that it depended upon the specific circumstances and what the billing was for. Mr. Pyron then went on to explain that Congressman Brown had met with the Chief and USDA Undersecretary for Natural Resources and the Environment (NRE) Mark Rey about the Vanilla Bay Fire. Mr. Pyron stated that Congressman Brown had told Mr. Rey that he was concerned about being issued a VN and about being billed for costs of suppressing the fire, especially because this was an election year. Mr. Pyron then stated to Ms. Shehan that the Chief had told Congressman Brown that the agency would not bill him. Ms. Shehan advised Mr. Pyron that no one in the Forest Service, including the Chief, had the authority to make that decision and commitment, and that according to Federal laws and regulations and Agency policy, collection action (billing) must be initiated whenever the agency incurs damages (expenses/costs) resulting from the actions of a third party (including fire and other trespass cases). Ms. Shehan told Mr. Pyron that if a debtor does not pay a bill, there are some limited agency authorities to suspend or terminate collection action, but under very strict circumstances. Mr. Pyron then asked Ms. Shehan "to research the matter" and to talk with WO OGC attorneys in an attempt to find a means for the Chief to keep his word to Congressman Brown, telling her that the Chief "has a real credibility issue here."

Ms. Shehan then called WO OGC Attorneys Betty Ollila and Barbara Good of the General Law Division. Both individuals concurred with Ms. Shehan's advice to Mr. Pyron, and suggested that she further discuss the matter with the Regional OGC,

since the Regional OGC attorneys generally handle claims for the Government, including fire trespass cases.

Also on May 4, PC Sadler was contacted by Forest Supervisor Thomas and was informed that Regional Forester Jacobs had been told by WO staff that Congressman Brown should not be issued a VN pending further direction from the WO. Forest Supervisor Thomas also informed PC Sadler that a decision had been made that Congressman Brown would also not be billed for the suppression costs.

On May 5, both Ms. Shehan and Ms. Rowe had a telephone conversation with Regional OGC Attorney Donald Kronenberger, Atlanta, Georgia, about the Vanilla Bay Fire. Mr. Kronenberger stated it to be his opinion that ". . . there is no basis to alter the normal Forest Service charge to pursue these damages," and, "There is no legal reason not to bill." He also stated he had talked with Regional OGC Attorney Bob Simmons (retired, San Francisco, California), who has significant experience with fire suppression collection cases, and that Mr. Simmons concurred with Mr. Kronenberger's assessment.

On this same date, Mr. Pyron called Ms. Shehan and asked if she had "solved my problem." Ms. Shehan told Mr. Pyron that her advice and information of the previous day had not changed, and then reported what the OGC attorneys had stated. Mr. Pyron stated that it was his understanding the agency has not always been consistent in billing in these types of cases and that was one of Congressman Brown's issues. Ms. Shehan responded that, even if that were true, the agency should not continue to violate laws, regulations, and policies, "especially just because a powerful individual has entered a plea with the Chief and Undersecretary." Mr. Pyron then stated that he would call WO, OGC Attorney Jan Poling (who works in an OGC division that does not handle any claims matters), and ask her for another opinion.

On May 6, SAC Gregory discussed this case with the USA's office. He spoke with First Criminal Assistant Scott Schools. During this time SAC Gregory went over the events that had occurred since LE&I's first contact with the USA's office on March 9 and then outlined the position of LE&I as to the case. SAC Gregory told Mr. Schools that it did not appear that there was much support for the issuance of the VN (or for a civil billing of the fire suppression costs) at the WO or Department level and stated that he wanted to make it clear with the USA's office that were aware of these two differing positions so there "would not be no surprises if this ever comes up." SAC Gregory went on to state that LE&I would most certainly support a formal declination of prosecution if that's what the USA (Strom Thurmond Jr.) wanted, however Mr. Schools stated that no such request had been made by the Administration. On May 7, Mr. Schools called back and said "based on what you have stated, I don't believe there have been any circumstances that would alter our initial decision."

Shortly after the call from Mr. Schools, also on May 7, LE&I Deputy Director David Ferrell sent SAC Gregory written direction that stated "I have been instructed from the Chief's office to advise you that the Chief is directing you not to issue Congressman Brown a violation notice for allowing a fire to escape.

On May 10 the Report of Investigation (ROI) for this case (04-08-6873992-F) was approved.

On May 11, Congressman Brown sent a letter Undersecretary Rey, stating that the regulation 36 CFR 261.5(e) was "extremely broad and could unfairly bring unattended consequences against Americans who are not intending to do harm to our national forests. . . ". Congressman Brown further stated that "I would appreciate it if you could please take a look at the referenced regulations and determine if they could be changed to provide more certainty, as well as flexibility, in the enforcement process."

On several occasions between May 11 and August 10, Director Sprinkle and Deputy Director Ferrell stated to SAC Gregory that it was Undersecretary Rey who had made the decision for the Chief to not permit the issuance of the VN or send a bill for the fire suppression costs to Congressman Brown. During these discussions, SAC Gregory inquired if these had been any kind of formal or informal prosecution declination request made by either Mr. Rey or Whitehouse staff. Both Director Sprinkle and Deputy Director Ferrell stated that to their knowledge, no declination request had been made.

On August 11, pursuant to an earlier request from the Atlanta OGC, SAC Gregory received and transmitted to them a Post Fire Behavior Report – Vanilla Bay Fire – 5 March, 2004. This report had been prepared by Richard Reitz, Fire Behavior Analyst, Southern Research Station, FS, at OGC's request, in order for them to assist the FS with the following question:

Was action taken by Mr. Henry Brown, Jr., appropriate, and did he have adequate suppression resources available, to foresee and prevent escape of the prescribed fire he lit on 5 March 2004, and to contain its spread if it did escape?"

Based on a significant amount of scientific analysis and time spent in the field, Mr. Reitz concluded:

The answer to the question is no, since the fire escaped and was neither detected by Mr. Brown or his companion. Constant vigilance is necessary on any downwind edge of prescribed fire to ensure fire does not escape and spread. An experienced and prudent burner accomplishes this in three ways: 1) not burning when the fire environment conditions make fire escape and rapid spread probable, 2) controlling fire intensity by appropriately applying firing techniques with patience, and 3) having the necessary men and resources to quickly detect and suppress an escaped fire. Mr. Brown was not adequately prepared to detect, or adequately equipped to suppress, the escaped fire on 5 March 2004 with only two men, a bucket of water, and no means of delivery of that water to the escaped fire.

Based on this final analysis, and in order for Chief Bosworth to be given a second opportunity review all of the above information, SAC Gregory asked Deputy Director Ferrell to determine if the Chief's May 7 "order" for LE&I to not initiate criminal action against Congressman Brown was still in effect. On August 23, Deputy Director Ferrell provided the above information to the Chief's Office. On August 24, Deputy Director Ferrell advised SAC Gregory of the results of this second inquiry, stating in an E-Mail that "we are to take no action."

On August 27, Ms. Rowe sent an E-Mail to FM&S NF's Budget and Finance Officer Claudette R. Bryant, stating:

We need to go ahead with the standard billing process for Mr. Brown. Hopefully, you have the necessary documentation from NFC for the bill. I am attaching Chapter 20 of FSH 6509.11h which lists the billable costs. It should be put in the system as an advance billing, since it is a potential debt. If you have any questions concerning what's billable and what isn't, give me a call me so we can discuss. Please send me a copy of the supporting documentation, along with the bill in case I get questions.

Shortly thereafter, Ms. Bryant responded with a message stating she had been advised by the Forest Supervisor and the Deputy RF "to not bill at this time."

Approximately 2 hours after Ms. Rowe transmitted the above, she was personally visited at her desk by Terry Cooper, Director, Financial Management, and was told by him to cease and desist any and all further attempts to bill Congressman Brown. This action was taken after Regional Forester Jacobs, Deputy Regional Forester for Administration, R-8, Gary Pierson and Mr. Pyron had received a copy of the same E-Mail message earlier in the day.

Basis in Law, Regulation, and Policy for the Complaint

Forest Service Manual/Agency Policy Ignored or Violated

- Section 5303.1 of the Forest Service Manual (FSM) states:

The ability of law enforcement personnel to conduct investigations and enforcement activities, free of pressure or inappropriate constraint, is essential to achieving the law enforcement mission. Cooperation of law enforcement personnel with other agency employees and the maintenance of investigative and enforcement independence are equally necessary and mutually compatible elements of working toward common agency goals.

- Section 5303.11 of the FSM instructs law enforcement personnel to "take appropriate criminal and/or civil action to hold responsible parties accountable." This section also adopts the guidelines set forth by the President's Council on Integrity and Efficiency (PCIE), Quality Standards for Investigations. These guidelines also address the fact that investigations are not unduly influenced. The section further states that "law enforcement personnel are responsible for investigations of incidents that could result in claims for or against the Government."
- The International Association of Chiefs of Police Law Enforcement Code of Ethics is included in Section 5303.7 of the FSM. It states, in part:

Performance of the Duties of a Police Officer

A police officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. Officers will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

- Section 5303.12 of the FSM sets forth the discretion policy for law enforcement personnel. They may not use discretion and must, at a minimum, issue a Form FS-5300-4, VN, if:
 - a. Violations are of the types that are not normally referred to the Department of Justice for prosecution.
 - b. Acts are clearly malicious, willful, or deliberate.
 - c. The safety or rights of other users are in jeopardy.
- Section 5304 of the FSM addresses the responsibilities of various levels of the FS to the law enforcement program within the agency. At no level does any line officer or other employee of the FS retain the responsibility to direct law enforcement personnel to take or not take a particular enforcement action.
- Section 5320.6 of the FSM states:

Agency officials must ensure that law enforcement personnel have the independence necessary to conduct any investigation in confidentiality and without interference. Employees must not attempt to overrule or influence the extent and thoroughness of an investigation by agency law enforcement personnel.
- Section 5320.46 of the FSM sets forth the sanctions for those who interfere in investigations:

Any employee who interferes with an investigation is subject to appropriate disciplinary action and possible criminal prosecution.
- Section 6570 of the FSM states:

A debt or receivable is created when a responsible Federal official determines that an amount is owed. There is no requirement that an

amount be litigated or adjudicated prior to its consideration as a receivable.

Federal Regulations Ignored or Violated

Title 5 CFR

Subpart A General Provisions

Section 2635.101 Basic obligation of public service.

- (a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.
- (b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.
 - (1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
 - (6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
 - (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
 - (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Subpart G Misuse of Position

Sec. 2635.702 Use of public office for private gain.

- An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.
- (a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to

friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

- (d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of Sec. 2635.502.

Title 7 CFR

- Title 7, CFR, part 3 – Debt Management (7 CFR part 3) contains the Department of Agriculture’s implementing regulations for debt management, including debt collection procedures.

Title 31 CFR

- The Federal Claims Collection Standards (FCCS, 31 CFR parts 900-904, effective December 22, 2000) clarify and simplify Government-wide debt collection procedures and policies. “Federal agencies shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary.” 31 CFR 901.1(a).

Title 36 CFR

- Title 36, CFR, Part 261, Subpart A, 261.3:
 - (a) Threatening, resisting, intimidating, or interfering with any Forest officer, engaged in, or on account of the performance of his official duties in the protection, improvement, or administration of the National Forest System is prohibited.

OMB Circular A-129

- Office of Management and Budget Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, as amended November 28, 2000, provides procedures and policies for Federal delinquent debt collection (non-tax receivables and debt management under the DCIA).

Federal Laws Violated

Title 18 United States Code (USC)

- Sec. 201. - Bribery of public officials and witnesses

(a) For the purpose of this section -

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee

or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever -

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent -

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

...

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

➤ Sec. 872. - Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

➤ Sec. 1512. - Tampering with a witness, victim, or an informant

...
(b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

...
(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
shall be fined under this title or imprisoned not more than ten years, or both.

Title 31 USC

- The Federal Claim Collection Act of 1966 (FCCA), as amended by the Debt Collection Act of 1982 (DCA, 31 U.S.C. 3701-3719), provides the basic legal framework for collecting claims owed the United States. The Debt Collection Improvement Act of 1996 (DCIA, PL 104-134, April 26, 1996) amends the DCA and provides for referral of delinquent debts to the Department of the Treasury for processing through its cross servicing (debt collection) program.

Predication

It is our opinion and belief that following subjects have engaged in various violations of the above. These subjects are:

Congressman Henry Brown

USDA Undersecretary for NRE Mark Rey

FS Chief Dale Bosworth

FS Deputy Chief for Business Operations, Chris Pyron

FS R-8 Regional Forester Robert Jacobs

FS R-8 Deputy Regional Forester Roberta Moltzen

FS R-8 Director of Financial Management Terry Cooper

FS R-8 FMSNF's Forest Supervisor Jerome Thomas

It should be clear to even the most casual observer in this case, that high ranking officials of the USDA and the FS ignored Federal laws, regulations, and written agency policy, instead "caving in" for the sake political expediency. In the case of Congressman Brown, he made actual threats of increased agency oversight as well as to suggest retroactively changing the law(s) if the agency initiated either the criminal or civil case against him. In our many years of combined public service, we have never witnessed this degree of displayed arrogance involving special treatment of Members by agency heads relating to the initiation of criminal (and civil) action; particularly in a case that is as straightforward and without controversy in its basic facts as this one is.

Evidentially, top agency heads have deemed that what may have been standard operating procedure over the course of many years as to the issuance of VN's, and collection of civil damages, to the very population that Congressman Brown serves, is to be applied differently if he is involved in the same.

There is irrefutable evidence that it has been a past practice by Forest Supervisor Thomas to cancel, without authority, the civil billings of fire suppression costs and damages of other political figures in South Carolina.

The non-actions taken with regard to Congressman Brown would appear to fall under the provisions of 18 U.S.C. 201(b)(1), (2), and (3) in that by not issuing a Violation Notice (\$250 fine) or billing for fire suppression costs (now estimated to be approximately \$4,000), the FS and/or USDA have provided a value to Congressman Brown.

Congressman Brown appears to have requested a thing of value by insisting that he not be issued a VN or be billed suppression costs and inquiring as to the possible amendment of to the CFR so the violation would not apply to him. Congressman Brown's escaped prescribed fire meets all of the tests for issuance of a VN as defined in the FSM. The USA's Office had clearly accepted this case for prosecution through the issuance of a VN. Congressman Brown knowingly and willfully set the prescribed fire that later escaped. It is not believed that Congressman Brown intended that his fire escape onto NFS lands, but it nonetheless did. The FS has experienced numerous injuries and some deaths related to wildland fire fighting. By FS fire suppression personnel responding to Congressman Brown's escaped fire with ground crews as well as aircraft, those personnel were automatically placed at risk.

Additionally, the provisions of 18 U.S.C, sections 872 and 1512 appear to have been violated when Congressman Brown implied that, should he be issued a VN or be billed for the fire suppression costs, FS programs may come under increased scrutiny. As a member of the House Budget Committee, Representative Brown is in a position to accomplish this.

While the actual investigation phase of Congressman Brown's escaped fire was not itself unduly influenced, subsequent actions by the above named FS and USDA managers have highly influenced the investigation's outcome.

Congressman Brown discussed changing the CFR to benefit him. He later followed up with a written request to the FS Chief's supervisor to take this very action. This would appear to be an ethics violation of far greater consequence than allowing a fire to escape control, to begin with.

As noted above, since 1993, the agency has promulgated directive after directive to ensure that FS managers throughout the agency do not engage in the very things that top agency officers did in this case. There is also clear direction about how to handle situations when (as will likely be claimed in this case) the FS Chief was "just acting on orders from the Undersecretary" when he told agency law enforcement personnel to not initiate criminal action against Congressman Brown. FSM 5303.12, paragraph 6, states:

Law enforcement personnel who believe that they have been given direction to carry out an action outside the jurisdiction and scope of their authority shall advise the employee giving the direction of this fact and shall seek advice from superior law enforcement personnel, an Assistant United States Attorney, or from the Office of the General Counsel.

In this case, FS Chief Bosworth had several alternatives that he could have pursued as to any inappropriate direction from Undersecretary Rey, but he failed to anything.

Then there is the issue of the civil billing for fire suppression costs. The evidence strongly suggests that Deputy Chief for Business Operations Chris Pyron failed to comply with a number of Federal laws, regulations and stated agency policy; even to the extent that he "shopped around" for legal opinions that would support not issuing Congressman Brown a bill for the suppression costs after Chief Bosworth inappropriately told Congressman Brown that he would not be billed. Mr. Pyron set the stage for the other FS managers listed above to issue direction to their subordinates to not initiate civil procedures against Congressman Brown.

It is a matter of Federal law and agency policy to take prompt and aggressive action to collect all debts/claims owed the United States. All incidents which may result in a claim for the Government, including fire and other trespass cases, will be investigated and turned over to the Claims and Debt Management Staff to bill for damage and other applicable costs, once the criminal case is resolved (or in this case, ignored). Further, policy states that it is critical for LE&I personnel work closely with Claims personnel to ensure coordination regarding closure of the criminal case, potential court-ordered restitution, and other key billing issues. Delinquent debts will be turned over to the Claims staff to take appropriate delinquent debt

collection action, including referral to the Department of the Treasury for cross servicing or referral to the Department of Justice for potential litigation.

Under the DCIA, valid debts that are delinquent 180 days must be referred to Treasury for cross servicing. Under a Letter of Agreement with Treasury, the FS refers valid eligible debts to Treasury once they become 60 days delinquent.

Delinquent potential claim debts may be referred to Justice for potential litigation.

There are stated authorities for certain agency personnel to compromise, settle, or terminate debts against the Government. These requirements are very specific and strict as outlined in the FCCS, at 31 CFR 902 and 903. As with this case, there is no authority to not take initial collection action (billing and initial demand letter) when "a responsible Federal official determines that an amount is owed." No FS official may make a decision to not bill when a determination has been made that a debt/claim exists.

Accordingly, we ask that you either investigate (or cause to be investigated by another agency) the above allegations. All original reports, notes, and other documents will be made available upon request.

/s/ John L. Gregory
09/08/2004

09/08/2004

/s/ John A. Sadler

JOHN L. GREGORY

Date

JOHN A. SADLER

Date

Special Agent in Charge

Patrol Captain

Southern Region, USDA, FS

Southern Region, USDA, FS