
MEDIGATE:

Bribes, Lies and Videotape



**A REPORT BY THE OFFICE OF
SENATOR FRANK R. LAUTENBERG
ON THE MOST SCANDAL-PLAGUED
FEDERAL LEGISLATION IN DECADES**



MEDIGATE: BRIBES, LIES AND VIDEOTAPE

The Medicare Drug bill passed into law in December 2003 is fast becoming the most scandal-plagued Federal legislation in recent decades. It was strong-armed through Congress utilizing tactics that have already spawned an FBI investigation, a House Ethics Committee probe, and an investigation by the Inspector General of the Department of Health and Human Services. The misconduct that occurred during consideration of the bill potentially violates four criminal statutes (detailed in this report), several civil statutes and Federal ethics rules.

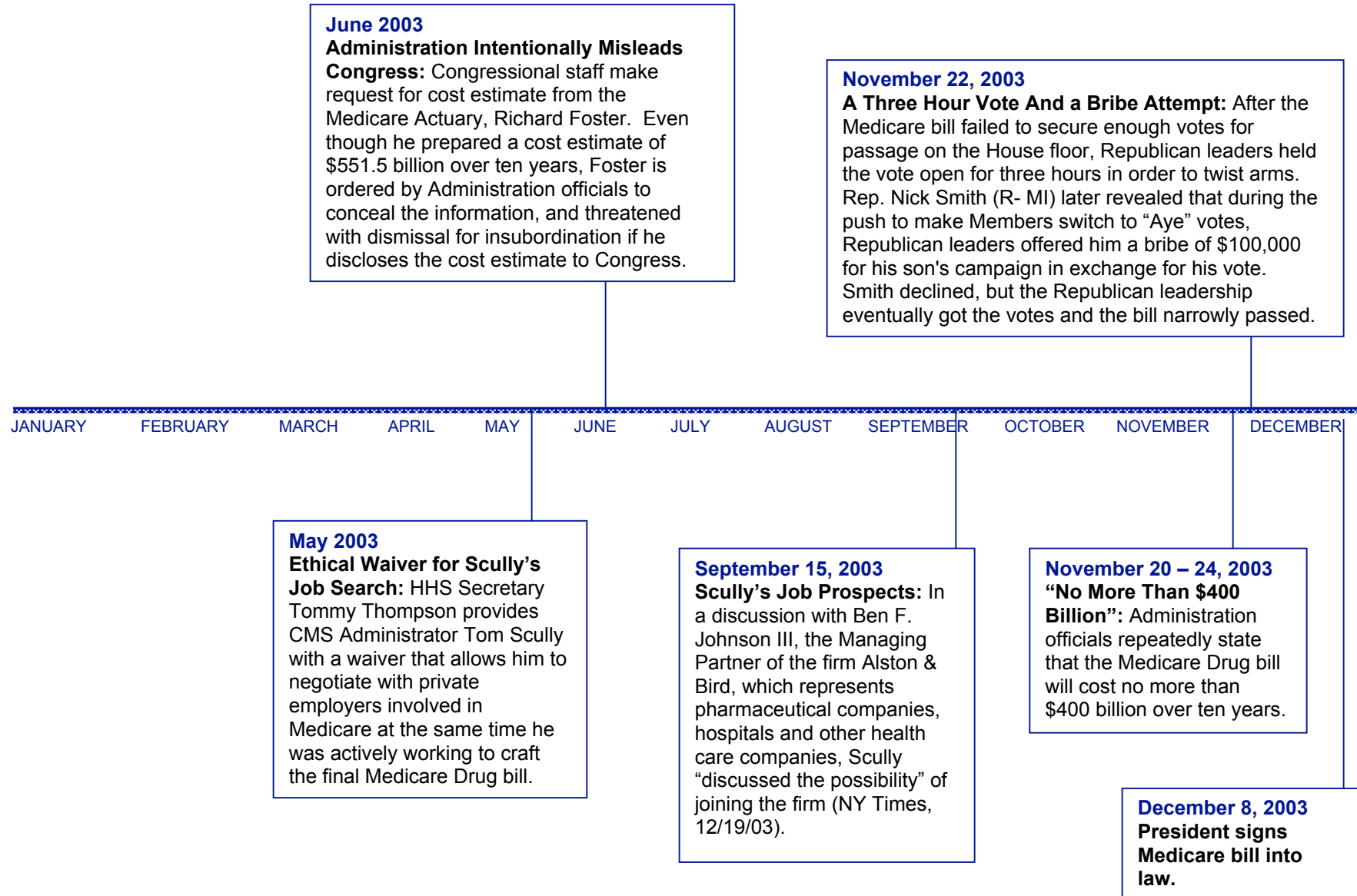
Misconduct during consideration of the bill includes:

- Allegation of an attempted bribe on the House floor
- The suppression by the Administration of valid information on the bill's ten-year cost
- False claims by the Administration to Congress that the bill will cost "no more than \$400 billion"
- Lucrative private employment deals negotiated between top officials involved in crafting the bill and private entities who would benefit from the bill's provisions

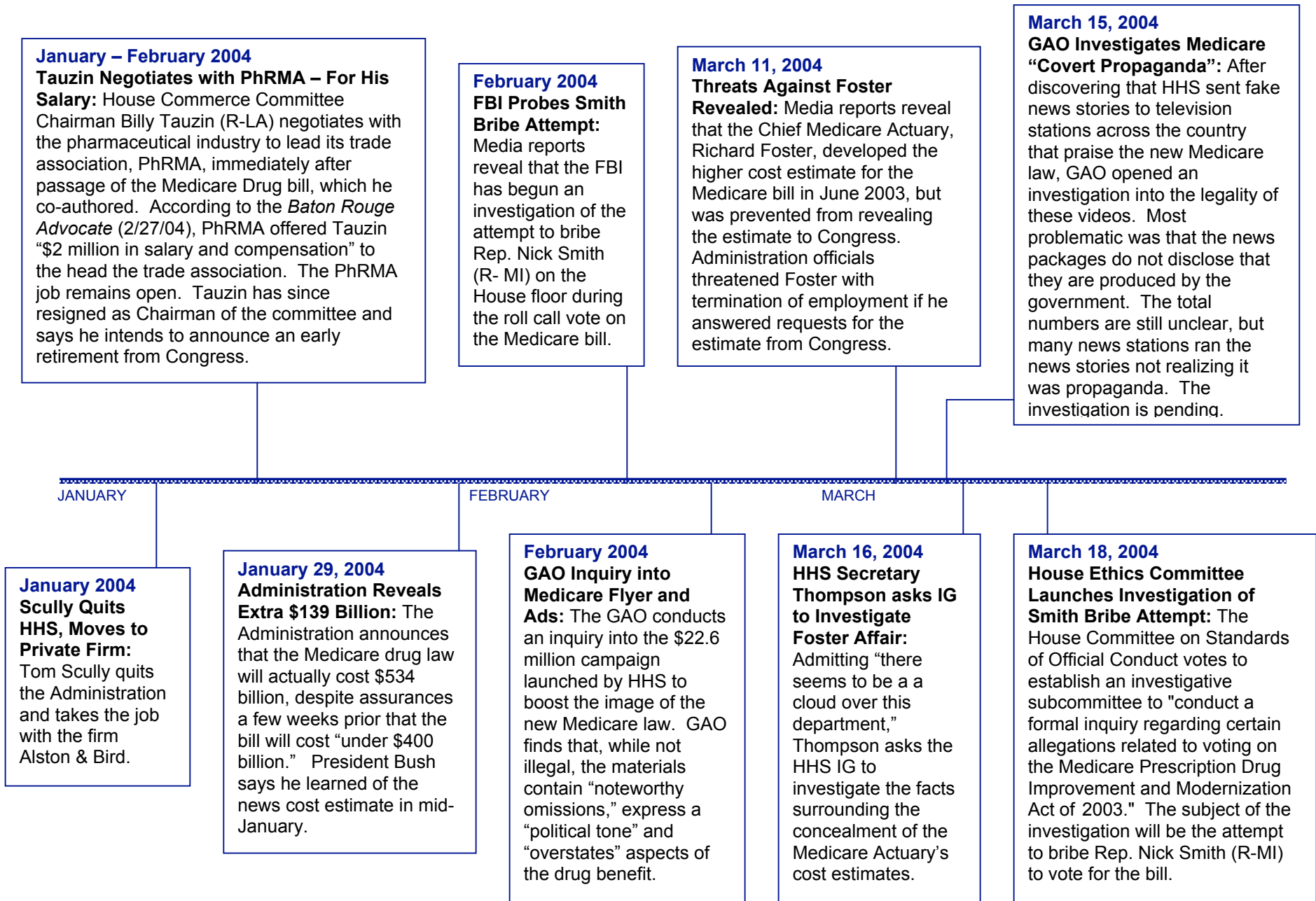
After passage of the bill, the Bush Administration engaged in tactics that have already resulted in two inquiries by the General Accounting Office (GAO) to determine the legality of the Administration's conduct. GAO conducted its initial investigation on a \$22.6 million HHS campaign designed to promote the new Medicare law in response to criticisms made by the bill's opponents. While finding the campaign legal, the GAO criticized the misleading nature of the HHS materials, finding that it: contained "notable omissions and other weaknesses"; had a "political tone" and "overstates the access beneficiaries will have to the prescription drug benefit program." The GAO also questioned the legitimate informational value in 2004 of educating the public about a drug benefit that is not available until 2006. (See *GAO Legal Opinion B-302504, pages 3, 11-12.*)

The GAO's current, pending inquiry revolves around the Department of Health and Human Services' (HHS) distribution of a fake television news story reported by a "Karen Ryan" that hails the new Medicare law. HHS also distributed a Spanish-language version, reported by a fictional reporter named "Alberto Garcia." These video news packages, which did not disclose that it was produced by the government, were received by news stations around the country, which aired them as real news stories. Many of these local stations likely had no idea that the news packages they aired were actually government-produced propaganda. In addition to the GAO, the Federal Communications Commission is currently considering a request for an investigation into these same fake television news stories.

THE MEDICARE BILL IN CONGRESS: 2003



IMPLEMENTATION OF THE MEDICARE LAW: 2004



**POTENTIAL LEGAL VIOLATIONS IN THE PASSAGE
AND IMPLEMENTATION OF THE MEDICARE LAW**

CONDUCT	POSSIBLE LEGAL VIOLATIONS
<p>Preventing Medicare Actuary Richard Foster From Informing Congress of HHS Cost Estimates for the Medicare Legislation</p>	<p>CRIMINAL:</p> <p><u>Obstruction of Proceedings Before Departments, Agencies, and Committees, 18 U.S.C. § 1505</u> reads, in pertinent part: “Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress – Shall be fined under this title or imprisoned not more than five years, or both.”</p> <p><u>Fraud and False Statements, 18 U.S.C. § 1001</u> reads: (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both. (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding. (c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to- (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.</p> <p><u>Conspiracy to Commit Offense or to Defraud United States, 18 U.S.C. § 371</u> reads: If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.</p>

Preventing Medicare Actuary Richard Foster From Informing Congress of HHS Cost Estimates for the Medicare Legislation (cont.)

CIVIL:

Pub. L. No. 108-199, Div. F, Tit. VI, § 618 and Pub. L. No. 108-7, Div. J, Title VI, § 620

Both read:

“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who –

- (1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or
- (2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).”

Employees' Right to Petition Congress, 5 U.S.C. § 7211

States: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

**Attempt to Bribe
Rep. Nick Smith (R-MI)**

Bribery of Public Officials and Witnesses, 18 U.S.C. § 201

Reads:

(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;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) 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 being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absents himself therefrom; 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.

(c) Whoever -

(1) otherwise than as provided by law for the proper discharge of official duty -

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or

<p>Attempt to Bribe Rep. Nick Smith (R-MI) (cont.)</p>	<p>person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or</p> <p>(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;</p> <p>(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;</p> <p>(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom; shall be fined under this title or imprisoned for not more than two years, or both.</p> <p>(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.</p> <p>(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.</p>
<p>HHS Covert Distribution of Administration's Fake Television News Story</p>	<p>LAW:</p> <p><u>Pub. L. 108-7, Title VI, Sec. 626 and Pub. L. 108-199, Division F, Transportation Treasury and Independent Agencies Appropriations 2004, Sec. 624</u></p> <p>States: "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by Congress."</p> <p>REGULATIONS:</p> <p><u>Rules Applicable to All Broadcast Stations; Sponsorship Identification; List Retention; Related Requirement, 47 CFR 73.1212(d)</u></p> <p>Reads:</p> <p>(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: Provided, however, That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.</p>

