

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
v.	)	
	)	Crim. No. 08-231 (EGS)
THEODORE F. STEVENS,	)	
	)	
Defendant.	)	
_____	)	

**REPLY IN SUPPORT OF  
SENATOR STEVENS’S MOTION TO STRIKE EVIDENCE REGARDING  
ALLEGED GIFTS NOT FAIRLY IDENTIFIED IN THE INDICTMENT**

The government’s opposition brief misses the point of Defendant’s motion. The defense does not contend that it had no inkling that the fish statue, the stained glass or the chair existed. Rather, the Motion argues that the government intentionally obscured that it intended to prove at trial that these were improper undisclosed “gifts.” The indictment is written in such a way that no reader lacking superhuman powers of deduction could tell that: (1) the unidentified gift(s) from “and others” meant the fish statue, Indictment ¶ 58; (2) the unidentified gift from Person A in 2001 meant the Brookstone chair, Indictment ¶ 52; and (3) the unidentified gift from Person B in 2001 meant the stained glass, *id.*

As a result of this calculated vagueness, Senator Stevens was prejudiced because his ability to prepare a defense to these items was impaired. The defense could speculate, but did not know for certain, what gifts if any were intended by this obscure language. Without knowing that “and others” meant the fish statue, for example, the defense had to try to anticipate that (a) the fish statue may or may not be charged; (b) the “and others” language might refer to some

other unidentifiable alleged gift;<sup>1</sup> or (c) the government might decide not to put in any evidence based on the “and others” language, which appeared to be a vague throwaway phrase. This kind of uncertainty makes it difficult if not impossible for defendants and their counsel to make informed decisions about allocating limited resources for investigation and trial preparation .

Critically, the government offers absolutely no reason why it indicted the case in this manner. It provides no explanation why the indictment (or the government in a bill of particulars) could not have told the Defendant: “You are charged with failing to disclose a fish statue, a chair and a piece of stained glass.” It therefore concedes that the obvious explanation is true: The government did not want the Defendant to know the details of the charges he faced, because it wished to obtain an unfair advantage at trial. Such close-to-the-vest tactics in the context of an indictment – a charging document with crucial constitutional notice implications – should not be rewarded. The evidence relating to these three alleged “gifts” should be stricken.

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By: /s/ Craig D. Singer  
Brendan V. Sullivan, Jr. (Bar No. 12757)  
Robert M. Cary (Bar No. 431815)  
Craig D. Singer (Bar No. 445362)  
Alex G. Romain (Bar No. 468508)  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
(202) 434-5000  
(202) 434-5029 (facsimile)

*Attorneys for Defendant Theodore F. Stevens*

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<sup>1</sup> Senator Stevens certainly does not believe he received any unreported gifts from “others,” but neither does he believe there is anything improper about the fish statue and other items that the government has inaccurately claimed are unreported gifts to him.