

Congress of the United States

Washington, DC 20515

November 13, 2003

Mr. Allen Kimbrough
Executive Director
State Bar of Nevada
600 E. Charleston Boulevard
Las Vegas, NV 89104

Dear Mr. Kimbrough,

We are writing in regard to continued ethical problems with the Department of Energy's (DOE) efforts to license a nuclear waste repository at Yucca Mountain, Nevada. In particular, we request that you investigate the actions of the law firm of Winston & Strawn (Winston) and a group of its attorneys, who in 1999 were awarded a \$16 million contract by DOE to become licensing counsel for the Yucca Mountain project. Winston & Strawn was forced to withdraw from this work due to conflict of interest concerns raised in an investigation by DOE's Inspector General that was requested by the Members of the Nevada delegation. In its investigation, DOE's Inspector General found that Winston & Strawn had not disclosed its work for the Nuclear Energy Institute, the lobbying organization representing utilities, manufacturers and supplies in the nuclear power industry. At a minimum, this work created a serious appearance of conflict of interest.

We are bringing this issue to your attention at this time since the U.S. Court of Appeals for the D.C. Circuit Court recently affirmed that Winston and its attorneys materially and overtly misrepresented themselves in the Yucca Mountain procurement. (*See LeBoeuf, Lamb, Greene & MacRae v. Spencer Abraham, Secretary, United States Department of Energy, et al., No. 01cv00269, D.C. Cir. October 28, 2003*, a copy of which is attached as Exhibit No. 1.) As was noted by the court, Winston had represented in the procurement that "[n]o actual or potential conflict of interest" existed. *Id.* at 4. But in November 2001, DOE's own Inspector General "concluded Winston had violated the [Organizational Conflict of Interest] provision of the [DOE] contract by failing to disclose its lobbying and non-lobbying activities for the Nuclear Energy Institute, a nuclear industry trade group whose members include commercial utilities that would send spent nuclear waste to the Yucca Mountain site." *Id.* at 6. The court cited other "evidence of Winston's apparent conflict of interests" stemming from Winston's prior representation of the Yucca project's lead developer, TRW. *Id.* at 9. The court affirmed that Winston's misrepresentations could plausibly undermine the entire Yucca Mountain licensing proceeding at the Nuclear Regulatory Commission. *Id.* at 12.

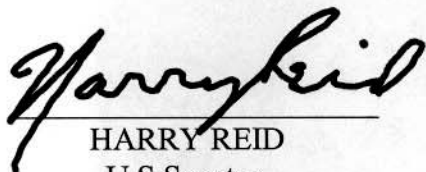
We have included the complete docket of the *LeBoeuf Lamb* litigation. Specifically, in the docket are two expert affidavits that bear close scrutiny, each of which is attached. The first, by the eminent legal ethicist Professor Geoffrey C. Hazard, Jr. (Exhibit No. 2,) shows how

Winston violated Rule 1.7 and Rule 1.9 of the Model Rules of Professional Responsibility (identical to the associated D.C. Rules of Professional Conduct and substantially the same as the associated Nevada Supreme Court Rules). The second, by former Nevada Attorney General and Supreme Court Chief Justice Charles E. Springer, shows how Winston violated Rules 157, 159, 150, 99, and 42 of the Nevada Supreme Court.

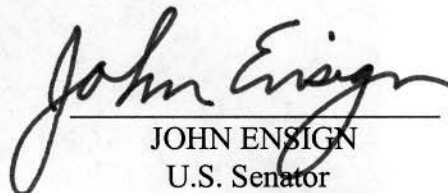
These infractions have the potential to threaten the safety of all Nevadans and have seriously tainted the veracity of DOE's Yucca license application. To ensure the protection of Nevadans and the environment, we request that the State Bar of Nevada review the improprieties of Winston with regard to its work for the DOE, and if appropriate, take immediate disciplinary actions against the law firm.

If you have any questions about this, please contact us or our staff. We appreciate your consideration of our request and look forward to hearing from you.


Sincerely,



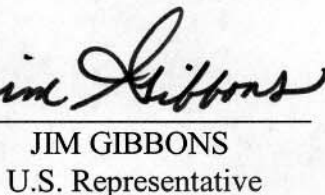
HARRY REID
U.S. Senator



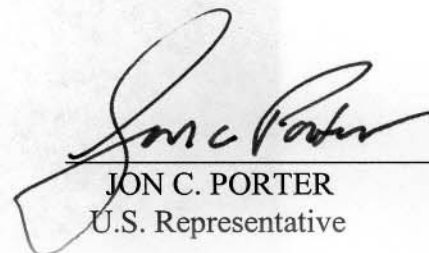
JOHN ENSIGN
U.S. Senator



SHELLEY BERKLEY
U.S. Representative



JIM GIBBONS
U.S. Representative



JON C. PORTER
U.S. Representative