

May 24, 2004

John Ashcroft  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Re: Request for Investigation of John Thune**

Dear Attorney General Ashcroft:

Citizens for Responsibility and Ethics in Washington requests that the Department of Justice initiate an investigation into whether former Congressman John Thune (R-SD) violated federal criminal law by lobbying his former colleagues on behalf of a medical equipment supplier during the pendency of last year's Medicare bill.

Mr. Thune left the House of Representatives after being defeated in a 2002 Senate race. In 2003, Mr. Thune formed The Thune Group and joined Arent, Fax, Kintner, Plotkin & Kahn. Throughout 2003, Mr. Thune served as a lobbyist for, among others, Laserscope, Inc. A 2003 lobbying disclosure report filed by Arent, Fox, Kintner, Plotkin & Kahn lists Mr. Thune as one of eight lobbyists who contacted the House, Senate and Department of Health and Human Services on behalf of Laserscope Inc., a medical laser systems supplier. Lobbying Report for Laserscope, Inc., filed by Arent Fox Kintner Plotkin & Kahn, PLLC, February 13, 2004 (attached as Exhibit A).

A spokesperson for Mr. Thune has claimed the Laserscope disclosure report does not state that Mr. Thune lobbied Congress. He argues that the form made it impossible to distinguish Mr. Thune from others at the firm who lobbied Congress as well as the executive branch. Susan Milligan, *Ex-Congressman's filing suggests he broke lobby law*, Boston Globe, May 20, 2004 (attached as Exhibit B). This claim is belied, however, by another disclosure form filed by Mr. Thune's firm. In a disclosure form filed regarding lobbying activity for the Motor and Equipment Manufacturers Association, the words "executive branch only" are included after Mr. Thune's name to underscore that he did not contact the House or Senate. Lobbying Report for Motor and Equipment Manufacturers Association, filed by Arent Fox Kintner Plotkin & Kahn, PLLC, February 13, 2004 (attached as Exhibit C).

Federal law specifically prohibits Members of Congress from lobbying their former colleagues. 18 U.S.C. §207(e)(1)(A). Violations of this law carry penalties of up to five years in jail. 18 U.S.C. §216(a). Civil penalties, as well as criminal penalties may apply. As you know, if the Attorney General brings a civil action in federal court and the court finds by a preponderance of the evidence that the violation has occurred, the violator must pay the greater of \$50,000 for each violation, or the amount of compensation which the person received for the prohibited conduct. 18 U.S.C. §216(b).

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The House Committee on Standards of Official Conduct released an advisory memorandum in an effort to forestall violations of this law. The memorandum states that departing members may not: “for one year after leaving office, communicate with or appear before any Member or staff of the House or Senate, or any legislative branch agency on official business . . .” Committee on Standards of Official Conduct, *Memorandum for all Members and Officers, Post-Employment and Related Restrictions for Members and Officers*, November 25, 2002 (attached as Exhibit D).

The memo specifically provides that Members may not, for a period of one year after leaving office, “[k]nowingly communicate with or appear before any Member, officer or employee of the House or Senate . . . with the intent to influence, on behalf of any other person, the official actions or decisions of such Member, officer or employee.” *Id.* Further, the memo explains that the Department of Justice has defined “communication” as “the act of imparting or transmitting information with the intent that the information be attributed to the former official.” *Id.* fn 18 (citing U.S. Office of Government Ethics, *Recent Office of Legal Counsel Opinions* (March 15, 2001) at 2 (available on the OGE website, [www.usoge.gov](http://www.usoge.gov), under the link for DAEOgrams)). The memo also notes that “appearance” has been defined as “a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.” *Id.* fn. 19 (citing U.S. Office of Government Ethics, *Summary of Post-Employment Restrictions of 18 U.S.C. §207* (Feb. 17, 2000) at 3 (available on the OGE web site, [www.usoge.gov](http://www.usoge.gov), under the link for DAEOgrams)).

Considering both the law and the Department of Justice’s prior interpretation of the statute, it appears Mr. Thune may well have violated section 207(e). The Department of Justice, under the purview of the Public Integrity Section, should open an investigation into this matter to determine whether or not Mr. Thune has, in fact, violated the law. The citizens of the United States need to be assured that ethics laws are vigorously enforced. We look forward to your prompt response.

Sincerely,

Melanie Sloan  
Executive Director  
Citizens for Responsibility and  
Ethics in Washington

encls.

cc: Christopher Wray, Assistant Attorney General  
for the Criminal Division

Noel Hillman, Chief, Public Integrity Section

