

## SEN. MARY LANDRIEU

Sen. Mary Landrieu (D-LA) is a second-term senator from Louisiana. Her ethics issues stem from her insertion of an earmark into an appropriations bill to benefit a large campaign donor.

### Earmark for Voyager Learning

The Voyager Expanded Learning literacy program had no proven track record when Congress appropriated \$2 million in the fall of 2001 to be spent on the program, aimed at District of Columbia kindergartners and first graders.<sup>1</sup> Voyager's founder, Randy Best, had hired former Rep. Bob Livingston (R-LA) to help get Voyager's programs into schools without having to sell the curricula to any district school systems.<sup>2</sup> On September 24, 2001, the House Appropriations Committee included \$1 million for Voyager in the District of Columbia's appropriations bill with the condition that the District provide an additional \$1 million.<sup>3</sup> When Mr. Livingston was unable to obtain a similar earmark in the Senate, Voyager hired the lobbying firm of O'Connor & Hannon, which arranged for Mr. Best to meet with Sen. Landrieu, the chair of the Appropriations subcommittee responsible for the District of Columbia.<sup>4</sup>

After Mr. Best met with Sen. Landrieu, a member of the senator's staff called to ask him if he would throw a campaign fundraiser for her.<sup>5</sup> On October 19, 2001, Mr. Best threw a fundraiser for Sen. Landrieu at his home in Dallas, Texas where, according to Mr. Best, Sen. Landrieu gave a short talk on the importance of reading.<sup>6</sup> According to Federal Election Commission (FEC) records, on or about November 2, 2001, Sen. Landrieu's campaign committee received contributions of approximately \$30,000 from Voyager employees and their relatives.<sup>7</sup> FEC records reflect that neither Mr. Best nor the others connected with Voyager had previously contributed to Sen. Landrieu's campaign committee.

Four days after the contributions were received, on November 6, 2001, when the Senate took up consideration of the District of Columbia appropriations bill passed by the

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<sup>1</sup> James V. Grimaldi, A Reading Program's Powerful Patron, *Washington Post*, December 20, 2007 (Exhibit 1).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Grimaldi, *Washington Post*, Dec. 20, 2007.

<sup>6</sup> Id.

<sup>7</sup> Friends of Mary Landrieu Inc., FEC Form 3, Year-End Report 2001, January 31, 2002, pp. 16-18, 66, 69, 77, 78, 125, 126, 148, 149, 154, 155, 158, 199 (Exhibit 2).

House, Sen. Landrieu successfully lobbied for a \$2 million earmark for the reading program.<sup>8</sup>

Sen. Landrieu, who refused to speak with *The Washington Post* before the paper ran its initial story on the Voyager earmark, put out a statement after CREW sent a letter to the Department of Justice requesting an investigation.<sup>9</sup> Sen. Landrieu claimed that CREW's complaint was "factually flawed," "wholly without merit," and "readily dismissed by the facts."<sup>10</sup> Sen. Landrieu explained that she met with Mr. Best on April 5, 2001, at which time he asked for her support for Voyager and she replied she would consider it if District of Columbia officials supported it.<sup>11</sup> Sen. Landrieu provided an April 25, 2001 letter from D.C. School Superintendent Paul Vance, in which he stated the letter was "in support of the request presented to you by Voyager for an additional appropriation beyond the requested District of Columbia budget for fiscal year 2002."<sup>12</sup> Sen. Landrieu's spokesperson claimed that the earmark followed the same process as every other earmark, noting that Sen. Landrieu sent Sen. Mike DeWine, then the chairman of the District of Columbia Appropriations Subcommittee, a letter on May 15, 2001 in which her \$3.5 million earmark request for Voyager was included.<sup>13</sup>

According to *The Washington Post* however, Mr. Vance neither initiated the letter nor supported Voyager, rather the idea was passed to the schools through the office of Mayor Anthony Williams.<sup>14</sup> Greg McCarthy, then-deputy chief of staff for Mayor Williams, said the Voyager earmark was not the mayor's idea, but that Sen. Landrieu's office had called to find out if the schools would be willing to use Voyager.<sup>15</sup> Mr. McCarthy encouraged school officials to

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<sup>8</sup> Grimaldi, *Washington Post*, Dec. 20, 2007.

<sup>9</sup> Letter from CREW Executive Director Melanie Sloan to Attorney General Michael Mukasey, January 8, 2008 (Exhibit 3).

<sup>10</sup> Press Release, Office of Senator Mary Landrieu, Statement Regarding CREW Complaint, January 8, 2008 (Exhibit 4).

<sup>11</sup> James Grimaldi, Landrieu Opens Files on Schools Earmark, *Washingtonpost.com*, January 22, 2008 (Exhibit 5).

<sup>12</sup> Letter from Paul L. Vance, Superintendent District of Columbia Public Schools to Mike DeWine, Chair and Mary Landrieu, Ranking Democrat, District of Columbia Appropriations Subcommittee, April 25, 2001 (Exhibit 6).

<sup>13</sup> Kathleen Hunter, Landrieu Denies Ethics Allegation by Watchdog Group, *Congressional Quarterly*, January 9, 2008 (Exhibit 7); Letter from Sen. Mary Landrieu to Mike DeWine, Chair, Subcommittee on District of Columbia Appropriations, May 15, 2001 (Exhibit 8); *see also* Office of Sen. Mary Landrieu, Voyager Earmark Timeline, available at: <http://landrieu.senate.gov/news/Voyager.cfm> (Exhibit 9).

<sup>14</sup> Grimaldi, *Washingtonpost.com*, Jan. 22, 2008.

<sup>15</sup> Id.

support it because reading scores were so poor. As a result, school district officials, who were initially resistant because they had just selected a different reading program, felt compelled to take the money from the earmark.<sup>16</sup>

Sen. Landrieu argued the complaint and media reports “erroneously mischaracterize” her relationship to Mr. Best and said “it is not uncommon for Members of Congress to receive contributions from individuals who support their policy goals.”<sup>17</sup>

### Acceptance of a Bribe

Federal law prohibits public officials from directly or indirectly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act.<sup>18</sup> It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.<sup>19</sup>

Here, after meeting with Voyager founder Randy Best someone from Sen. Landrieu’s staff asked Mr. Best to hold a fundraiser for the senator, which he did. Shortly thereafter, Sen. Landrieu received \$30,000 in campaign contributions from individuals connected with Voyager and a mere four days after that, the senator inserted an earmark for Voyager into the District of Columbia appropriations bill. Even if, as she claims, Sen. Landrieu had agreed to push the earmark earlier in the year, neither Mr. Best nor his colleagues had ever previously donated to Sen. Landrieu and did so only after the senator had agreed to earmark an appropriation for Voyager. This may well constitute a direct exchange in violation of the bribery statute.

### 5 U.S.C. § 7353

A provision of the Ethics Reform Act of 1989, 5 U.S.C. § 7353, prohibits members of the Congress, officers, and employees from asking for anything of value from a broad range of people, including “anyone seeking official action from, doing business with, or . . . conducting activities regulated by the individual’s employing entity; or whose interests may be substantially affected by the performance or nonperformance of the individual’s official duties.”

If Sen. Landrieu sought campaign contributions from Voyager in exchange for inserting an earmark for the company into the District of Columbia appropriations bill, she may have violated 5 U.S.C. § 7353.

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>19</sup> McCormick v. U.S., 500 U.S. 257, 273 (1991); United States v. Biaggi, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

### Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as “improper conduct which may reflect upon the Senate.”<sup>20</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>21</sup> The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules. . .”<sup>22</sup>

Whether or not Sen. Landrieu violated federal bribery laws, by accepting campaign contributions in apparent exchange for an earmark, she has engaged in improper conduct that reflects upon the Senate.

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<sup>20</sup> *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432.

<sup>21</sup> Id.

<sup>22</sup> Id. at 433; *see also* fn. 10 citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, the Committee on Rules and Administration, which stated, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88<sup>th</sup> Cong., 2d Sess. 5 (1964).