

REPORT OF THE SPECIAL COUNSEL FOR THE CUNNINGHAM INQUIRY

EXECUTIVE SUMMARY

Cunningham's Plea

On June 23, 2005, then-Congressman Randy "Duke" Cunningham released a public statement in response to allegations regarding his relationship with a government contractor named Mitch Wade. Among other things, Cunningham argued that "I do not have the authority or ability to award a contract to Mr. Wade's company and no single Member of Congress, no matter how influential, can dictate to the Armed Services who will be awarded contracts."

There was some truth to this assertion. By himself, Cunningham had no authority or ability to award a contract to MZM, Wade's company. To ensure that MZM received government contracts worth tens of millions of dollars, Cunningham and Wade needed to secure the cooperation, or at least the non-interference, of many people: the appropriators and authorizers in Congress, who carried Cunningham's funding requests (or "adds") and wrote the language directing how they were to be used; the various Department of Defense ("DOD") officials responsible for execution of the money, awarding the contracts and preparing the Statements of Work; and officials of the agencies for which the contracts were to be performed. This was a lot of people to persuade, cajole, deceive, pressure, intimidate, bribe or otherwise influence to do what they wanted.

On November 28, 2005, Cunningham pled guilty to accepting at least \$2.4 million in bribes from his co-conspirators, including Wade and another defense contractor named Brent Wilkes. In exchange for these bribes, Cunningham admitted that he "made recommendations and took other official action in order to influence the United States Congress's appropriations of funds to benefit [Wilkes] and [Wade]." He also "used his public office and took other official action to pressure and influence United States Department of Defense personnel to award and execute government contracts in a manner that would benefit [Wilkes] and [Wade]."

On February 23, 2006, Wade pled guilty to bribing Cunningham. He also pled guilty to other offenses, including providing benefits to "DoD employees in order to influence, induce and otherwise improperly cause them to show bias toward MZM in the discharge of their official duties, in ways that would enrich MZM and Wade."

The HPSCI Inquiry

On December 20, 2005, the Honorable Pete Hoekstra, Chairman of the House Permanent Select Committee on Intelligence (HPSCI), and the Honorable Jane Harman, HPSCI Ranking Member, signed a "Framework Agreement on Cunningham Inquiry." In this memorandum they directed the initiation of an inquiry "to determine whether Mr.

Cunningham improperly used Committee staff or resources to further the conspiracy identified in his plea agreement, or whether the Committee staff furthered the conspiracy in any way.”

An important objective of the inquiry was to determine whether Cunningham attempted to use the HPSCI authorization process to benefit his co-conspirators and, if so, whether he was successful in obtaining provisions in the HPSCI authorization bill for that purpose. Another important objective was to determine whether any HPSCI staff member was culpable in the illegal acts of Mr. Cunningham. In this connection it must be recognized that the inquiry does not have either the resources or the authorities of a criminal investigation. Therefore, this objective is more precisely stated as determining whether there is any substantial evidence, warranting a referral to appropriate law enforcement authorities, that any HPSCI staff member committed a violation of law as part of, or in connection with furthering the purposes of, the conspiracy identified in Cunningham’s plea agreement.

The Framework Agreement provides that the inquiry is limited to activity internal to HPSCI. In accordance with that directive, our focus has been on reviewing documents and files within HPSCI and interviewing current and former HPSCI staff. However, there is much information from other sources which can shed light on HPSCI’s relevant activities. In this connection we have interviewed a number of other persons with relevant information, including former Cunningham staffers and former DOD officials.¹ We have also obtained relevant documents from Cunningham’s personal office files.

Some sources of significant information have been unavailable to us to date. We have not yet been able to interview Cunningham himself, although we have an outstanding request to do so. We have also requested that the House Appropriations Committee (HAC) permit us to speak with some current and former staff, but we have not received a response to this request. Although we have received listings of contracts awarded to Wilkes and Wade related companies from DOD (as well as from the Central Intelligence Agency (“CIA”) and the Director of National Intelligence), the DOD has been unwilling to share additional information to date, due to the pending criminal investigations.

Summary of Factual Findings

Set forth below are our principal findings to date, subject to refinement or modification as additional information is gathered:

1. Beginning in early 2000, Cunningham and his co-conspirators (Wilkes and Wade) repeatedly sought to use HPSCI to facilitate the objectives of the conspiracy,

¹ Some Cunningham staffers have declined cooperation with our inquiry. Nancy Lifset, Cunningham’s former legislative director and his principal point of contact with HPSCI, was subpoenaed and gave testimony at a closed hearing after she refused our request for a voluntary interview.

particularly through requests for congressional funding (“adds” or “earmarks”) that benefited Wilkes, Wade and their companies.

2. Cunningham was successful in obtaining HPSCI authorization of funding requested by Wilkes and Wade. From FY01 through FY06, HPSCI authorized approximately \$70-80 million in funding requested by Cunningham on behalf of these two individuals and their companies.

3. Cunningham appears to have been largely successful in obtaining the requested funding authorization in a manner that ensured the funds went to the intended recipients. In other words, the HPSCI authorizations permitted—if they did not actually require—the appropriated funds to be awarded to companies controlled by Wilkes and Wade without a competitive contract award process. Moreover, in Wade’s case at least, HPSCI staff was fully aware that the funds were intended for a specific recipient and either actively cooperated with or did not resist Cunningham’s efforts to steer the funds toward that recipient.

4. While HPSCI operates in a complex political environment in which many factors affect decisions as to funding of particular programs or projects, the evidence points to Cunningham’s support as the clearly predominant factor in the decisions relating to the Wilkes/Wade funding. In particular, Cunningham’s status as a member of the defense appropriations subcommittee with the power to impact HPSCI’s key priorities and his willingness to pressure and intimidate individual HPSCI staff members were key to the success of the Wilkes/Wade funding requests.

5. As a direct consequence of the conspiracy between Cunningham and Wade, Cunningham requested and obtained HPSCI support in FY03 for a new counterintelligence project at the Counterintelligence Field Activity (CIFA). Obtaining HPSCI support was integral to Cunningham’s strategy to obtain funding for this project, which was to be run by Wade’s company, MZM. Because of Cunningham’s insistence, HPSCI staff agreed to support this project, despite staff’s concerns that it was a “pork barrel” project and a waste of taxpayer money.

6. Over time, HPSCI staff learned of numerous “red flags” associated with the counterintelligence project, including frequently expressed questions about the ethics and integrity of Wade, doubts about the value of the project and MZM’s performance, and grave concerns about the propriety of the Cunningham-Wade relationship. Despite these red flags, the responsible HPSCI staff members continued to accept and support Cunningham’s growing requests for this project from FY03 through FY06.

7. As acknowledged in his plea agreement, Cunningham frequently pressured and otherwise influenced DOD officials to award and execute contracts and take other action for the benefit of Wade and Wilkes. This activity took place both before and after Cunningham joined HPSCI, and continued during the time that Cunningham served as chairman of the HPSCI subcommittee on Terrorism, Human Intelligence, Analysis and Counterintelligence. Wade also used his connection with Cunningham to pressure and

intimidate DOD officials for his own benefit. Specifically, Cunningham and Wade sought to exert pressure on DOD officials, including CIFA, to benefit Wade in connection with the counterintelligence project.

8. HPSCI's ability to conduct appropriate oversight over the counterintelligence project at CIFA, MZM's other contracts with CIFA, and, arguably, CIFA as a whole appears to have been seriously impeded by the corrupt conspiracy between Cunningham and Wade. CIFA was reluctant to share negative information about MZM with HPSCI staff and, when it did, it appears that there was little that HPSCI staff was willing or able to do to follow up.

9. We have found no evidence that any HPSCI staff member, current or former, profited, sought to profit, or expected to profit personally from any of the funding requests in question. We also have found no evidence that any HPSCI staffer was aware of, or in any way participated in, any financial inducements provided to Cunningham by Wilkes, Wade or anyone else.

10. Despite occasional efforts by Wade to curry favor with various HPSCI staff, the evidence does not suggest that any staff sought, on their own initiative, to give special treatment to Wade. On the contrary, the evidence suggests that HPSCI staff who dealt with Wade were, to varying degrees, suspicious of him and disinclined to provide him any favorable treatment (other than that they provided as a consequence of acceding to Cunningham's demands).

11. There was a significant personal relationship between Wilkes and Brant Bassett, a former HPSCI staffer. Bassett had a special relationship with Cunningham as well, based largely on their mutual friendship with Wilkes. However, Bassett did not have any direct or indirect authority over the budgetary areas in which Cunningham made his requests for Wilkes, and there is no evidence that Bassett played a substantive role in HPSCI's handling of those requests.

12. Bassett had a close personal relationship with Kyle Dustin "Dusty" Foggo, a CIA official who was also a close personal friend of Wilkes. During his time at HPSCI, Bassett and Foggo worked together to achieve certain objectives relating to the management of the CIA. Bassett introduced Foggo to key HPSCI members and staff, and Bassett and Foggo sought to motivate various HPSCI members to take desired actions by, among other things, providing them with gifts of "government trinkets" such as a carpet emblazoned with the words "Global War on Terror." At this stage it is unclear whether these actions violated any law or regulation, but further inquiry is appropriate.

13. Foggo is currently under investigation for his involvement in the award of certain CIA contracts, including a contract to a company affiliated with Wilkes and several large contracts to a company managed by another individual. Foggo introduced Bassett to this individual in the spring of 2003, when Bassett was contemplating leaving HPSCI for the private sector. Bassett, Foggo, Wilkes and this individual also apparently had dinner together at the Capital Grille in June 2003. While we have not determined

that Bassett had any involvement in the award of CIA contracts either to Wilkes or to the other individual, we believe that additional inquiry is warranted to determine whether either Bassett or anyone else at HPSCI facilitated or was involved in any of the contract awards in question.

14. While our review has not identified any national security breaches resulting from the Cunningham conspiracy, we are aware of dealings that Cunningham had with certain foreign nationals, which we expect will be given careful scrutiny by appropriate law enforcement and national security agencies.