

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

UNITED STATES OF AMERICA

v.

WILLIAM J. HEATON,

Defendant.

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1:07CR42 (ESH)

**DEFENDANT WILLIAM HEATON'S
MEMORANDUM IN AID OF SENTENCING**

In accordance with this Court's order of May 23, 2007, Defendant William Heaton, by counsel, respectfully submits this Memorandum in Aid of Sentencing. Mr. Heaton and the government agree that a sentence of incarceration is not warranted in light of Mr. Heaton's substantial assistance in the government's investigation and prosecution of others implicated in the Jack Abramoff scandal. In its Substantial Assistance Memorandum ("Government Memorandum"), the government requested a five-level reduction in Mr. Heaton's offense level and recommended that any sentence of incarceration be satisfied through home confinement. Moreover, as discussed below, Mr. Heaton's youth, good character, sincere remorse, role as a subordinate to Congressman Ney, and the harsh consequences he already has incurred – among the key sentencing factors the Court considers under 18 U.S.C. § 3553(a) – weigh heavily against any sentence of incarceration. We therefore respectfully request that the Court sentence Mr. Heaton to some combination of community service, home confinement, and/or supervision so that Mr. Heaton may serve his sentence while continuing to contribute to society.

I. INTRODUCTION

In August 2001, about a year after he graduated from college, Will Heaton was hired by Congressman Bob Ney. (Gov't Mem. at 1.) Widely described as earnest, moral, and at times naive, Mr. Heaton was quickly realizing his dream of serving his country by working on Capitol Hill. (*See, e.g.*, Letter from Karen Haas, attached as Ex. 20; Letter from former Congressman Edward Pease, attached as Ex. 41.) For six months, Mr. Heaton worked as Mr. Ney's executive assistant and then, in February 2002, the Congressman promoted Mr. Heaton to the position of Chief of Staff – despite Mr. Heaton's initial rejection of the offer because of his own sense that he lacked the necessary experience. (*See* Peggy Sampson Ltr., Ex. 47; Karen Haas Ltr., Ex. 20.) Just 23 years old, Mr. Heaton became the youngest chief of staff on Capitol Hill. (*See* Gov't Mem. at 1; Robert Knapp Ltr., Ex. 35.)

As the record in this investigation makes clear, Congressman Ney was a corrupt, deceitful, and manipulative public official who sought and established improper relationships with lobbyists and others for personal and political gain. Mr. Ney intentionally hired and quickly promoted young, inexperienced staffers – who did not receive any formal ethics training from Congress – so that the staffers would have neither the knowledge nor the maturity to question Ney's conduct. (*See* Gov't Mem. at 1-2; *see also* Theodore Van Der Meid Ltr., Ex. 52.) Indeed, Mr. Ney stated as much to another conspirator in explaining his promotion of Mr. Heaton. (Gov't Mem. at 1-2.) Former Congressman Ney is currently in prison at the Federal Correctional Institute in Morgantown, West Virginia.

As he now deeply regrets, Will Heaton continued working for Congressman Ney even after he witnessed and recognized the Congressman's corruption. (*See* Will Heaton Ltr., Ex. 1.)

Instead of speaking up or simply walking away from his job, Mr. Heaton tolerated the Congressman's misconduct and even, at times, participated in it. (*Id.*)

Congressman Ney's corrupt relationship with Jack Abramoff and other lobbyists eventually attracted scrutiny from the national media and the United States Department of Justice ("DOJ"). By the spring of 2006, DOJ prosecutors had subpoenaed thousands of documents from Ney's office and numerous Ney staffers for grand jury testimony. The investigation was massive and far reaching, implicating not only Congressman Ney but also other Congressmen, staffers, executive branch officials, and lobbyists.

On the evening of June 19, 2006, the government covertly recorded a telephone call to Mr. Heaton from a more junior (though older) Ney staffer. With the guidance of FBI agents and DOJ prosecutors, the staffer talked about conduct under investigation, claimed that his lawyers were pressing him for information he did not want to reveal, and repeatedly asked Mr. Heaton for guidance on what to do and what to say.

In response to the staffer's entreaties, Mr. Heaton displayed the integrity and moral character that so strikingly differentiate him from the other public officials and lobbyists prosecuted in this scandal. Repeatedly and emotionally refusing the staffer's invitations for guidance, Mr. Heaton pointedly warned the staffer against trying "to cover something up." Instead, Mr. Heaton told the staffer, "you need to talk to [your lawyers] and you need to trust them and you need to go forward with that ... I can't tell you what to do." When the staffer kept asking, "[w]hat am I supposed to say," Mr. Heaton told him, "the truth is what the truth is."

The recorded conversation offers an unchoreographed snapshot of Mr. Heaton's good character – a picture unanimously confirmed by the myriad letters addressed to this Court from Mr. Heaton's former colleagues on Capitol Hill, from his former teachers, from clergymen, from

childhood friends, from his high school principal, from family relations near and far, and even from the government prosecutors in their sentencing memorandum to the Court. Indeed, instead of providing evidence of obstruction of justice against Mr. Heaton, the recorded conversation presented to the government prosecution team a staffer who – except for his conduct in this case – was conscientious and honest and thus could substantially assist their efforts to prosecute Congressman Ney and others. Before the end of June 2006, Mr. Heaton began cooperating proactively with government prosecutors and investigators.

As the government attests, Mr. Heaton’s cooperation was “exceptionally important” in bringing about former Congressman Ney’s guilty plea. (Gov’t Mem. at 6.) At the government’s request, Mr. Heaton actively cooperated against the Congressman including through recordings of telephone conversations and a face-to-face meeting, participated in many hours of debriefings, and provided documents that the government had been unable to obtain from any other source. (*Id.* at 3-5.) Mr. Heaton’s cooperation with the government was demanding, extensive, and extremely valuable. (*See id.*)

In light of Mr. Heaton’s extraordinary and valuable cooperation, his subservient role to Congressman Ney, his sincere remorse, his youth, and his character, a sentence of incarceration in this case would serve no purpose and, instead, would discourage similarly situated staffers from cooperating with prosecutors in the future. For these reasons, and as discussed in more detail below, Mr. Heaton requests that his sentence be a combination of community service, home confinement, and/or supervision that will permit Mr. Heaton to atone for his misconduct by working to help others.

II. DISCUSSION

In the Plea Agreement, Mr. Heaton and the government agreed to recommend an advisory sentencing calculation, before the § 5K1.1 reduction, within the sentencing guidelines range. In addition, the Court must consider the factors set forth in 18 U.S.C. § 3553(a) in determining the appropriate sentence. *See United States v. Dorcely*, 454 F.3d 366, 374 (D.C. Cir. 2006). The sentence must be adequate “but not greater than necessary” to comply with the relevant purposes and factors set forth in the statute. 18 U.S.C. § 3553(a). The principal section 3553 factors relevant to this case are Mr. Heaton’s personal history and characteristics, the nature and circumstances of the offense, the need for a just punishment, and the deterrence of criminal conduct. These factors demonstrate that incarcerating Mr. Heaton would serve no worthwhile purpose. The government’s dual interests in appropriate punishment and effective deterrence are more than amply met without incarceration, as the government itself agrees. Instead, the Court should sentence Mr. Heaton to a combination of community service, home confinement, and/or supervision that will enable Mr. Heaton to remain a contributing member of our society.

Mr. Heaton has reviewed the Presentence Report (“PSR”) prepared in this matter and agrees with the information and recommendations contained in that report. In addition, for the Court’s information and assistance, Mr. Heaton submits the attached letters from himself, his family members, friends, former teachers, clergymen, and former colleagues.

A. Will Heaton’s Background and Character

Will Heaton was born in Aiken, South Carolina, on July 17, 1978, the oldest child of Deborah and Daniel Heaton. (*See* PSR, at 10.) Will’s brother, Brian, was born 15 months later, and their sister, Mary, 15 months after that. (*Id.*) By all accounts, the Heatons were a loving, traditional, and devout Catholic family. (*See, e.g.,* Friar Conall McHugh Ltr., Ex. 39.) As a

factory manager in the textile industry, Dan worked long hours and often traveled out of town, but his salary permitted Debbie to stay at home with the children during their early years, before she returned to teaching kindergarten when the children grew older. (*See* Deborah Heaton Ltr., Ex. 23.)

Will was a painfully shy and endearingly fastidious and caring child. (*See id.*) Rarely competitive and never bullying, Will had close relationships with Brian and Mary, and they looked up to him with admiration and affection. (*See id.*; *see also* Brian Heaton Ltr., Ex. 21; Mary Heaton Ltr., Ex. 25.) Though extremely loving and nurturing, Dan and Debbie were also quite strict with their children. Will, Brian, and Mary were expected to live their faith each day, to treat others with kindness, to speak honestly and respectfully, and to accept punishment humbly when they misbehaved. In adolescence, that meant one hour of chores for each minute after curfew that they arrived home. (*See* Daniel Heaton Ltr., Ex. 22.) But throughout childhood and adolescence, the punishments were rare. (*See id.*) Before this prosecution, the worst trouble Will had ever been in was during the eighth grade when he joined in a prank that ended with the bumper of a teacher's car being dented. (Deborah Heaton Ltr., Ex. 23.)

Dan's job caused the family to relocate several times. (Daniel Heaton Ltr., Ex. 22.) The last time, as Will was entering the eighth grade, they moved from Wisconsin to North Carolina. (*Id.*) Will had always been a good student and well-liked by his classmates, but he constantly had struggled with shyness around his peers. (*Id.*) Eminently earnest and with the endorsement of his parents, Will simply decided, when the family moved to North Carolina, that he would no longer be shy. (Deborah Heaton Ltr., Ex. 23.)

His decision presented a significant challenge. Will was not competitive, he was openly devout, and he felt at ease following the rules – not the usual ingredients of teenage popularity.

But Will nonetheless became widely admired both by his peers and by adults, because of his guileless manner, his simple kindness, and his rare maturity. (*See, e.g., Michael Streich Ltr., Ex. 50; Robert Gates Ltr., Ex. 18.*) He handled conflicts with a deftness unusual in any setting, least of all in high school. (*See Mary Heaton Ltr., Ex. 25.*) He enjoyed helping others but avoided calling attention to himself for it. (*See Jeffrey Pojanowski Ltr., Ex. 42.*) He related to teachers and administrators with the same straightforwardness that he related to his peers. (*See Michael Streich Ltr., Ex. 50.*) As the Heaton family settled into North Carolina, Will's shyness matured into humility, and his kindness grew into purpose.

As his peers grew to admire Will and to recognize his natural leadership qualities, Will was developing a passion for American politics and political history. He voraciously read books on American history, and he idolized American historical figures. (*See Peter Sinclair Ltr., Ex. 49.*) As a tenth grader, he participated in Harvard University's "Model Congress," where he won an award for excellence. (*See Michael Streich Ltr., Ex. 50.*) The experience in the Model Congress led Will to learn about the United States Congressional Page program, and Will immediately set his sights on spending his junior year in Washington as a page. With the blessing of his parents and his school, Will applied and was accepted to the page program. (*See Deborah Heaton Ltr., Ex. 23.*)

Will spent his entire junior year of high school in the page program where he made a strong impression on other pages and program administrators alike. (*See Robert Gates Ltr., Ex. 18; Peggy Sampson Ltr., Ex. 47.*) The pages voted Will as having the "Best Overall Personality," and they elected him as a representative of their dormitory. (*Tatum Evans and Todd Mayberry Ltr., Ex. 16.*) He impressed them by giving up prized positions in the program to allow others to have them. (*Id.*) Program administrators considered him to be one of the

finest pages they had ever known, a hard worker with high morals. (*See* Peggy Sampson Ltr., Ex. 47.)

For Will's part, the experience confirmed his passionate feelings about the United States government. The honor and allure of working on Capitol Hill, surrounded by men and women he idolized, working for the common good, left a deep impression on Will. He came to see the men and women working on Capitol Hill as genuine heroes. (*See* Peter Sinclair Ltr., Ex. 49.)

Will returned to North Carolina for his senior year of high school where he had been elected, in absentia, as President of the student body. (Michael Streich Ltr., Ex. 50.) He was elected a member of the National Honor Society. (*Id.*) After graduating high school ranked fourth in his class, Will attended the College of William and Mary, where, fittingly, he majored in government. (*See* PSR, at 12.) While in college, Will continued to impress people with his kindness and integrity. For three years, he volunteered as a literacy tutor for illiterate adults, not only tutoring his students but befriending them and seeking to be a positive force in their lives. (*See* Peter Sinclair Ltr., Ex. 49.) Will's college friends used him as a touchstone for wise guidance. When facing difficult situations, friends turned to Will for advice, and Will went out of his way to provide them support. (*Id.*) During college, Will met Katie Knapp, and they began a long relationship that culminated in marriage last year. (Kathryn Knapp Ltr., Ex. 33.)

As college ended, Will was drawn again to public service. He dreamed of entering the Peace Corps, but after going through the long application process, a health condition prevented him from joining. (Michael Streich Ltr., Ex. 50.) He also considered teaching in an inner city school or becoming a fire jumper out west, but ultimately, the allure of working on Capitol Hill proved irresistible. (*Id.*; Deborah Heaton Ltr., Ex. 23.) As one of the outstanding Congressional pages five years earlier, Will now had the opportunity to return to Congress and work in the

cloakroom of the House of Representatives. (Karen Haas Ltr., Ex. 20.) In the summer of 2000, Will graduated from William and Mary and again moved north to the city that embodied his highest ideals, the city of his heroes. He seemed on the verge of great things.

B. The Nature and Circumstances of the Offense

In respectfully urging this Court not to order Mr. Heaton to be incarcerated, defense counsel call to the Court's attention three unique circumstances of this offense: Mr. Heaton's youth and inexperience; his sense of duty and loyalty as a subordinate of Congressman Ney; and his significant public service. These facts, of course, do not excuse Mr. Heaton's misconduct, but they shed light on important distinctions between Mr. Heaton and the other conspirators.

First, Mr. Heaton is, by several years, the youngest person charged in connection with this scandal. Indeed, at the time of much of the conduct at issue, the United States Constitution prohibited Mr. Heaton, because of his youth, from holding the congressional office of whose honest services he helped defraud the public. *See* U.S. Const. art I, § 2 (prohibiting Congressional Representatives younger than 25 years old). When Congressman Ney hired him, Mr. Heaton was 23 years old, and when Mr. Ney promoted him to chief of staff, Mr. Heaton was still 23 years old. (*See* Gov't Mem. at 1.) Mr. Heaton, in fact, resisted his promotion to chief of staff because he worried that he did not have the experience or knowledge to handle the job. (*See* Peggy Sampson Ltr., Ex. 47; Karen Haas Ltr., Ex. 20; Kathryn Knapp Ltr., Ex. 33.) Over the course of about a week, however, the Congressman repeatedly pressured him to accept the position, offering him a significant pay raise and assuring him that he would be guided and mentored along the way – a promise left tragically unfulfilled. (*See* Peggy Sampson Ltr., Ex. 47; Karen Haas Ltr., Ex. 20; Kathryn Knapp Ltr., Ex. 33.)

In August 2002, when Mr. Heaton accompanied the Congressman, Mr. Abramoff, Ralph Reed, and other Washington power brokers on the now infamous golf trip to Scotland, Mr. Heaton had recently turned 24 years old and the conspiracy was already in “full swing.” (Gov’t Mem. at 2.) His youth undoubtedly limited his ability to question the conduct of the Congressman and these lobbyists, and the situation was not helped by the fact that neither Congressman Ney’s office nor Congress required formal training in ethical and legal restrictions for congressional staffers at that time. (See Theodore Van Der Meid Ltr., Ex. 52 (discussing the House of Representatives’ “new” mandatory staff training program instituted in 2007).) In a Capitol Hill culture widely reported to be flush with lobbyists offering international trips and other perks to Congressmen and their staffers, it is not surprising that Mr. Heaton lacked the confidence and perspective to challenge the ethics of Congressmen and powerful lobbyists. (See, e.g., Jeffrey H. Birnbaum, *Privately Funded Trips Add Up on Capitol Hill*, Wash. Post, June 6, 2006, at A4, attached as Ex. 54.)

Indeed, the trip to Scotland in particular, and working for Congressman Ney in general, brought into conflict for the first time in his life two basic parts of Mr. Heaton’s character. On the one hand, he was an honest and righteous young man, but on the other hand, he was loyal and eager to please. In Scotland, surrounded by these Washington power brokers, fearful of the consequences of challenging them, Mr. Heaton, as he now regrets, lacked the “courage to choose a different direction.” (See Will Heaton Ltr., Ex. 1.) Dreading the role of “tattletale on the playground,” Mr. Heaton tacitly joined the ongoing conspiracy. (*Id.*) That initial choice led to further involvement in the scandal and, ultimately, to the charges in this case.

The typical Congressional chief of staff, of course, has years of experience working in politics and would know by virtue of that experience the ethical and legal rules attendant to

working in a Congressional office. The typical chief of staff would likewise have experience regarding when to challenge his or her boss and when to defer. But Mr. Heaton relied solely on the Congressman for guidance, and his trust in Congressman Ney was sorely misplaced. Instead of seeing Mr. Heaton's youth as a reason for careful mentoring, Mr. Ney took advantage of Mr. Heaton's youth and, as he confided to others, saw in Mr. Heaton's youth and inexperience an opportunity to behave unethically without consequence. (*See Gov't Mem. at 1-2.*)

Second, Mr. Heaton's misconduct in this case derived largely from a well-intentioned, though obviously misguided, sense of loyalty and duty to Congressman Ney. This loyalty grew out of Mr. Heaton's idolization of American political figures – what one childhood friend described as his “undeserved reverence” for political leaders. (*See Peter Sinclair Ltr., Ex. 49.*) With that reverence, Mr. Heaton combined hard work and an open eagerness to please. Former Congressman Edward Pease described Mr. Heaton as idealistic, eager to please, and “constantly amazed at his good fortune to be working” on Capitol Hill. (*Edward Pease Ltr., Ex. 41.*) Numerous other friends and former colleagues wrote of Mr. Heaton's abiding sense of loyalty, but longtime friend Peter Sinclair may have said it best when he wrote the following:

[W]hile his intellect and work ethic brought Will success quickly, they denied him the chance to mature in his role as a servant to our country. He served as a top aide to a very powerful politician, but he reached that post without ever losing his naïve faith in the authority of such leaders. So while on a purely intellectual level he knew his actions were wrong, I believe that on some deeper level he thought that failing to follow where Mr. Ney led would be an even graver sin.

(Peter Sinclair Ltr., Ex. 49.) Given Mr. Heaton's character and background, it seems patently obvious that, if he had been hired by an upright, ethical Congressman, Mr. Heaton would have thrived, advanced, and matured without taking the unethical or illegal missteps that he did here.

Indeed, the plea documents reflect that Mr. Heaton assisted and followed along with Congressman Ney and the lobbyists with whom Ney worked and socialized. (*See* Gov't Mem. at 2-3). Importantly, when sentencing Mr. Ney, this Court found that the Congressman exercised control over other conspirators and that this control, among other factors, militated for a harsher sentence. The opposite situation inheres in this case. Just as Mr. Heaton followed Congressman Ney's orders and guidance in his daily work, so too he followed Mr. Ney along the path of misconduct described in detail in the Factual Basis. His obedience and loyalty, especially in light of Mr. Heaton's youth and inexperience, militates in favor of a more lenient sentence.

Indeed, not only did Mr. Heaton play a subservient role to Congressman Ney in the conduct at issue, but, as the government attests, "Ney rarely allowed Heaton or any other member of his staff to act on his behalf in exercising his official power or influence absent Ney's direct involvement." (Gov't Mem. at 2.) Thus, Mr. Heaton was a Chief of Staff in title only, acting according to Congressman Ney's orders or after consulting Mr. Ney. (*See id.*) In controlling and manipulating his staffers, Mr. Ney preyed not only their youth and experience but also on their dependence on Mr. Ney as an employer. He frequently "fired" staffers for perceived disloyalties and then permitted them to keep their jobs after his bullying had its desired effect. (*See* Kathryn Knapp Ltr, Ex. 33.) For young staffers, Ney's repeated threats of termination not only brought fears of unemployment but also of losing their political careers altogether. (*See id.*) Thus, Mr. Heaton's loyalty often derived from his sense of powerlessness to choose a different course.

Finally, despite Mr. Heaton's missteps, his tenure on Capitol Hill was defined, not by the conduct at issue here, but by the kindness, hard work, and public service that have always and will always define Will Heaton. Unlike other conspirators in this case, Mr. Heaton never left his

position as a congressional staffer in order to join the rotating door of former staffer-lobbyists who used their connections on Capitol Hill to cultivate improper relationships with public officials. Further, friends from Capitol Hill describe his kind manner and his nonjudgmental engagement with those of differing political viewpoints. (*See Lindsay Rosenfeld Ltr., Ex. 46.*) A former Ney staffer describes Mr. Heaton's genuine concern for the well-being of his coworkers when difficult situations arose in their lives. (*Christopher Kreuger Ltr., Ex. 36.*)

The recorded telephone call to Mr. Heaton from another Ney staffer starkly revealed Mr. Heaton's priorities: he considered others before himself. During the conversation, Mr. Heaton repeatedly expressed concern, not for himself, but for the staffer's well-being. He worried about the legal bills the staffer was accruing, advised the staffer not to sacrifice himself out of loyalty to others, and offered to meet with the staffer anytime to let him "bawl [his] eyes out." The only legal implication of the conversation about which Mr. Heaton expressed concern was that the staffer could lose his own legal privileges by talking to Mr. Heaton.

Thus, despite Mr. Heaton's sixteen hour work days, his hand-holding of Congressman Ney on the Washington social scene, and the intense stress that took a toll on his body and spirit, Mr. Heaton remained the same compassionate, idealistic, and caring person he has always been. For example, during his first few years in Washington, Mr. Heaton lived with and provided care for his ailing grandmother. His friends and family members remark on how grateful he was to be able to spend those times with her, despite the many hours spent mowing her lawn, running errands for her, or simply keeping her company. (*Dorothy Battista Ltr., Ex. 4; Aaron Rashba Ltr, Ex. 44; Karen Haas Ltr, Ex. 20.*) Later, after he moved into his own home, Hurricane Katrina left two New Orleans friends homeless. Mr. Heaton promptly welcomed them into his

home, and they lived with him for the next two and half months. (Tatum Evans and Todd Mayberry Ltr., Ex. 16.)

Given his many admirable qualities and the many lives that Mr. Heaton touched, his friends and colleagues understandably were shocked by the news when Mr. Heaton pled guilty to a crime. A chaplain from Mr. Heaton's high school described it as "one of my greatest surprises in seventy-nine years of living." (Rev. Joseph Kelleher Ltr., Ex. 30.) Rita Hofbauer, a coworker who became acquainted with Mr. Heaton after he left Capitol Hill writes that his crime, "is so out of character for him that it challenges one's ability to comprehend it." (Rita Hofbauer Ltr, Ex. 27.) Ms. Hofbauer, a non-lawyer, explained that when she learned of his crime she researched the honest services fraud legislation to try to understand what Mr. Heaton had done. (*Id.*) Muftiah McCartin, a former colleague from Capitol Hill, confesses that she "openly wept" when she heard about Mr. Heaton's legal troubles. (Muftiah McCartin Ltr., Ex. 38.)

Tellingly, those who expressed surprise at Mr. Heaton's crime did not change their opinion of him as a result. They continue to view him as one of the most admirable young men they have ever known, a man with a "good, kind, and generous heart." (*See id.*) They see his criminal conduct as an aberration, consistent with youth and naivety, but not a product of ill will. Further, Mr. Heaton has demonstrated his remorse not only in his substantial assistance to the government, his guilty plea, and his letter to this Court, but also in numerous conversations he initiated with family members, friends, and former colleagues. (*See, e.g.,* Daniel Heaton Ltr., Ex. 22; David Horne Ltr., Ex. 28; Theodore Van Der Meid Ltr., Ex. 52.) For several months after he began his active cooperation with the government, Mr. Heaton was unable to discuss the case with his friends and family members. (*See, e.g.,* Christopher Edmunds Ltr, Ex. 15; Emily Seidel Ltr., Ex. 48.) After his case became public, Mr. Heaton reached out to his friends and

former colleagues to apologize for his actions, express his remorse, and seek their forgiveness. (*See, e.g.*, Lindsay Rosenfeld Ltr., Ex. 46; Daniel Heaton Ltr., Ex. 22; David Horne Ltr., Ex. 28; Theodore Van Der Meid Ltr., Ex. 52; Christopher Edmunds Ltr, Ex. 15; Emily Seidel Ltr., Ex. 48.) Such affirmative acts of repentance speak to Mr. Heaton's depth of character and his sincere remorse.

C. Just Punishment in Light of Mr. Heaton's Substantial Assistance

As detailed in the government's Substantial Assistance Memorandum, Mr. Heaton actively cooperated with the government over the course of several crucial months in the investigation of Congressman Ney and others. His cooperation was "exceptionally important" in bringing about Former Congressman Ney's guilty plea. (Gov't Mem. at 6.) Indeed, without Mr. Heaton's cooperation, it is quite possible that Congressman Ney would have contested the prosecution at trial, bringing uncertainty as to whether he ever would have been held accountable for his grave abuse of Congressional office. In terms of value, Mr. Heaton's cooperation was indeed crucial.

His cooperation was likewise extensive. At the government's request and direction, Mr. Heaton recorded telephone calls and a two-and-a-half hour meeting with Congressman Ney. Mr. Heaton participated in many hours of debriefings, often on weekends and late at night so that he could continue working for Congressman Ney without arousing suspicion that he was cooperating with the government. Mr. Heaton also turned over documents from Congressman Ney's office that the government had been unable to obtain from any other source, even from its subpoena of Congressman Ney's office. (*See id.* at 3-5.) Mr. Heaton's cooperation with the government was difficult, extensive, and crucial in the prosecution of the Congressman. (*See id.*)

In light of his extraordinary cooperation, we respectfully submit that a combination of community service, home confinement, and/or supervision is an adequate and just punishment for Mr. Heaton's crime. In addition, if the Court orders Mr. Heaton to pay a fine, we ask the Court to consider several facts in deciding the amount of such a fine. First, Mr. Heaton, as a result of this prosecution, has lost his employment on Capitol Hill and now does landscaping work for which he earns about \$800 per month. (*See* PSR at 14.) Second, Mr. Heaton has significant legal debts. (*See id.* at 14-15.) Third, Congressman Ney, who, as discussed above, was more culpable than Mr. Heaton and did not assist the government's prosecution, received a fine of \$6,000. For these reasons, we respectfully submit that the Court set any fine amount at or near the low end of the range applicable for offense level ten.

D. Deterrence

In a case followed closely on Capitol Hill, Mr. Heaton pled guilty to a serious felony with a significant up-front guidelines range before application of the section 5K1.1 departure. His guilty plea alone therefore carried a significant – and adequate – deterrent message to the wider community. Indeed, the direct and collateral consequences of this plea send a powerful message to others: Mr. Heaton lost his job and his career and will carry this felony conviction for the rest of his life.

Thus, a sentence of incarceration would be “greater than necessary” to provide the general deterrent message under the statute. *See* 18 U.S.C. § 3553(a). Further, although Mr. Heaton avowed his willingness to plead guilty to a felony from the outset of his active participation with the government, a felony conviction alone is greater punishment and deterrent than his counsel strenuously, albeit unsuccessfully, urged the government to pursue.

Given the consequences – both personal and professional – that he has experienced to this point, Mr. Heaton likewise has been deterred from committing future crimes. He recently turned 29 years old and celebrated his first wedding anniversary earlier this summer. He has taken complete responsibility for his crimes and already has incurred the harsh punishments of losing his career on Capitol Hill, losing the right to vote, significant legal debts, and widespread public disgrace. In light of his remorse, his character, and his hard-earned maturity, Mr. Heaton is simply not a risk to recidivate.

III. CONCLUSION

When young Americans graduate college and first enter the professional world, they often need some time to get grounded, find their direction, and grow up. Most, of course, do not grow up on the national political stage in the midst of a major Washington scandal and ensuing massive federal criminal investigations. But, because of his talents, his naiveté, and the twists of fate, Will Heaton took his missteps of youth under the bright lights of Capitol Hill and under the jurisdiction of this Court.

In committing this crime, Mr. Heaton not only failed to live up to his morals, but at times he found himself working directly against them. For his misconduct, Mr. Heaton has apologized to the Court in his attached letter, has apologized directly to many individuals affected by this investigation, and looks forward to the opportunity to voice his remorse in person to this Court, to his family, friends, and former coworkers, and to the American public.

In light of his personal background and character, the severe punishments he already has incurred, his sincere remorse, and the substantial assistance he has provided to the government, Mr. Heaton respectfully requests that the Court sentence him to some combination of community service, home confinement, and/or supervision. Such a sentence would permit Mr. Heaton to

reach out to help others facing similar moral and legal dilemmas by contributing his immense talents to society.

Respectfully submitted,

/s/

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Dated: August 6, 2007

CERTIFICATE OF SERVICE

I certify that on this sixth day of August 2007, a copy of the foregoing Memorandum in Aid of Sentencing was delivered to Kendall Day, Esq. and Mary Butler, Esq. at the Public Integrity Section of the United States Department of Justice via the CM/ECF system, and a copy was sent via Federal Express to Deborah Stevens-Panzer, Senior United States Probation Officer at the Probation Office for the United States District Court for the District of Columbia.

/s/
Timothy P. Kane