IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In the Matter of the Search of:	)	
	)	**Case No. 06-231-M-01**
RAYBURN HOUSE OFFICE BUILDING	)	
ROOM NUMBER 2113	)	**Judge Thomas F. Hogan**
WASHINGTON, D.C. 20515	)	
	)	

MEMORANDUM IN SUPPORT
OF MOTION FOR RETURN OF PROPERTY

On Saturday night, May 20, 2006, the FBI raided the Congressional offices of Representative William Jefferson. After approximately 15 agents spent about 18 hours painstakingly reviewing documents in the Congressman's office, the FBI carted away two boxes of paper records as well as every record from the Congressman's personal computer. In executing the search, the FBI and the Department of Justice refused to allow either Congressman Jefferson's personal attorney or House General Counsel to be present.

The search of a Congressional office and the seizure of records and files from that office are apparently without historical precedent. *See* Dan Eggen and Shailagh Murray, "FBI Raid on Lawmaker's Office is Questioned," Wash. Post, May 23, 2006. The actions of the Executive Branch are an affront to the Constitutional separation of powers and a violation of the absolute privilege and immunity that Members of Congress enjoy under the Speech or Debate clause of Article I, section 6 of the

U.S. Constitution. In addition, the exclusion of Congressman Jefferson's counsel from the premises during the execution of the search -- a circumstance that exacerbated the Constitutional problems inherent in the search -- violated Fed. R. Crim. P. 41 and rendered the search "unreasonable" in violation of the 4th Amendment. Finally, the search warrant was based on a false premise, to wit, that the government "has exhausted all other reasonable methods to obtain these records." *Aff.* ¶ 132.[1]

For the reasons set forth in this memorandum, Congressman Jefferson, "a person aggrieved by the unlawful search and seizure," requests that the court order the return of all items seized from the Congressional offices. Fed. R. Crim. P. 41(g). In order to minimize the harm that this violation of Constitutional privilege may cause while this motion is pending, Congressman Jefferson further requests the following immediate relief in order to allow for full briefing and careful consideration by the court of the serious Constitutional issues and the unprecedented circumstances that give rise to this motion:

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[1] The factual basis for this premise, *Aff.* ¶¶ 129-32, is redacted from the copy that has been released to Congressman Jefferson and to the public. As part of his motion, Congressman Jefferson requests that he be provided with the unredacted paragraphs 129-32 so that he may examine the representations made to the court to obtain the warrant, and have an opportunity to challenge them.

- that the FBI and the Department of Justice, and their agents and employees be immediately enjoined from any further review or inspection of the seized items;
- that the seized items be sequestered and locked in a secure place; and
- that the supervisor(s) of the search team and the "Filter Team" file a report with the court detailing which documents have been reviewed and what steps have been taken to sequester the documents from further review pending further order of the court.

Factual Background[2]

On May 18, 2006, this court issued a warrant authorizing the Federal Bureau of Investigation to search the premises known as Rayburn House Office Building, Room Number 2113, identified on Schedule A as "the office of Congressman William Jefferson." According to the affidavit in support of the search warrant application ("*Aff.*"), Congressman Jefferson is currently serving his eighth term as the elected Representative of people of the 2nd District of Louisiana, located in New Orleans.

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[2] Congressman Jefferson reserves the right to supplement this factual recitation with information responding to Section VI of the affidavit, entitled "Government efforts to exhaust all lesser intrusive approaches to obtaining relevant documents and records located in the Washington, D.C. Congressional Office of William J. Jefferson." *Aff.* at 70. It is the Congressman's position that there were in fact less intrusive approaches that were rejected by the Department of Justice.

The warrant called for the search of the offices "and any and all storage areas and locked containers, associated therewith…." It authorized the seizure of records and documents, electronic or otherwise related to a list of 30 individuals and entities. The warrant authorized the seizure of records and documents related to appointments, visits, and telephone messages to or from the Congressman related to those 30 individuals and entities, including visitor sign in books, ledgers, paper telephone messages, and appointment calendars. Finally, the agents were permitted to copy or remove the Congressman's entire computer hard drive. In other words, every single file and every single email that was stored on the Member's computer was transferred to the custody of the executive branch on Saturday night.

The affidavit purported to set out "special procedures in order to identify information that may fall within the purview of the Speech or Debate Clause Privilege," *Aff.* ¶¶ 136-55, and it noted that the procedures would apply to both paper records and electronic media. The application set forth the following procedures to be employed in searching the Member's office:

- The physical search would be conducted by "non-case agents" who have no other role in the investigation.
- The non-case agents would review the paper records in the Congressman's office to determine if they were

responsive to the warrant, and they would remove any responsive records they found. No Speech or Debate privilege review would precede the removal.[3]

- Removed material would later be provided to a "Filter Team" consisting of Department of Justice lawyers and a Special Agent who are not otherwise involved in the investigation.
- The Filter Team would "validate" the decision made on responsiveness and then review the materials to determine if the Speech or Debate Privilege applied to them. The application sets forth no criteria by which such a determination would be made, and the procedure does not provide the Congressman with any opportunity to identify privileged material.
- If the Filter Team concludes that documents are not subject to the privilege, the materials are to be immediately provided to the prosecution team. There is no provision under which the Congressman will be notified of those documents deemed to be not privileged and no provision under which he can

[3] Congressman Jefferson submits, as will be set out in more detail below, that any privilege review by the Executive Branch -- even if before removal -- would run afoul of separation of powers principles and the privilege immunity that he enjoys under the Speech or Debate Clause.

interpose an objection and assert his privilege. In other words, the right to exercise the Congressman's Constitutional Speech or Debate privilege has been completely stripped from the Member and assigned to two Department of Justice lawyers and an FBI agent.

- The Filter Team will provide the Congressman with a log of the materials it does consider to be "potentially privileged." The Congressman can consent to their production, but he is not the decision maker in the event he considers the materials to be covered by Speech or Debate. Under the terms of the warrant, the court will rule on the production of any "potentially privileged" documents.
- With respect to the Congressman's computer, the government was permitted to copy or remove the entire hard drive without regard to the subject matter of the files preserved on it.
- While there is to be an initial search of the computer files conducted utilizing search terms drawn from the warrant, once files are located, the Filter Team will again conduct a review for responsiveness before considering the question of privilege, and the Filter Team, and not the Congressman, will make the Speech or Debate determination. And again, if the Filter Team

makes the unilateral determination that files fall outside the Speech or Debate privilege, those files will be immediately provided to the prosecution team.

The search was executed on the evening of Saturday, May 20, and the search continued into Sunday, May 21. At approximately 8:15 p.m. on May 20, the General Counsel of the House of Representatives, Geraldine Gennet, went to Congressman Jefferson's office, but the FBI agents prohibited her from entering during the execution of the search. Counsel for Congressman Jefferson, Amy Jackson, then spoke to the affiant, Special Agent Timothy R. Thibault, by telephone at around 8:45 p.m., and he advised her that he would not permit her to enter and observe the search either. When she noted that property owners or their lawyers are regularly permitted to remain when their premises are searched, the agent noted that it was "our decision" that "no one can enter, not even counsel."

Counsel then telephoned Assistant United States Attorney Mark Lytle, the lead prosecutor on the case, and he refused to instruct the agents to grant her access to her client's office. When she inquired as to the legal grounds for her exclusion, he stated, "that's our policy." He did send her a faxed copy of the warrant, with its attached form entitled "Return." The Return included blanks to be completed for such details as the date the warrant was received and the date and time it was executed, as

well as "inventory made in the presence of _____." On May 21, the government provided counsel for the Congressman with a copy of its Inventory of Seized Items, but it bears only one signature, and it does not identify anyone in whose presence it was prepared or verified.

I. THE SEARCH OF CONGRESSMAN JEFFERSON'S OFFICE INVADED THE CONGRESSMAN'S ABSOLUTE CONSTITUTIONAL PRIVILEGE UNDER THE SPEECH OR DEBATE CLAUSE.

A. The issuance and execution of the search warrant for the office of a Member of Congress violates the Constitution.

The government's unprecedented and extraordinary action on the evening of May 20 constituted not only a direct assault on the privacy and dignity of William Jefferson, but a violation of the Constitution itself. While the situation may be a novel one, the principles that govern the relationship between the three branches of government are over two hundred years old.

Article I, §6 of the United States Constitution provides: "the Senators and Representatives shall … be privileged from Arrest during their Attendance at the Session of their respective Houses … and for any Speech or Debate in either House, they shall not be questioned in any other Place." The purpose of the Speech or Debate Clause is to "protect the integrity of the legislative process by insuring the

independence of individual legislators." *Eastland v. United States Serviceman's Fund*, 421 U.S. 491, 502 (1975). In addition, the Clause serves "to preserve the Constitutional structure of separate, co-equal, and independent branches of government." *United States v. Helstoski*, 442 U.S. 477, 491, (1979). Unlike other privileges commonly analyzed by the courts, the Speech or Debate privilege is **absolute**, and there is no balancing test to be employed. *Eastland*, 421 U.S. at 509 - 510.

The Speech or Debate Clause has two components. First, the Clause provides immunity from lawsuits for all actions "within the legislative sphere ... even though the conduct, if performed in another context, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes." *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973)(quotations omitted). This Constitutional immunity extends both to civil suits and criminal prosecutions. Second, and more importantly here, the Clause provides a testimonial privilege. *Gravel v. United States*, 408 U.S. 606, 615-16 (1972). This aspect of the privilege operates to protect those to whom it applies from being compelled to give testimony as to privileged matters, and from being compelled to

produce privileged documents.[9] The Supreme Court draws no distinctions between the immunity-from-suit and the testimonial aspects of the privilege.

The Supreme Court has underscored the critical importance of the Clause in "preventing intrusion by the Executive and Judiciary into the legislative sphere." *Helstoski*, 442 U.S. at 492.

> [T]he central role of the Clause is to prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.

Eastland, 421 U.S. at 502 (quotations omitted). "In the American governmental structure, the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *United States v. Johnson*, 383 U.S. 169, 178 (1966). Because the guarantees of the Speech or Debate Clause are "vitally important to our system of government," they "are entitled to be treated by the courts with

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[9] **Testimony**: *See, e.g., Dennis v. Sparks*, 449 U.S. 24, 30 (1980) (dicta); *Gravel*, 408 U.S. at 615-16; *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 528-29 (9th Cir. 1983). **Documents**: *See, e.g., Brown & Williamson*, 62 F.3d 408; *MINPECO, S.A. v. Conticommodity Services, Inc.*, 844 F.2d 856, 859-61 (D.C. Cir. 1988); *McSurely*, 553 F.2d at 1296-97; *Dombrowski v. Burbank*, 358 F.2d 821, 823-24 (D.C. Cir. 1966) (dicta), *aff'd in part and rev'd in part sub nom. Dombrowski v. Eastland*, 387 U.S. 82 (1967); *Hearst v. Black*, 87 F.2d 68, 71-72 (D.C. Cir. 1936); *Pentagen Technologies Int'l, Ltd. v. Committee on Appropriations*, 20 F. Supp. 2d 41, 43-44 (D.D.C. 1998), *aff'd*, 194 F.3d 174 (D.C. Cir. 1999) (per curiam); *U.S. v. Peoples Temple of the Disciples of Christ*, 515 F. Supp. 246, 248-49 (D.D.C. 1981).

the sensitivity that such important values require." *Helstoski v. Meanor*, 442 U.S. 500, 506 (1979). Accordingly, the Supreme Court has "[w]ithout exception... read the Speech or Debate Clause broadly to effectuate its purposes." *Eastland*, 421 U.S. at 501. *See also McMillan*, 412 U.S. at 311; *Gravel*, 408 U.S. at 618; *Johnson*, 383 U.S. at 179; *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881).

The protections afforded to Members of Congress by the Speech or Debate Clause apply to all activities "within the 'legislative sphere.'" *McMillan*, 412 U.S. at 312-13 (1973), quoting *Gravel*, 408 U.S. at 624-25 (1972). The "sphere of legitimate legislative activity" includes all activities that are

> an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

Eastland, 421 U.S. at 504.

The courts have broadly construed the concept of "legislative activity" to include much more than words spoken in debate, and they have rejected a literal interpretation of the privilege. "Committee reports, resolutions, and the act of voting are equally covered." *Gravel*, 408 U.S. at 617. Similarly, committee investigations and hearings have been held

to be activities within the legislative sphere. *See, e.g., Eastland,* 421 U.S. 491. Information gathering in furtherance of legislative responsibilities is also covered by Speech or Debate because "'[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.'" *Id.* at 504, quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). Even informal information gathering by Members or their staff in furtherance of their legislative responsibilities and objectives has repeatedly been held to be protected. *See, e.g., Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408 (D.C. Cir. 1995) (documents voluntarily delivered to committee by private citizen protected); *McSurely v. McClellan*, 553 F.2d 1277, 1287 (D.C. Cir. 1976) (en banc), *cert. granted*, 434 U.S. 888 (1977), *cert. dismissed sub nom. McAdams v. McSurely*, 438 U.S. 189 (1978) ("[A]cquisition of knowledge through informal sources is a necessary concomitant of legislative conduct and thus should be within the ambit of the [Speech or Debate] privilege…."); *Tavoulareas v. Piro*, 527 F. Supp. 676, 680 (D.D.C. 1981) ("[A]cquisition of information by congressional staff, whether formally or informally, is an activity within the protective ambit of the speech or debate clause."). It is not necessarily obvious from the face of a document whether or not it falls within the protected realm;

only the Congressman knows whether information he has collected in his files relates to his committee work or legislation he has in mind.

The delicate balance of our democratic system was disrupted when the court authorized the executive branch to search the Member's office and peruse and remove Speech or Debate material. The execution of the search warrant called for federal agents to painstakingly review every piece of paper and every file in the Congressman's office in order to locate the responsive documents. **In this case, that process took 18 hours**. The Inventory of Seized items indicates that the agents went through desk drawers, cabinets, boxes under the desks in staff members' work stations, file cabinets, bookshelves, and even the floor behind a television stand.

Executing the search warrant on Congressman Jefferson's office through a process of reviewing documents one at a time necessarily required the agents to read Speech or Debate material. The wholesale copying or removal of the Congressman's computer hard drive guaranteed that the executive would be in possession of material that relates to the Member's legislative duties. Moreover, the Congressman was completely divested of his authority -- **his privilege --** to identify and segregate those materials in his office and on his computer that relate to his legislative activities. Thus, the execution of the search

warrant for Congressman Jefferson's office contravened the Constitution.

The government suggested in its warrant application that it might not be able to obtain the evidence it was seeking if it did not receive authority to search the Congressman's office. The fact that honoring the privilege might complicate an investigation or even the ultimate prosecution of the government's case does not justify a departure from the Constitution: the privilege is an absolute one. Indeed, in some cases, respecting the privilege could require dismissing a criminal indictment altogether. *See United States v. Johnson*, 383 U.S. at 169 (conspiracy conviction set aside).[4] The fact that some material may be outside the prosecution's reach is irrelevant;[5] the Constitution and the Bill of Rights expressly establish **limits** to executive authority, and there are spheres the executive cannot enter and information he cannot compel. *See* U.S. Const. amend. IV and U.S. Const. amend. V, as well as Art. I §6. Therefore, in order to vindicate the Constitution and

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[4] Moreover, as the affidavit in support of the search warrant reveals, the government is already in possession of copies of many of the records it sought with the warrant, and it has already charged two individuals with the very offenses under investigation based on the materials in its possession.

[5] *See Helstoski*, 442 U.S. at 491 ("[T]he Speech or Debate Clause was [not] designed to assure fair trials … Rather, its purpose was to preserve the constitutional structure of separate, co-equal, and independent branches of government").

maintain the separation of powers, the materials seized from Congressman Jefferson's office on May 20 and 21 should be immediately returned.

B. The proposed method of conducting the search of Congressman Jefferson's office and the procedures established for the ongoing review of his computer files did not comport with the Constitution.

Even if this court can conceive of a circumstance in which a carefully tailored warrant for a Member's office could lawfully issue, the search and seizure in this instance were plainly unlawful. The procedures set forth in the warrant application are fatally flawed in numerous ways. First and most important, it is the Member who must assert the privilege, and any procedure that transfers that authority to anyone else -- particularly to someone in the executive branch -- invades the privilege and contravenes the Constitution. Second, under the one-sided procedures devised and implemented by the prosecution, once the Filter Team concludes that something is not privileged, the materials are simply handed over to the prosecution team. The procedures include no mechanism for the Congressman to assert his privilege or challenge the government's privilege determination.

To place the Speech or Debate decision in the hands of the prosecution team essentially nullifies the privilege. Given the

breadth of the privilege, the Filter Team cannot possibly know what is or is not Speech or Debate material. The Filter team has no idea what legislative initiatives or committee hearings the Congressman is currently pursuing or contemplating. The affidavit notes that the Congressman is a member of the House Ways and Means Committee, and the subcommittee on Trade. He is a member of the Congressional Africa Trade and Investment Caucus, the Congressional Black Caucus, and the Congressional Caucus for Nigeria. They could not possibly know which telephone messages or visits recorded on the seized logs relate to his legislative activity or which communications with businessmen or with individuals in Africa were in furtherance of these legislative functions.

The procedures authorized the FBI to review every scrap of paper in the office and to seize the entire computer, thus ensuring that the agents would be reading reams of protected material before making their initial decision of what to remove. The entire process took approximately 18 hours. The fact that such an all out invasion into the legislative arena would be conducted by "non-case agents" does not begin to cure the problem the Speech or Debate Clause was designed to address: the incursion of executive authority into the legislative realm. While the affidavit proclaims the agent's desire to exercise "sensitivity" about these grave issues, the government's

unjustified refusal to permit either the General Counsel of the House of Representatives or Congressman Jefferson's private legal counsel to enter the premises while the search was ongoing reflects the government's real attitude: arrogance and hostility about questions of privilege. In accordance with the procedures routinely employed on Capitol Hill when subpoenas or other forms of legal process are involved, the lawyers could and should have been permitted to review each document for privilege in consultation with the Congressman before the records were read or removed by the agents.

Finally, a review of the inventory demonstrates that the search team had little regard for the limits prescribed by the warrant when they made determinations as to responsiveness, so the court should have little confidence in their ability to make determinations as to privilege. For instance, Box 1, item 40 on the Inventory notes the seizure of "letters requesting contributions to Jefferson Legal Defense Fund," correspondence not listed on the schedule of items to be seized.

In light of all of these circumstances, the search warrant issued in this case cannot pass muster under the Speech or Debate Clause of the Constitution as it has been consistently interpreted by the Supreme Court.

II. THE BARRING OF THE COUNSEL FROM THE CONGRESSMAN'S OFFICE DURING THE SEARCH VIOLATED RULE 41 AND RENDERED THE SEARCH "UNREASONABLE" IN VIOLATION OF THE 4TH AMENDMENT.

Rule 40(f)(2) provides: "[a]n officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken … (emphasis added). Thus, the Federal Criminal Rules expressly contemplate that the owner of the seized property will witness the preparation of the inventory of what is removed. In this case, though, the United States Attorney's Office and the FBI refused to permit the owner's designated representative or the General Counsel of the House of Representatives to monitor the execution of the warrant. No reason was given for the implementation of this "policy," and there were absolutely no grounds to believe that the attorneys would have impeded the search or destroyed any evidence.

The 4th amendment right to be free from unreasonable searches and seizures includes the right to be free from the unreasonable execution of search warrants. *Foreman v. Beckwith*, 260 F. Supp. 2d 500, 503 (D. Conn. 2003). In assessing the reasonableness of an officer's execution of a search warrant,

the court must examine the totality of the circumstances and consider the privacy due the public, the reasonable expectations of an informed public, the needs of law enforcement officials, and any other appropriate considerations. *United States v. Hester,* 361 F. Supp 2d 1145, 1151 (C.D. Cal. 2005).

Here, particularly in light of the Constitutional dimensions of the situation, the public had every reason to be concerned that the Congressman's rights were fully protected. And law enforcement certainly did not need to exclude the Congressman's representative. The items to be seized did not include weapons, explosives, controlled substances, or contraband. This warrant was not premised upon the existence of any exigent circumstance, and lawyers posed no danger to the 15 or so FBI agents searching a building guarded by the United States Capitol Police.

The search was justified on the grounds that relevant records could be found in the office, and that the government had no other reasonable means of obtaining them. *Aff.* ¶¶ 129-32. Basically, it was a document production exercise. The Congressman and his lawyers have been aware of the investigation since the beginning of August, and they have been in close communication with the government. The government knows that all of documents and computer files have been appropriately preserved, and that House Counsel and private counsel have been

scrupulous about these matters. Therefore, considering the totality of the circumstances, which includes the fact that the prosecution knew when it sought this warrant that it was treading in uncharted constitutional waters, and it knew that its agents would be viewing Speech or Debate material -- the government's insistence upon executing the search warrant in the absence of the property owner and his counsel was unreasonable.

Even if a violation of Rule 41 does not rise to constitutional dimensions, it may render the search unlawful. In *United States v. Slaey,* 2006 WL 1117881, *3 (E.D. Pa. 2006), the court explained that when a non-constitutional violation is merely ministerial, such as a delay in filing the return with the magistrate, the party whose premises were searched may have no recourse. But "there is cogent authority that a non-constitutional violation of Rule 41 is cause to suppress evidence when the defendant has been prejudiced or the violation is intentional and deliberate." *Id.* at *3, citing *United States v. Simons,* 206 F. 2d 392, 403 (4th Cir. 2000) and *United States v. Burke,* 517 F. 2d 377, 386 - 87 (2d. Cir. 1975). In this case, the violation was deliberate and intentional and as in *Slaey,* the violation was "particularly egregious" because the agents were acting at the direction of the Department of Justice. The defendant in *Sleay* presented the issue as a

suppression motion, but Rule 41 also mandates the return of property when a search is unlawful.

III. THE SEARCH WAS UNLAWFUL SINCE IT WAS BASED ON A FALSE PREMISE THAT THERE WERE NO LESS INTRUSIVE APPROACHES TO OBTAINING RELEVANT DOCUMENTS.

Section VII of the affidavit in support of the search warrant purports to set forth "government efforts to exhaust all lesser intrusive approaches to obtaining relevant documents and records located in the Washington, D.C. Congressional Office of William J. Jefferson." The information contained in section VII is redacted from the copy of the affidavit shared with the public and Congressman Jefferson, so the Congressman cannot yet comment upon the affiant's rendition of the facts. But in the published portion of the affidavit, the affiant concludes by asserting, "as a result of the information discussed in the paragraphs immediately above, the government has exhausted all other reasonable methods to obtain these records in a timely manner short of requesting this search warrant ... Left with no other method, the government is proceeding in this fashion." *Aff.* ¶ 132.

Congressman Jefferson emphatically disputes this conclusion and submits that there were several less intrusive options available to the government. During their very first meeting with the prosecution team, the Congressman's lawyers did not

communicate a refusal to comply, but rather, they proposed reasonable means to afford the government access to his documents. Those efforts were rebuffed. Congressman Jefferson directs the court's attention to the letter his counsel sent Assistant United States Attorney Lytle more than eight months ago, on September 2, 2005, attached hereto as Exhibit 1, filed under seal, and Mr. Lytle's response, Exhibit 2. In addition, Congressman Jefferson reserves the right to supplement this memorandum at such time as he receives access to the redacted paragraphs of the affidavit from this court and the necessary authority from the Eastern District of Virginia to fully brief this court on the status of the matter. He notes as an aside that the government can hardly assert that it had no other means of access to the records sought when a reading of the search warrant affidavit makes it apparent that the prosecution already has many of them.

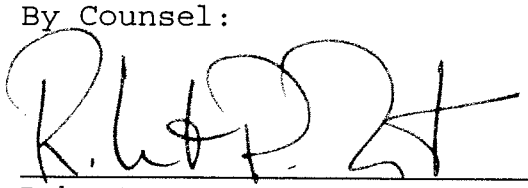
The government's debatable assertion undermines the integrity of the entire warrant. Coupled with the prosecution's failure to adequately consider the significant separation of powers issues implicated by the warrant, the nullification of Congressman's absolute privilege, the barring of the Congressman's lawyers from his office, and the refusal to pursue reasonable alternatives to gain access to the documents, this flawed premise adds to the unreasonableness of the search and

the unlawful nature of the seizure. The court should therefore order the return of the property seized.

WHEREFORE, Congressman William J. Jefferson respectfully submits that his motion for return of property should be GRANTED, and all material seized pursuant to the execution of the search warrant on Rayburn House Office Building Room Number 2113 should be returned to him forthwith.

Respectfully submitted,

WILLIAM J. JEFFERSON
By Counsel:



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