



# FOLEY SCANDAL FALLOUT: ETHICS IN CONGRESS

An educational panel sponsored by Judicial Watch

## INTRODUCTION

In October 2006, not even a nuclear bomb going off in North Korea was enough to push the sex scandal involving former Florida Congressman Mark Foley off the front pages. Foley, who ultimately resigned over the matter, was accused of sending salacious emails to male congressional pages – and possibly much worse.

Press reports at the time suggested that members of both parties were aware of Foley's shameful behavior, but took no action to stop him. A subsequent House Ethics Committee investigation confirmed these reports, concluding that Democrats attempted to "shop" the Foley story to the media in order to claim an advantage in the November mid-term elections, while Republicans swept the matter under the rug to avoid public embarrassment. The House Ethics Committee, however, recommended no punishment for those involved. Judicial Watch president Tom Fitton called the report, "a bipartisan embarrassment and a sorry example of a Congress unwilling to hold its members and staff to account for misconduct."

While the details of the Foley scandal were shocking, the response by the House Ethics Committee was not. Under the "leadership" of outgoing Speaker Dennis Hastert, the ethics

process in Washington ground to a halt. Gary Condit, Cynthia McKinney, William Jefferson, John Conyers, Tom DeLay, Duke Cunningham, Jim McDermott, Patrick Kennedy, to name a few, are examples of alleged wrongdoers who faced little-to-no ethics enforcement in the House. The same, of course, can be said of the Senate, where Hillary Clinton, and Harry Reid, among others, have gone unpunished for serious ethical transgressions.

Ultimately, the issue of corruption made the difference in the mid-term elections, as Republicans lost control of the House of Representatives, the Senate, and the majority of the governorships all in one night.

On October 16, in the final weeks before the mid-term elections, Judicial Watch held an educational panel at the National Press Club entitled, "The Foley Scandal Fallout: Ethics in Congress," hosted by Judicial Watch President Tom Fitton, and Director of Investigations and Research Christopher Farrell. Featured panelists were Tim Burger of *Time Magazine*, Charles Hurt of *The Washington Times*, and Stephen Hess of The Brookings Institution. The panel

initially focused on the Foley scandal, but soon developed into a free-wheeling discussion on the subject of congressional ethics. The following is a summary of the key issues discussed.



**"Mark Foley, Gary Condit, Cynthia McKinney, William Jefferson, John Conyers, Tom DeLay, Duke Cunningham, Hillary Clinton, Patrick Kennedy, and so many, many members of both parties have benefited from an evisceration of the ethics process."**

– Tom Fitton, JW President



Left to right: Former Rep. Mark Foley (R-FL), Former Rep. Gary Condit (D-CA), Former Rep. Cynthia McKinney (D-GA), Rep. William Jefferson (D-LA), Senator Hillary Clinton (D-NY).

## THE BIPARTISAN PROBLEM

“Under Speaker Hastert, we’ve seen Congressmen embroiled in some pretty amazing scandals. The scandals that involved Congressmen Cunningham, DeLay, Conyers, Ney and Jefferson were not inadvertent administrative oversight failings. These were enormous scandals that are corrosive. They undermine the government’s ability to function and they undermine the public’s trust in Congress. If we back up a few more years, we can look at [former] Congressman Condit and some other disturbing questions concerning his behavior,” said Chris Farrell in his opening remarks.

“There is no party that has a monopoly on corruption. These are not Democrat or Republican; these are Democrat *and* Republican...I think the American people understand full well the bipartisan nature of Washington corruption...these scandals almost always involve members of the majority party. Occasionally, you’ll get a minority party member but, by and large, the majority members have more to offer and do,” said Stephen Hess.

Tim Burger of *Time Magazine* added, “One thing to keep in mind, there are 540 members of Congress and, not to justify any kind of behavior that’s coming out now, but, in a group that large, you’re always going to have some bad apples in the bushel. The question is whether you find them before you bite into them, if you will, and before too much damage is done.”

## BRINGING CRIMES AND ETHICS VIOLATIONS TO LIGHT

“Part of the problem is the House’s own Ethics Committee. It was essentially out of business for a couple of years,” said Farrell. “The only person who can file a House ethics

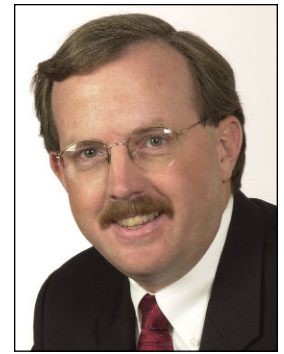
complaint is another House member. So the American people can’t file an ethics complaint. An ordinary citizen can file an ethics complaint in the Senate, but the average American citizen can’t even file an ethics complaint concerning a member of their own House of Representatives.”

Tim Burger of *Time Magazine* stated that the Foley matter would be the first test for the House Ethics Committee’s new composition. “It was totally paralyzed, literally, and out of business for quite a while.

Burger suggested that a certain amount of cowardice impedes the process of holding members to account. “Members of Congress are afraid to file [ethics complaints] because they don’t want to be responsible for causing a new partisan avalanche...”

*The Washington Times’* Charles Hurt said that the Ethics Committee has been shunted to the side over the last couple of years. “It’s been replaced by alcohol rehab for Congressmen. When they get into trouble, they can just check themselves in and say they’re alcoholics.”

Hurt also noted that the House Ethics Committee meets behind closed doors in the basement of the Capitol, tucked away in a labyrinth of hallways. He gave the impression of a cramped setting where reporters cannot even watch the testimony. Many journalists must sit in the crowded hallway waiting for witnesses to walk in and out so they can report the names of the witnesses.



Chris Farrell, JW Director of Investigations and Research



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Photo: Former House Speaker Hastert (R-IL).

## NOTHING NEW UNDER THE SUN

Stephen Hess of The Brookings Institution, a 48-year observer of Washington scandals, provided some historical perspective. “The first scandal I knew in Washington was called the ‘Vicuna Coat Scandal.’” In September 1958 Hess was a young man on President Eisenhower’s staff. Sherman Adams, the Chief of Staff, had to resign over a scandal that involved taking some gifts and making some telephone calls.

“It’s amazing how many have given up or allowed their integrity to be challenged and undermined by rewards that are so modest. Remember how little the fees were in the credit union scandal in the kited checks?...That was largely about the stamps that [former Rep. Dan Rostenkowski] turned back in for money. A game of golf at St. Andrews seems to be a big enough lure for some of these folks.

“Is public life here more corrupt than 48 years ago? I think you could argue that perhaps this question is really a matter of optics. Those things that are closest to you are largest. I certainly would argue that human nature doesn’t change very much and certainly not in such a small period as half a century,” said Hess.

## THE HEART OF THE MATTER

After the opening remarks of the panelists, Tom Fitton noted that the evisceration of the congressional ethics process has benefited Mark Foley as well as Cynthia McKinney, who assaulted a Capitol Hill police officer, and Patrick Kennedy, who allegedly drove his car into a Capitol Hill barricade while drunk. “Given the nature of previous investigations and the hesitation to get into areas covered by criminal prosecutors, which has always been an excuse not to do anything until public pressure said otherwise, do you think this ethics investi-

gation is going to get to the heart of the matter?” asked Fitton.

Hess replied, “Members of the House of Representatives do not wish to police other Members of the House of Representatives if they can avoid it. It is as simple as that.” Hess said he never expects anything out of the Ethics Committee – unless they are absolutely forced to the wall – because members have to face their electorate every two years.

Burger speculated that the Foley investigation will lead to a report, “and if it’s not reasonably complete, then you’re going to have people second guessing it.”

## SUGGESTED REMEDIES

Hurt suggested that a bill recently signed into law by President Bush will “take all the spending that goes on in Congress, put it in a massive database, and put it on the Internet and let the people go through and make of it what they want.” This type of government transparency, Hurt contended, could provide a remedy for rampant corruption on Capitol Hill.

Hess offered the idea of having the House Ethics Committee comprised of distinguished former members of the House of Representatives. “I don’t know why the House of Representatives couldn’t turn to [former members] who know and love that institution and say, ‘Okay, we’re one step removed. Let us consider these problems.’”

Burger warned, however, that America should not expect any substantive action soon. Patience may be the order of the day. “The 9/11 Commission got huge publicity. It couldn’t have been a more important issue and recommended some reforms of intelligence oversight for Congress that haven’t been touched.”



Left to right: Charles Hurt, *The Washington Times*; Stephen Hess, The Brookings Institution; Chris Farrell, JW’s Director of Investigations and Research; and Tim Burger, *Time Magazine*.

“What I’m saying,” continued Burger, “is that congressional reform is something that happens at a geologic pace.” He called for both Congress and the Executive Office of the President to be subjected to the Freedom of Information Act, a legal tool which helps bring the inner workings of federal agencies to light.

Hess remarked that years ago state legislatures tried to make voting districts competitive rather than safe. This, he believes, has changed over time. He said that state legislatures must be “reminded and convinced that what they’re doing is not in the national interest; that we really have to redesign districts that give voters a chance to throw the rascals out...if that is indeed what they want to do.”

Fitton suggested that the best way to keep Congress honest is with the threat of jail for criminal wrongdoing. “I think what has moved the ethics process along...is the change of attitude at the Justice Department. For the first time in a decade, you have a public integrity unit that has been willing to investigate public officials and put them in jail for bribery and extortion. That was not the case during the Clinton years and I don’t think they’re as aggressive as they should be, but...it certainly is a marked improvement.”

## VALUE OF THE PRESS

Burger suggested that the press has a valuable role to play in exposing wrongdoing. In the “Duke” Cunningham case, Burger pointed out, the House Intelligence Committee said there were red flags concerning Cunningham’s behavior. He said, “[Cunningham] was a little too obsessed with getting certain contractors their deals.” Burger complimented the *San Diego Union Tribune* for its aggressive but fair coverage that made the difference in this case when they reviewed and analyzed the real estate transactions that led, in part, to Cunningham’s conviction.

## THE “ABRAMOFFING OF WASHINGTON”

Convicted felon and former mega-lobbyist Jack Abramoff is now an infamous name in the American lexicon for devising a sophisticated scheme to bribe members of Congress. Fitton said, “The Foley scandal is obviously the public face of the

so-called culture of corruption...[represented] by the Abramoff scandal. We were led to [the Abramoff scandal] by the press and it resulted in Congressman Tom DeLay resigning. Congressman Ney is going to resign; he’s going to jail as well. And other congressmen and senators have been implicated, including the Minority Leader Harry Reid, who is subject to other ethics criticisms...”

“The Abramoff scandal is one of those things that is much harder to explain than the Mark Foley scandal,” said Hurt. It resulted from a Republican plot to amass power without regard

to ethics, much like the Democrats had done during the previous 40 years in power on Capitol Hill. He said, “When Republicans took over in ‘94, you were looking at a very Democratic town...where Democrats had been in control [of the House] for 40 years, and had all of the ties to lobbyists on K Street.” Hurt said that it was tactically brilliant of DeLay, though clearly distasteful to many, to go after those lobbyists and force them to “play ball” with the Republicans.

Hess attributed the Abramoff scandal to the deeply ingrained nature of power and money brokering in Washington. “They never go back to Pocatello [Idaho],” said Hess. When a congressman is defeated or retires, instead of going home, they set up shop here in Washington. Based on a study being conducted at George Washington University, Hess added, “Each one, each administration, each member, each staffer comes into town and they don’t go home, and this place gets more and

more cluttered. It becomes very big business and a very competitive business.” Hess called for “an awful lot of attention” to this growing problem.

Burger added that a lobbyist friend told him that congressmen and their staff call regularly and ask for box seats and campaign contributions. “One interesting fact,” said Burger “is that Congress is not covered, nor is the Executive Office of the President, by the Freedom of Information Act.” According to Burger, the American people never see the scores, if not thousands, of e-mails exposing this activity.



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— Charles Hurt, *The Washington Times*  
Photo: Former Lobbyist Jack Abramoff

## THE PROBLEM WITH INCUMBENCY

Fitton suggested that in elections, no matter how they turn out, 80% of the seats in Congress will remain unchanged.

Twelve years ago, as we were reminded by Hurt, when Republicans came to Congress, they had an answer to the incumbency problem: term limits. After Republicans were elected, however, the idea lost its appeal. Hurt recalled that he thought term limits were a bad idea at first because voters should have the ability to vote for whomever they want. “I don’t dismiss it out of hand anymore,” said Hurt. “There is a corrosiveness that comes with being around here so long and having so many contacts in the lobbying world.”

Burger added, “. . .there’s definitely a chummy environment that can get out of hand at times. You have to try and be conscious of that and guard against it. Even if you’re some anonymous member of the House, there’s the ‘red carpet’ treatment and you really have to avoid taking that to heart.”

## CHECKS AND BALANCES

During his many years in Washington, one thing Hess has learned is “the degree to which Article I, Article II and Article III of the Constitution is terribly meaningful to these people. The legislative, executive, and judicial branches are constantly in a struggle against each other.”

“If the president is down, you can be sure that the Congress is going to try to reassert some powers: whether it’s the War Powers Act or otherwise,” observed Hess. “It works in the other direction just as well.”

“So yes, I can look at things in a terribly short view and get very upset, or I can look at it through a long lens and be quite enamored by our Founding Fathers and what they have created.”

Burger added, “We’re talking about the bad apples, but there’s a lot of good folks in the staffs of government and in elected office. There really are. And what happens is some bad ones surface. There’s a chumminess that goes on, but that’s not inherently corrupt. It all depends on the details. . .but we shouldn’t be portraying that everyone in Washington, everyone in government is corrupt, because that’s really unfair and not true.”

## CHECKS AND BALANCES

Fitton asked the panelists, “Do you think the parties are going to learn any lessons? Back in the Clinton years – I’m sure all the liberal Democrats thought they were crocodile tears – but I used to warn that the Democratic Party was being hurt by the Clinton corruption and, sure enough, they lost the presidency, in part due to it. . .Judicial Watch has been a lonely voice on the right, warning against this sort of endemic corruption. . .and lo and behold, [the Republicans] may lose Congress.

“Am I going to be screaming about it five years from now, telling the parties they haven’t learned anything, or do you think some of the smarter folks within the party operations are beginning to understand that this is an issue?”

Burger answered, “. . .history repeats itself over and over. It does in so many examples in the world, but in Washington these things really happen in cycles and waves, and presumably [members of Congress] would see more of their colleagues in handcuffs and going away wearing orange suits. Bob Ney was a popular congressman. Duke Cunningham has some very good friends in Congress. I would assume this would have an effect on people.” Burger added, “Some people will be scared straight, and then the shock of the thing wears off and someone gets sloppy and you’re sort of back where you started.”

Hess recalled studies performed by political scientists on party



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Photo: The Founding Fathers of the United States of America signing the Declaration of Independence.

platforms: "It turned out that far more often than not, the parties tried – therefore politicians tried – to honor their pledges." The reason why, he said, was that politicians get into lots of trouble when they renege on their promises. Hess encouraged people to put the candidates on the record at campaign time and then hold them to their promises. This is a significant time and if, indeed, they go back on their word voters can take advantage of the fact that politicians prefer to keep their word than break it, even if only to maintain their stranglehold on power.

Hurt highlighted the value of efforts by Judicial Watch and C-Span at pointing out the failing to uphold ethical standards. He believes these sorts of activities have a big impact.

## CONCLUSION

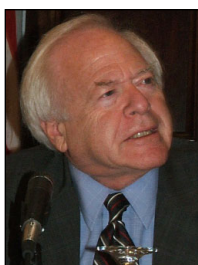
While Judicial Watch's panel discussion began on the topic of the sex scandal involving Mark Foley, it points to a broader issue on Capitol Hill. Both Democrats and Republicans have been full partners in the evisceration of the ethics process in Congress. The fact is few congressmen accused of ethical misconduct have undergone serious investigations. Democrats, who now control the levers of power in both houses of Congress, are set to institute a package of ethics rules changes. But how can we trust members of Congress to enforce these new rules, when they openly flouted the old ones without consequence? The key to addressing the issue of ethics in Washington depends upon strict enforcement.

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## PANEL PARTICIPANTS



**TOM FITTON** is President of Judicial Watch, a nonpartisan, nonprofit educational foundation established in 1994 as a "watchdog" over the executive, legislative and judicial branches of government. Judicial Watch has brought more than 150 cases against high-ranking officials for misconduct and violations of the public trust.



**STEPHEN HESS** is one of the foremost authorities on media and government in the United States and has been a senior fellow in the Governmental Studies Program of the Brookings Institution since 1972. He has served on the White House staffs of Presidents Dwight Eisenhower and Richard Nixon, and has been an adviser to Presidents Gerald Ford and Jimmy Carter.



**CHRIS FARRELL** is Director of Investigations and Research for Judicial Watch. Farrell, a former US Army Intelligence Officer, leads Judicial Watch's investigations department, which specializes in using the open records process to investigate public corruption.



**CHARLES HURT** covers Congress for *The Washington Times* and has been covering the Foley scandal. Prior to covering the goings on of Congress and the presidential campaign for the Times, Charlie covered the rise of former Senator John Edwards for folks in North Carolina and the local beat out of Detroit.



**TIM BURGER** is an investigative Washington correspondent for *Time* magazine. He previously worked for the *New York Daily News* and covered Congress for *Roll Call*.



# Judicial Watch

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## ABOUT JUDICIAL WATCH

Judicial Watch, Inc., a conservative, non-partisan educational foundation, promotes transparency, accountability and integrity in government, politics and the law. Through its educational endeavors, Judicial Watch advocates high standards of ethics and morality in our nation's public life and seeks to ensure that political and judicial officials do not abuse the powers entrusted to them by the American people. Judicial Watch fulfills its mission through investigation, litigation, and public outreach.

### Investigation:

Open government is honest government. This is the principle that drives Judicial Watch's fight against government secrecy. Using open records laws, such as the federal Freedom of Information Act (FOIA) and the states' Sunshine Laws, Judicial Watch forces the release of government documents into the public domain. When elected and appointed public officials or government agencies stonewall investigations or try to hide behind special privilege, Judicial Watch takes strong legal action to force them to comply with open records laws. Our persistence and strategy has proven extremely effective. Judicial Watch has filed more than 400 open records requests in its first ten years, leading to the release of hundreds of thousands of documents into the public domain.

### Litigation:

Litigation and the civil discovery process not only uncover information for the education of the American people on anti-corruption issues, but they can also provide a basis for civil authorities to criminally prosecute corrupt officials. Judicial Watch has filed more than 150 lawsuits against corrupt public officials, achieving numerous victories on behalf of the American people. This is what separates Judicial Watch from other watchdog organizations. Judicial Watch is willing to take action, to use the civil court system in order to achieve justice. Thanks, in part, to its aggressive litigation, Judicial Watch was recently named one of the "top ten" most effective government watchdog organizations by *The Hill* newspaper.

### Public Outreach:

Judicial Watch's investigation, legal, and judicial activities provide the basis for strong educational outreach to the American people. Judicial Watch's public education programs include speeches, opinion editorials (op-eds), publications, educational conferences, media outreach, radio and news television appearances, and direct radio outreach through informational commercials and public service announcements. Through its publication *The Verdict*, educational mailings, and special reports, Judicial Watch educates the public on abuses and misconduct by political and judicial officials and advocates for the need for an ethical, law abiding and moral civic culture. Judicial Watch also pursues this educational effort through its Internet site, [www.judicialwatch.org](http://www.judicialwatch.org), where many of the open records documents, legal filings, and other educational materials are made available to the public and media.

**"I think it is fair to say that Judicial Watch has been singularly successful in bringing scandals to light, educating the public, and using the legitimate tools of the judicial system to obtain justice on behalf of the American people."**

– Former Congressman Bob Barr

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# JW'S RECENT VICTORIES FOR JUSTICE

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- 1 HOLDING HILLARY CLINTON ACCOUNTABLE** The Federal Election Commission responded to a Judicial Watch complaint and fined Hillary Clinton's fundraising operation \$35,000 for failing to accurately report more than \$700,000 in campaign contributions to her Senate campaign.
- 2 FIGHTING THE POLITICAL ESTABLISHMENT TO GET TO THE TRUTH ABOUT AMNESTY FOR ILLEGAL ALIENS** Judicial Watch uncovered a previously undisclosed "Border Patrol Survey" that proved President Bush's "guest worker program" (amnesty for illegal aliens) lured greater numbers of illegal immigrants to cross the border, along with details of the government's desperate attempts to cover up the politically unfavorable findings.
- 3 HOLDING JESSE JACKSON ACCOUNTABLE** JW forced Jesse Jackson to testify in a court of law about his alleged role in a violent attack on conservative activist Rev. Jesse Lee Peterson at an event sponsored by Jackson's Rainbow-PUSH Coalition. Faced with the prospect of a retrial on one charge, Jackson (and his son) elected to settle the case.
- 4 EXPOSING BILL CLINTON'S KNOWLEDGE OF THE THREAT POSED TO AMERICA BY OSAMA BIN LADEN** Judicial Watch, through the Freedom of Information Act (FOIA), forced the release of government records which show conclusively that the U.S. Department of State warned President Bill Clinton of the severe terrorist threat posed by bin Laden in 1996.
- 5 PROVIDING THE AMERICAN PEOPLE WITH NEVER-BEFORE-SEEN VIDEOS OF THE 9/11 TERRORIST ATTACK ON THE PENTAGON** Judicial Watch sued the Department of Defense on behalf of the people's "right to know" and obtained security videos of the 9/11 attack on the Pentagon. The videos were broadcast on every major news network in the United States, while more than 550 publications around the world reported the story. More than one million people viewed the videos on Judicial Watch's Internet site.
- 6 EXPOSING THE CLINTON ADMINISTRATION'S CONTEMPT FOR THE SANCTITY OF LIFE** Judicial Watch uncovered documents from the Clinton Presidential Library proving conclusively that the Clinton administration rushed the abortion pill RU-486, which has killed at least six American women, through the FDA approval process in order to appease its funders and supporters in the abortion lobby.
- 7 FORCING THE WHITE HOUSE TO REVEAL ITS DEALINGS WITH CONVICTED FELON JACK ABRAMOFF** Judicial Watch filed a lawsuit against the U.S. Secret Service and forced the release of documents that show admitted felon and former casino lobbyist Jack Abramoff's contacts with the White House.
- 8 FIGHTING FOR THE AMERICAN PEOPLE'S "RIGHT TO KNOW"** Judicial Watch fought all the way to, and before, the U.S. Supreme Court to argue its case for open and transparent government in the matter of the secret records of the White House "Energy Task Force."
- 9 VINDICATED BY THE FEDERAL COURT** Federal Judge Royce Lamberth ordered the Commerce Department to pay Judicial Watch just under \$900,000 as partial compensation for attorney's fees and costs related to Judicial Watch's 10-year battle over the Clinton "Chinagate" scandal, because Judicial Watch had "substantially prevailed" in its case.