Center for American Progress

Beyond Justice

Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities

Scott Lilly
December 2007

www.americanprogress.org
Progressive Ideas for a Strong, Just, and Free America

BEYOND JUSTICE

Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities

Scott Lilly
Center for American Progress

December 2007

Introduction and Summary

The State Department website explains American democracy to the rest of the world as follows:

> ***The rule of law is a fundamental component of democratic society … in the United States, the rule of law is based primarily on the U.S. Constitution and on the assurance that U.S. laws—in conjunction with the Constitution—are fair and are applied equally to all members of society.***[1]

How closely the United States actually adheres to those principles, however, has been increasingly drawn into question—particularly over the course of the past year. Revelations about the firing of U.S. attorneys because they were not sensitive enough to the Bush administration's political priorities almost turns the State Department claims on their head.[2]

But even more serious are allegations that have surfaced in recent months. They indicate that the Bush administration may have encouraged prosecutors to indict and imprison people as part of an electoral strategy aimed at helping gubernatorial candidates they were supporting in Alabama and Wisconsin. If those allegations are proven accurate there would be little to separate us from the regimes we so frequently lecture about the rule of law.[3]

The problem of unfair and unequal application of the law, however, extends well beyond the Justice Department. Failure by a wide range of regulatory agencies to enforce federal law has benefited some segments of society at the expense of others. There is ample evidence that in recent years the laws protecting the public against air and water pollution, workers against health and safety risks, and consumers against unsafe foods, drugs, and commercial products have all been laxly enforced to the significant financial benefit of certain businesses and at the expense of those whose health and safety those laws were designed to protect.[4]

Lax regulatory enforcement, however, has not been a government-wide policy. In at least one instance, rigorous and in fact pernicious regulatory enforcement was the course chosen by the Bush administration. That instance involved the regulatory authorities of the U.S. Department of Labor under the Landrum-Griffin Act aimed at improving the governance of the nation's organized labor organizations.

Rather than relax these regulatory responsibilities, the Bush administration shoveled significantly more federal tax dollars into the department's Office of Labor-Management Standards so that key political operatives in OLMS could expand and exercise regulatory authority to:

- Impose costly and confusing new reporting requirements
- Attempt to increase the number of criminal prosecutions
- Disclose the results to the public in seriously misleading ways
- Mischaracterize the published data through a variety of false analyses

The underlying purpose, of course, is to undermine the reputation of the labor union movement through a classic political misinformation campaign—all under the supervision of a lifelong partisan political operative whose career has been dedicated to the destruction of his political opponents. But first, the context.

Politicizing Regulatory Enforcement

As disturbing as the Justice Department abuses currently appear to be, the politicization of regulatory enforcement represents an abuse of constitutional authority that is nearly as great. As President Bush's philosophical allies have stressed repeatedly over recent decades, "The power to regulate is the power to destroy." With respect to most types of government regulation, the Bush administration has been exceedingly careful to insure that those subject to government regulation suffer a minimum of inconvenience. For instance, the *Washington Post* reported recently,

> The Environmental Protection Agency's pursuit of criminal cases against polluters has dropped off sharply during the Bush administration, with the number of prosecutions, new investigations and total convictions all down by more than a third, according to Justice Department and EPA data.[5]

Carol Raulston, a spokeswoman for the National Mining Association, told the *Pittsburgh Post-Gazette* shortly after the Sago Mine disaster in West Virginia two years ago, "What we have seen that is different with the Bush administration is that they put a little more emphasis on working with mining companies."[6]

Real (inflation-adjusted) spending for most areas of regulatory enforcement has declined markedly during the Bush presidency. Federal spending for mine safety is now 9 percent below 2001 levels. Spending for Occupational Safety and Health enforcement is off by 8 percent, and spending to ensure that employers pay the minimum wage and that child labor laws are observed has dropped by 13 percent.[7]

But there is one area of regulatory enforcement that has grown significantly during that same period—the enforcement of Landrum-Griffin Act, the law requiring unions to report their finances and empowering the Secretary of Labor to investigate internal union affairs and audit union finances. The total budget for the agency with responsibility for Landrum-Griffin, The Office of Labor-Management Standards, or OLMS, has grown by 20 percent and the number of federal employees working to enforce compliance and investigate possible misconduct has increased by more than one third. [8]

Passed in 1959, Landrum-Griffin was intended to ensure that the dues paid by union members were used in an honest and appropriate manner, and that union business was conducted fairly and in a manner that was both transparent and democratic. The act gives the secretary of labor broad powers to ensure attainment of these goals. In addition to establishing reporting requirements, the Act states that:

> *The Secretary shall have power when he believes it necessary...to determine whether any person has violated or is about to violate any provision of this Act to make an investigation…enter such places and inspect such records and accounts and question such persons as he may deem necessary…*

The act also empowers the secretary to turn over the facts from such investigations to appropriate authorities for prosecution.[9]

The first person to advocate the use of Landrum-Griffin as a venue for partisan warfare was former Rep. Newt Gingrich (R-GA). In a 1992 memo to Labor Secretary Lynn Martin, Gingrich urged her to direct OLMS to significantly increase union reporting requirements because it would "weaken **our** opponents and encourage **our** allies.[10]

Long-term Gingrich ally and advisor, Grover Norquist, stated the intention somewhat more bluntly, "We're going to crush labor as a political entity" and ultimately "break unions."[11] More recently Norquist pointed out, "every worker who doesn't join the union is another worker who doesn't pay $500 a year to organized labor's political machine."[12]

The Labor Department and the first Bush White House responded by hastily pushing Gingrich's proposed reporting requirements through the federal rulemaking process despite the strenuous objections of the man that had been appointed to run the program, Assistant Secretary of Labor for Employment Standards Robert Guttmann. Guttmann, a former Senate staffer to Vice President Dan Quayle, labeled the proposed requirements as "a lot of junk," arguing that they would produce little useful information while imposing an "unconscionable" burden on unions.[13]

Guttmann resigned, but the department went forward and completed final rulemaking the week before the 1992 election. Those rules were largely reversed the following year by the incoming Clinton administration.

That was the end of the first attempt to change the manner in which Landrum-Griffin had been administered and enforced over the years. But it was not the final chapter.

Nothing could be more reflective of the intentions of the second Bush administration with regard to the Gingrich/Norquist recommendations than the choice of personnel to staff the Office of Labor-Management Standards. For most of the eight years of the Clinton administration this office was led by a career civil servant. Prior to that, it was headed by a political appointee who had been a practicing attorney and had moved on to become the department's chief financial officer.[14]

In the early months of the second Bush administration, Don Todd was chosen to run the Office of Labor-Management Standards. Todd was neither an attorney nor an individual with extensive experience in labor issues. Many elements of his background remain unclear and he is one of only a few deputy assistant secretaries in the department who never posted a biography on the department website despite his more than six-year tenure in that position.

There are some things about Todd's background, however, that are clear. Since at least the late 1970s he has been involved in the strident attack side of Republican campaign politics. In 1980 he headed an organization in Idaho called ABC or "Anybody but Church." That organization was dedicated to blocking the reelection of that state's senior Democratic senator, Frank Church, by making allegations against Church that his Republican opponent preferred not to be associated with.[15]

Todd's most notable public moment came in 1988 when Lee Atwater asked him to head opposition research for the Republican National Committee. There he unearthed the fact that an inmate in the Massachusetts prison system had committed a murder while on a furlough he had been granted by prison authorities in return for information he provided against other inmates. At Todd's urging, Atwater convinced the Bush campaign to make the ad a center piece of the George H.W. Bush campaign for president against Michael Dukakis. The ad was named after the inmate whose story Todd had discovered, Willie Horton, and was widely credited for Bush's 1988 victory. In return, Todd was named the "RNC Man of the Year."[16]

A decade later—and less than two years before Todd was named to enforce the provisions of the Landrum-Griffin Act by President George W. Bush—Todd gave an interview to the *Chicago Tribune* on the subject of opposition research. The *Tribune* reported:

> Todd toils in a dim basement office in the Ronald Reagan Republican Center near the Capitol. His computer screen-saver says "Convict Clinton." The shelves in his office are lined with volumes of the Congressional Record, each bristling with self-incriminating Democratic quotes ready to be plucked out. Other shelves are occupied by dozens of "fact books" on Democratic senators, each a sort of anti-biography vilifying its subject, with the victim's name scrawled on the spine: "Byrd." "Harkin." "Bryan." "Levin." "Bingaman." "Nunn."
>
> Todd is from the hard-hitting school. "If you've got the facts, every time the guy opens his mouth you ought to be able to shove it right back down his throat," he said.
>
> To Todd, victory is all-important. "Somebody asked me, 'What does it take to be successful in politics?' I said, 'There's no such thing as success in politics. There are those who are in it, and those who are not. There's the quick and the dead.'[17]

Todd was not the only campaign operative to move into the Office of Labor-Management Standards in the first term of the new Bush administration. Don Loos, special assistant to Todd, came to the Labor Department from the staff of the Republican Senate Campaign Committee, as did another assistant, Patrick Bosworth. Sean Redmond, also a special assistant to Todd, had previously been on the advance staff of the Bush 2000 presidential campaign.[18]

It did not take the new team long to move forward in adopting the policies that the assistant secretary in charge of the programs in the first Bush administration, Bob

Guttman, had threatened to resign over. In fact, their efforts went well beyond the recommendations by Gingrich and Norquist. Their strategy appears to have had two principal objectives:

- Greatly increase the time, effort, and expense to labor unions, their officers, and employees of complying with department reporting requirements.

- Use information gleaned from Labor Department investigations of union officials and employees along with data from expanded union reporting requirements to launch a public relations effort to discredit unions and weaken their ability to organize and act on behalf of their members.

The Paperwork Expansion Act

The first order of business was adoption of new reporting requirements that were in some respects more onerous than those adopted nine years earlier. This involved redesigning of the so-called LM-2 reporting form, which requires disclosure of receipts and expenditures by not only all of the international labor unions but by tens of thousands of the larger locals and other affiliates of those unions.

The revisions have resulted in a radical increase in paperwork requirements placed on unions. One international union saw the size of the LM-2 reports it filed jump from 125 pages to more than 800. On average, unions found the amount of information they were required to report increased by at least 60 percent.[19]

But far more onerous were the arbitrary categories established by the Labor Department for reporting expenditures. Each expenditure of $5,000 or more and the time spent by each official and employee of a union must be reported on the basis of whether it was a:

- Representation activity
- Political action or lobbying activity
- Contribution or gift
- Overhead
- Union Administration[20]

The first problem was that in virtually no instance did these categories approximate the categories contained in the budgets adopted by unions, their membership or their governing councils.[21] As a result, the reporting required an entire new second layer of accounting simply for the purpose of filing the reports.

Secondly, despite long and complex discussions contained in the regulations and the accompanying materials prepared by the Labor Department, it remains unclear under which category many types of expenditures should be included. This is particularly true with the categories of overhead and administration. This lack of clarity not only generates additional work on the part of those trying to comply with the regulation but also results in inconsistent reporting.

There is no mechanism to ensure that each local within a particular union will follow the same policy with regard to categorization, or that a particular local will follow the same policy from year to year as the personnel responsible for the reporting change.[22] As a result, massive amounts of data generated by this reporting requirement are (as Guttman predicted) of dubious utility in providing greater transparency or understanding to either union members or the outside world into union financing.

One thing that is clear, however, is that the reporting is expensive. Most unions have spent considerable sums in purchasing new software packages and have had to ask nearly all employees to engage in additional record-keeping and pay for significant additional hours of work by both their internal and external accounting teams. The general counsels and outside attorneys that support most unions have been forced to divert large amounts of time from other issues facing their organizations to interpret the filing regulations and monitor their organizations' compliance.

One relatively small international union has estimated the cost of software modification alone to be close to a million dollars, and administrative personnel in that union expect that the costs for most unions will be far greater given the nature of their computer systems.[23] To paraphrase Grover Norquist, "Every dollar that is spent on disclosure and reporting is a dollar that can't be spent on other labor union activities."

Now the Labor Department is considering further revisions in the LM-2 form, which would start the process of software purchases, legal, and accounting expenditures all over again. But the problems posed to unions by the new LM-2 reporting requirements seem minor when compared with a second reporting "reform" that Don Todd and his staff determined was necessary in 2005.

This reporting involved a requirement in the Landrum-Griffin Act intended to ensure that union leaders were not compromised by gifts, bribes, or other potential conflicts of interest in their dealings with the companies for whom their members worked or with vendors that may contract with unions to provide products or services. Concern that union leaders might be compromised in their advocacy on behalf of union members is not a topic about which most people who know Todd would expect him to hold deep or abiding concerns.

Nonetheless, he insisted that the simple two-page form called the LM-30, which is required to be filed annually by any official or employee of a union with personal financial dealings with companies represented by their union, be greatly expanded.

This particular reporting requirement was added to the Landrum-Griffin Act 50 years ago by then-Sen. John F. Kennedy of Massachusetts, and it was drafted for him by Harvard Professor Archibald Cox. Cox testified before the Senate in 1958 on the importance of this provision. He stated that the provision "embodies many of the same principles which these progressive (labor) leaders stated in the AFL-CIO Codes of Ethical Practices."

Cox stated that he agreed with the leader of the AFL-CIO, George Meany, on the importance of applying this code of ethical conduct to unions affiliated with the AFL-CIO. But he stated that he also agreed with Meany,

> in cautioning against excessively elaborate reports, which place an undue burden upon the ordinary men and women who serve as officers of many local unions. There is a further objection. One aim of this legislation is to give publicity to financial malpractice. There could be no better place to hide than under a mountain made up of thousands of lengthy reports filed in the cellars of the Department of Labor.[24]

Cox could not have more clearly anticipated the proposal that Don Todd and his staff would concoct nearly a half century later.

The first portion of the proposed revision in this reporting requirement involved the universe of individuals who would be required to report through the LM-30. It is estimated by the Department of Labor that more than 200,000 officials and employees of unions are currently in a category of individuals that would be required to file an LM-30 report *if* they have dealings that might constitute a conflict of interest.

Todd's proposal would require such disclosures by not only officials and employees of unions but also by non-paid members of such unions if they are granted permission by their employer to work on union-related business for more than 250 hours in a year. Such individuals might include shop stewards, of which there are probably in excess of 130,000 nationwide, and participants in employer/employee health and safety committees, which may constitute an additional 100,000 union members.

It is not clear how many of these individuals would hit the 250-hour trigger in a given year and be forced to file a report. But it is clear that all would be burdened with the record-keeping requirement to demonstrate whether or not they should file.

But an even more dramatic change that would occur as a result of the Todd proposal is the amount of information that would be required. The LM-30 is revised from a simple two-page form to a form that consists of nine pages even before any of the required information is entered. An extraordinary amount of personal financial information is required under the new regulations, and it is anticipated that a very high portion of potential filers will in fact have to file based on the new definitions. All such filings are posted on the Labor Department Website.

If, for instance, an employee or officer of a labor organization has financial dealings with the credit union that is affiliated with the labor organization and if that dealing exceeds $250 over the period of a year, he or she must disclose the transaction. That would require disclosure of mortgages, car loans and all other such transactions and those disclosures would be posted on the Internet.

The requirements place an extraordinary burden on filers to obtain information that is not readily available. For instance, any union employee, official, or member of a union who is obliged to file an LM-30 if he or she has financial arrangements that constitute a possible conflict of interest would be required to file if he or she had a mortgage or other form of loan from a financial institution that gets at least than 10 percent of its receipts from companies represented by the union and companies the union is

attempting to organize. The individual would have to disclose the nature and size of each such loan.

If, for instance, an employee of the United Auto Workers has a home improvement loan from Citibank he would need to determine what share of the receipts of Citibank come from not only the big three automakers, but all companies represented by the union—including all parts manufacturers and all companies that the UAW is attempting to organize.

A document intended to "help" filers that is posted on the Labor Department website explains how filers are to address such questions:

> If a labor organization official does not know the amount of business dealings between the vendor and his or her employer, the official should request such information in writing from the vendor. If the vendor refuses to provide the information, the official should contact OLMS for assistance. In the meanwhile, the official should make a good faith estimate, based on the information reasonably available, whether the 10% threshold has been met. If such estimate exceeds the 10% threshold, then the official should file the report and explain that the vendor failed to provide requested information. If the estimate yields a figure less than 10%, no report is required, but the official should retain the written request for information he or she presented to the vendor and any work sheet used to arrive at the less-than-10% figure. Under these circumstances, absent collusion or bad faith, the labor organization officer or employee need not be concerned with criminal or civil enforcement, despite his or her inability to report this required information.[25]

The document also cautions:

> The labor organization officer or employee required to file Form LM-30 must sign the completed report and is personally responsible for its filing and accuracy…the individual is subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.[26]

A final version of the rules implementing these reporting changes was published in the Federal Register in July. All those required to file under the new rules will be expected under penalty of law to start record keeping on January 1, 2008.

Using Government Regulatory Authority to Sow Public Distrust of Unions

Based on available information, Don Todd had never worked in government prior to arriving at the Labor Department in early 2001. He also appears to have little or no experience as an administrator. Not only does he have no known legal training but some employees who work for him believe he never attended college.[27]

He lacks other skills, too, such as an accounting background or familiarity with administrative issues facing labor organizations that one might look for in a person chosen to run a $40 million plus agency with responsibility for overseeing the governance and financial integrity of the entire American labor movement.[28]

But Todd had decades of experience in campaign communications and propaganda. It was clear from the beginning that he would rely heavily on those skills during his tenure at Labor. Todd's initial efforts centered on reshaping the OLMS Web site and uploading literally millions of pages of extremely detailed information about the finances of individual labor organizations. He also instituted a data base beginning January 1, 2001, listing all legal actions taken in federal or state courts against any official or employee of a labor union alleged to have violated a law relating to OLMS jurisdiction.

What value this had in helping union members understand the activities of their unions is unclear. What is clear is that the Bush appointees at the Labor Department used the data heavily in statements they made about unions and that the data was used even more heavily by outside organizations, which spent millions of dollars to publicize union corruption and misconduct. Case in point: Paul Weyrich, widely credited as one of the founders of the "New Right" movement within the Republican Party, explained the Department's efforts in 2003:

> The secretary is convinced that this transparency rule will change the dynamic within the large unions. She believes the membership will be shocked when they find out what is going on in their own unions.[29]

Don Todd is quoted in a Department press release saying:

> We are committed to protecting union members' dues payments and ensuring transparency in labor union reporting to allow workers to review their unions' expenditures…Since fiscal year 2001, OLMS investigations have yielded a total of 810 indictments with 781 convictions and court-ordered restitution exceeding $101 million[30].

Early in 2006 a new and extremely well funded organization called the Center for Union Facts launched its operations with television commercials and full page ads in major daily newspapers across the country. The mission of this new organization seemed to be largely focused on publicizing the data that Todd had added to the Labor Department Web page. Union Facts explains on its own Web page:

> In 2005, criminal charges and fines against union officials hit five-year highs, proving that union bosses have earned their reputation for greed and corruption...Most people don't know just how many crimes are committed every year through which union officials hurt their own members. The number of reputed and verified crimes is staggering. Nothing illustrates this more clearly than the hundreds of indictments of union officials for violations of the Labor Management and Reporting Disclosure Act. According to the Office of Labor-Management Standards (OLMS)[31]

They included the following table to underscore the magnitude of the problem:

OLMS ENFORCEMENT STATISTICS FINANCIAL INTEGRITY[32]

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Indictments	98	166	132	109	114
Convictions	102	90	152	111	97

Not only did Union Facts think highly of the Labor Department's data collection, but the admiration was reciprocated. Documents leaked to *The Washington Post* revealed that a former Heritage Foundation employee, Lynn Gibson, who continues to work for Labor Secretary Elaine Chao in her public liaison office, sent an e-mail to Department employees plugging the Union Facts Web site and stating that it was "dedicated to providing information on labor unions and their expenditures."[33]

A freedom of information request by Citizens for Responsibility and Ethics in Washington revealed an extensive relationship between Labor Department political appointees and Union Facts director Richard Berman.[34] Meanwhile, Ken Boehm, chairman of the National Legal and Policy Center and director of the Organized Labor Accountability Project, was not about to let his contributors think he was not part of this effort. He offered his own interpretation of the OLMS data.

In his newsletter Union Corruption Update he stated, "There is a wave of union corruption plaguing our country."[35] He was recently quoted by Cybercast News Service, stating, "There is rampant corruption," adding that union embezzlement had become an "epidemic."[36]

And Grover Norquist also weighed in to the discussion that he helped start. In a press release from his organization, Americans for Tax Reform, he quoted himself:

> Is this what hard-working Americans are paying union dues for? Detecting and prosecuting those who would try to terrorize and exploit America's workers through coercion and deception is something that the Department of Labor must continue to do without fail…America must not abandon its workforce to the mercy of the criminal element. Scandal after scandal forces us to recognize the level of union corruption that exists. How many more workers must be bullied and exploited before America puts a stop to such despicable behavior?[37]

Beyond the fact that these statements all grossly distorted and exaggerated the data reported by OLMS there was an additional problem—reports issued by OLMS grossly misrepresented the information contained in the data base.

OLMS Lies About the Contents of its Own Data Base

The cataloging of criminal actions involving labor unions provides exhaustive details on each case. Entries are made under a wide variety of circumstances, including the filing by prosecutors of information alleging wrongdoing, an indictment, a guilty plea, and sentencing. These entries typically include the name of the individual, the venue, the charges, the union involved, the proposed or ordered restitution, and the role of OLMS investigators in bringing the charges and a link to the actual court documents.

For fiscal year 2005 there were a total of 167 entries. Of these, 57 involved the defendant being charged or indicted, 6 involved the filing of information alleging the commitment of a crime, 47 involved a plea agreement or conviction, and 56 involved sentencing.[38] It is therefore difficult to explain how OLMS could get anywhere near the number 97 for total convictions, which they reported and which Union Facts repeated, unless the 47 plea agreements and convictions were combined with the 56 sentencings.

Sentencings, of course, follow convictions, which means OLMS is double-counting—an obvious problem since many of these cases are clearly the same cases. In fiscal year 2005, for example, 22 of the plea agreements and convictions resulted in sentencings that also took place in the same year. But even if they don't take place in the same year they will eventually occur and there will be a double-reporting of the crime.

The table published by Union Facts shows the number of "convictions" not only for fiscal year 2005 but for earlier years as well. A total of 111 "convictions" were tallied by OLMS for fiscal year 2004, but a review of the data base indicates that there were only 57 guilty pleas and convictions in that year. This double-counting more than doubled the number of total "convictions."

A detailed examination of the OLMS criminal enforcement data was conducted by a group lead by Professor John Lund of the University of Wisconsin. They reported their findings in an article published last year entitled, "*Lies, Damn Lies and Statistics*":

> We discovered a significant amount of "double-" and "triple-counting." In many instances, DOL lists an individual case two, three or even four times by reporting as a separate "case" the date of an indictment, charge or information (a prosecutor's accusation without indictment), the date of a plea of guilty or not guilty, and the date of sentencing. When we removed this double-counting, only five hundred thirty (530) unique case records[39]—just over 50 percent of cases reported on the OLMS website - remained. Only 442 of the 530 unique case records involved a phase of the criminal proceeding that signifies guilt (either through sentencing, a guilty plea, a verdict, or an order to pay restitution). The remaining 88 cases were indictments, informations, or charges that do not establish the guilt of the defendant.[40]
>
> We then identified how many of these records involved union officers and employees. While nearly 20 percent of the 530 unique case records for this period involved employees, and 70 percent involved union officers, 10 percent (55) involved people who are neither union officers nor union employees, such as accountants, lawyers, business owners, building managers, and benefit plan administrators.[41]

There is actually a simple, straightforward method of measuring the prevalence of corruption in the labor movement and that is to examine for a given time period either the number of convictions and plea agreements or the number of sentencings of union officials and employees for crimes against their unions. As stated previously, there were 56 individual cases listed in the OLMS data base in which people were sentenced during the course fiscal year 2005. Of those, five were actually not union officers or employees, leaving 51 instances of union corruption. As Lund pointed out in his article that is out of a universe of more than 200,000 people who are officials or employees of the labor movement—and constitutes a crime rate of less than 0.03 percent.

It is also clear that the number of proven violations is not only low but that there is not a "wave of union corruption," as the National Legal and Policy Center warned. In fact, that conclusion is not even supported by the heavily doctored OLMS data that Union Facts took pains to post on their Web site.

Looking solely at the number of union officials and employees sentenced on a yearly basis, fiscal year 2005 had a lower number of convictions than any of the previous three fiscal years. The number of convictions during the 2004–2005 period was also substantially below the level for the preceding two-year period.

OLMS reporting on court-ordered restitution to labor unions is even more deceptive than the reports on number of convictions. Labor Secretary Chao recently stated, "In the last six years OLMS investigators and auditors have referred cases to U.S. Attorneys resulting in…over $70 million in restitution for union members."[42]

The OLMS report for fiscal year 2005 claimed $23,244,979 in "court-ordered restitution" for that year alone.[43] But again, close examination of the data found that only 10 percent of that amount—or a little more than $2 million—involved restitutions to

be paid to unions. Embedded in the OLMS data base were several cases in which the principal perpetrators were not members of unions and the target of their crimes were not union treasuries. A Chicago businessman accounted for more than half the total for a series of crimes involving fraudulent contracts with the city of Chicago.

The OLMS data base indicates that restitutions to unions totaled a little more than $6 million in fiscal year 2004, and a little more than $3 million in fiscal year 2003. This raises the question of whether new reporting requirements that OLMS has imposed on unions aren't costing union treasuries far more than the theft, embezzlement, and fraud they are aimed at preventing. That question is particularly relevant when the 38 percent increase in enforcement staff appears to have identified no more criminal cases than the smaller staff that was in place in 2001.

Finally, the data collected by OLMS is hugely misleading with regard to where the bulk of these cases originated. Each entry concludes with, "The sentencing follows an investigation by the OLMS _____ District Office," or some variation such as "The guilty plea follows a joint investigation by the OLMS _____ District Office, the FBI, the IRS, and the Department of Labor's Office of Inspector General."

But never does the Web site acknowledge that a large share and perhaps a large majority of convictions come about because of audits and investigations conducted by the unions themselves. While this fact flies directly in the face of the message that Todd and his anti-union colleagues are attempting to spread, it makes sense to anyone who recognizes that unions don't like to have their money stolen anymore than other non-profit organizations or businesses.

I attempted to contact the General Counsels of all of the unions who had a member or officer convicted in fiscal year 2005. Of the 51 convictions, I got responses from union general counsels on 26. In 18 of the cases the union brought the wrongdoing to the attention of the OLMS, the Justice Department, or local law enforcement. In five cases the crimes were discovered by OLMS or state or federal law enforcement. In three cases the facts were more complex and the wrongdoing surfaced by a combination of union initiative and OLMS investigations.

Embezzlement

Embezzlement is clearly an important problem facing labor organizations. Of the 51 convictions that occurred in 2005, 39 involved embezzlement. But is it a systemic problem throughout the movement associated with innate character flaws in the people who join and run labor unions as the host of non-profit corporations set up to critique organized labor imply, or are unions simply subject to the same vulnerabilities of other similar organizations outside the labor movement?

One compelling fact with regard to this question is that none of the 39 individuals convicted of embezzlement in 2005 worked at the headquarters of an international union

where staffs are normally large and financial controls extensive. Virtually all of the convictions involved individuals associated with the well over 20,000 local unions spread across the country, the large majority of which have few staff and small budgets. Half of the 39 convictions involved embezzlements of less than $22,000.

In this respect the problem faced by unions is identical to the problem faced by small organizations outside the labor movement such as small businesses, non-profit corporations, and churches. The relatively small budgets of these organizations make it impractical to absorb the costs required to support the kind of financial management and control used in most larger organizations.

National crime statistics indicate employees and officials of unions are somewhat more likely to be convicted of embezzlement than workers outside the labor movement but they may very well be less likely than employees in certain sectors facing similar management challenges.[44] One example is churches.

There is some evidence that embezzlement is a bigger problem in churches than in unions[45]—a problem that the Bush administration has neglected to address or publicize. A recent article by Religion News Service attempted to define the magnitude of the problem facing churches. In 2004 a single Catholic priest in Chicago was convicted of stealing more than $1 million from the congregation he was supposed to be serving. Other cases identified by Religion News Service included:

- In New York, the Rev. Charles Betts of Morning Star Missionary Baptist Church has been accused by prosecutors, along with the bookkeeper and her husband, of stealing $494,000.

- In Rockford, Ill., Jannine M. McKee was sentenced to 18 months in prison for taking $140,000 from the Second Congregational Church, where she was the volunteer financial secretary.

- In Layton, Utah a former bookkeeper at St. Rose of Lima Catholic Church was charged with stealing more than $38,000.

- In Cheektowaga, N.Y., Marie, a business manager for Kolbe Catholic School, stole $332,000, while at Grace United Church in nearby Buffalo, the church's day care director embezzled $235,000. Both pleaded guilty. According to the *Buffalo News*, the local district attorney's office has prosecuted eight embezzlement cases at churches and non-profits since 2003, totaling more than $1 million.[46]

What is Wrong with the Bush Administration Approach to Labor Law Enforcement?

One thing that should be said about Don Todd's tenure at the Labor Department is that it would be difficult to concoct a less effective means of routing out corruption and wrongdoing in the labor movement. Any effective law enforcement effort is built on establishing a positive rapport with the community whose laws are to be enforced.

The vast majority of unions will continue to seek out and report wrongdoers simply because it is in their interest to do so. The less money that is stolen from them the more money they have to advocate on behalf of their members. But no one could fault them for failing to see Don Todd and his operation at the Labor Department as allies in that effort. As a result, the level of cooperation will be less than optimal.

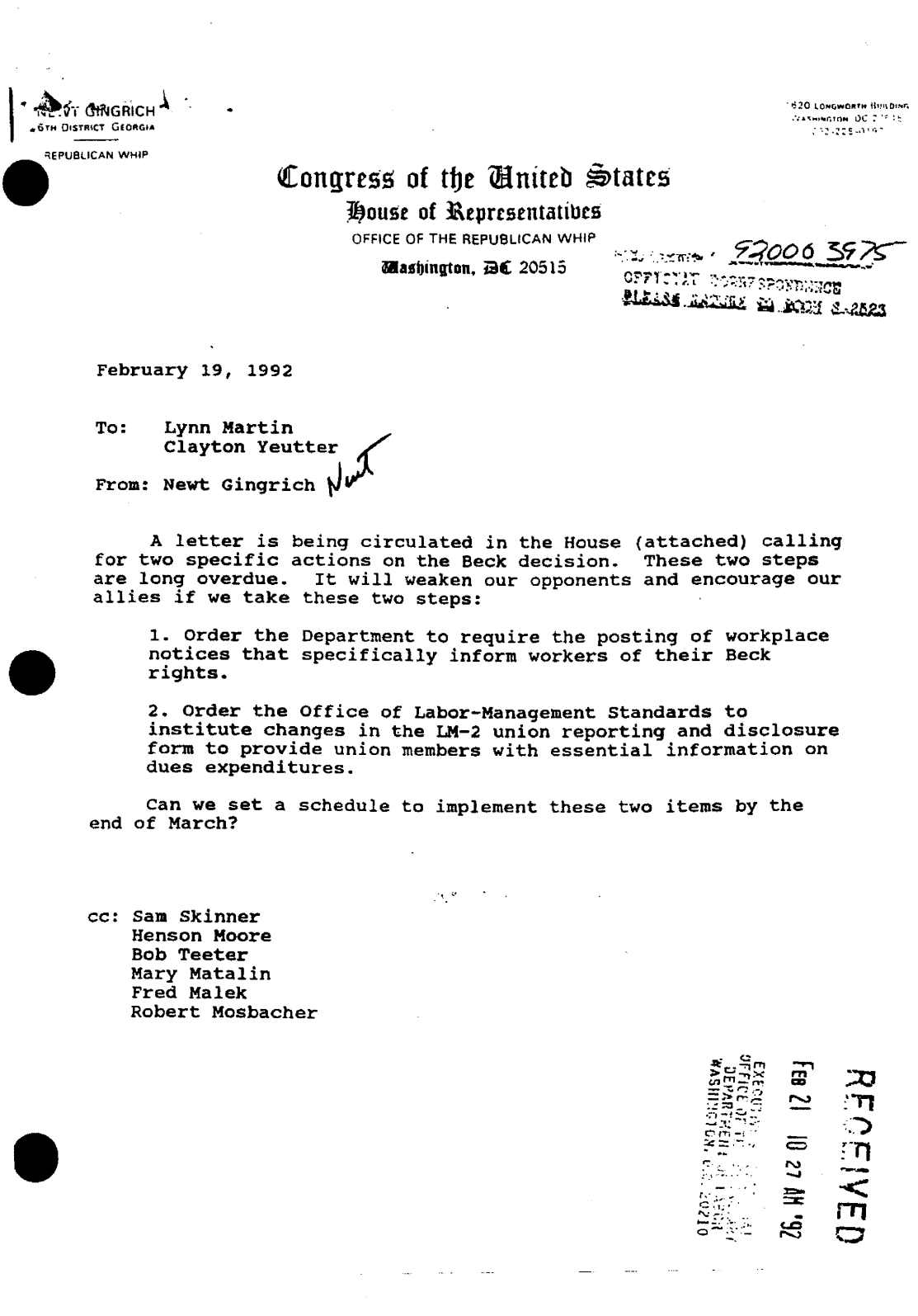
In unions where serious corruption is an issue, reform elements will not see Don Todd or his deputies as useful or trustworthy allies and opportunities for change will be lost. One has wonder why the 38 percent increase in staff at OLMS has produced so little in terms of enforcement results. The distrust that the current regime in the Labor Department has engendered by well be the answer.

But there is a far more fundamental problem with what this paper describes taking place at the Labor Department. "To the victor go the spoils," remarked Sen. William L Marcy of New York when defending Andrew Jackson's replacement of government employees hired by his predecessor, John Quincy Adams. Do we want a political system in which the "spoils" extend beyond simple patronage, to a system which grants winners the ability to use the law of the land to weaken, disable, and destroy political opponents?

Is it healthy for Americans of either party if the new administration that will come to office in a little more than a year observes as it is taking the reins of power that these types of abuses by its predecessor went unchallenged and unchecked?

The American people are justly proud of their Constitution and our nation's long history of commitment to the rule of law. But they may be overly confident that the rule of law can be protected by the Constitution alone. Any society that allows partisan allegiance to trump commitment to the fundamental values of democracy—beginning with the rule of law—is on a relatively quick path to losing those values. The current mess at the Labor Department is yet one more indicator that this country is on that path.

Appendix



NEWT GINGRICH
6TH DISTRICT GEORGIA
REPUBLICAN WHIP

1620 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-4272

Congress of the United States
House of Representatives
OFFICE OF THE REPUBLICAN WHIP
Washington, DC 20515

92006 3975
OFFICIAL CORRESPONDENCE
PLEASE ROUTE IN BOX 2523

February 19, 1992

To: Lynn Martin
Clayton Yeutter

From: Newt Gingrich Newt

A letter is being circulated in the House (attached) calling for two specific actions on the Beck decision. These two steps are long overdue. It will weaken our opponents and encourage our allies if we take these two steps:

1. Order the Department to require the posting of workplace notices that specifically inform workers of their Beck rights.

2. Order the Office of Labor-Management Standards to institute changes in the LM-2 union reporting and disclosure form to provide union members with essential information on dues expenditures.

Can we set a schedule to implement these two items by the end of March?

cc: Sam Skinner
Henson Moore
Bob Teeter
Mary Matalin
Fred Malek
Robert Mosbacher

RECEIVED
FEB 21 10 27 AM '92
EXECUTIVE SECRETARIAT
OFFICE OF THE SECRETARY
DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

Endnotes

1 "International Information Programs, Rule of Law," available at http://usinfo.state.gov/dhr/democracy/rule_of_law.html.

2 Amy Goldstein, "Report Suggests Laws Broken in Attorney Firings." *The <<Washington>> Post*, July 25, 2007, pg. A03. "Witness for the Prosecutors." *The New York Times*, May 24, 2007, Editorial Desk, pg. 26.

3 Adam Zagorin, " Rove Linked to Alabama Case." *TIME Magazine*, October 10, 2007, available at http://www.time.com/time/printout/0,8816,1669990,00.html. Adam Zagorin, "Selective Justice in Alabama?" *TIME Magazine*, October 4, 2007, available at http://www.time.com/time/nation/article/0,8599,1668220,00.html. Adam Cohen, "A Woman Wrongly Convicted and a U.S. Attorney Who Kept His Job." *New York Times*, April 16, 2007, available at http://www.nytimes.com/2007/04/16/opinion/16mon4.html. Ryan Foley, "Federal Appeals Court Orders Thompson Released from Prison." *Associated Press*, April 6, 2007. Daniel Bice, "Questions on Thompson case won't quit." *Milwaukee Journal Sentinel*, September 12, 2007, available at http://www.jsonline.com/story/index.aspx?id=661588

4 John Solomon and Juliet Eilperin, "Bush's EPA is Pursuing Fewer Polluters." *Washington Post*, September 30, 2007, A01, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/09/29/AR2007092901759.html (last accessed November 30, 2007). Ann McFeatters and Karen MacPherson, "Bush pledges to find cause of 12 miners' deaths." *Pittsburgh Post-Gazette*, January 5, 2006, available at http://www.post-gazette.com/pg/06005/632959.stm (last accessed Novemer 30, 2007). Stephen Labaton, "OSHA Leaves Worker Safety in Hands of Industry," *The New York Times*, April 25, 2007, p. 1; Rep. Rosa DeLauro, "CPSC's Disdain for the Agency's Regulatory Mission Leaves our Children Vulnerable to Harmful Products," November 8, 2007, available at http://www.house.gov/delauro/press/2007/November/Children_Vulnerable_11_8_07.html; Eric Lipton, "Safety Agency Faces Scrutiny Amid Changes," *The New York Times*, September 2, 2007, p. 1; "You're Eating That?" *The New York Times*, November 26, 2007, p. 22.

5 John Solomon and Juliet Eilperin, "Bush's EPA is Pursuing Fewer Polluters." *Washington Post*, September 30, 2007, A01, available at http://www.washingtonpost.com/wpdyn/content/article/2007/09/29/AR2007092901759_pf.html

6 Ann McFeatters and Karen MacPherson, "Bush pledges to find cause of 12 miners' deaths." *Pittsburgh Post-Gazette*, January 5, 2006, available at http://www.post-gazette.com/pg/06005/632959.stm

7 *Budget Justifications* (Department of Labor)

8 Ibid.

9 *Labor-Management Reporting and Disclosure Act of 1959*, As Amended, U.S. Department of Labor, available at http://www.dol.gov/esa/regs/statutes/olms/lmrda.htm

10 See Exhibit A in Appendix.

11 "Prop. 226 Opponents Sound off in TV Ads." *<<Sacramento>> Bee*, April 22, 1998. Rick Henderson and Steven Hayward, "Happy Warrior: Grover Norquist on Building Anti-Tax Coalition." *Reason Magazine*, Feb. 1997, available at http://www.reason.com/news/show/30147.html.

12 Grover Norquist, "The Democratic Party is Toast." *Washington Monthly*, September 2004, available at http://www.washingtonmonthly.com/features/2004/0409.norquist.html

13 Daily Labor Report, *DLR No. 125,* p. A-3, June 29, 1992.

14 The Historical Office of the U.S. Department of Labor does not maintain an official record of the directors of the Office of Labor-Management Standards. From a variety of sources the following information was constructed. Mary Schiavo, an attorney and former White House Fellow was appointed by President George H.W. Bush as the Deputy Assistant Secretary for OLMS in 1989 but served only a year before moving on to become the Inspector General of the Department of Transportation. Upon her departure, Robert Guttman assumed the job of director of OLMS as well as continuing in the position of Assistant Secretary for Employment Standards. When he resigned in 1992 as is discussed later in this paper, he was replaced for approximately one year by Marshall Breakman, a career civil servant. President Clinton appointed a practicing attorney from Denver named Edmundo Gonzales. Gonzales moved after less than three years to become the Chief Financial Officer of the Department and was replaced by John Kotch, a career civil servant who held the position for approximately five years.

15 "A Rowdy Campaign of Personalities." *Time Magazine*, October 20, 1980, available at http://www.time.com/time/magazine/article/0,9171,951522-2,00.html.

16 Charles Fenyvesi, "Washington Whispers." *U.S. News & World Report*, December 3, 1990.

17 *Naftali Bendavid, "Now, the Best Defense is Knowing One's Offenses." Chicago Tribune, October 4, 1999, p. 1.*

18 *2004 Government Plum Book*, (Government Printing Office), p.105-109 and 106th Congressional Directory Oct. 2000 Interim Cong. Dir. ASSIGNMENTS OF SENATORS TO COMMITTEES...Staff of Senate Republican Campaign Committee.

19 Interview with official of International Union., Increased reporting of this magnitude was also reported by the Washington office of the AFL-CIO in a story that appeared in the Philadelphia Inquirer - Jane M. Von Bergen, "Unions get stricter oversight." *The Philadelphia* Inquirer, December 11, 2005, p. E01.

20 U.S. Labor Department/OLMS Web site available at http://www.dol.gov/esa/olms_org.htm

21 John Lund and Benjamin Roovers, "Through the Looking Glass: Does the Labor Department's New Form LM-2 Really Deliver Greater Transparency?" *Labor Studies Journal*, forthcoming 2008.

22 Ibid.

23 Interview by author with labor union accountant who asked to not be identified in fear of retribution against his union by the U.S. Department of Labor.

24 Hearings on Union Financial and Administrative Practices before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 85 Cong. 2 sess. (1958).

25 U.S. Department of Labor, "Revised Form LM-30 Labor Organization Officer and Employee Report, Frequently Asked Questions," available at http://www.dol.gov/esa/regs/compliance/olms/RevisedLM30_FAQ.htm

26 Ibid.

27 Interview by author with employees of OLMS who asked not to be identified because of fear of retribution.

28 Interviews by author with Department of Labor employees who asked to remain anonymous for fear of retribution.

29 Paul Wyrich, "Labor Secretary Chao Rooting Out Union Corruption." *Newsmax.com*, April 1, 2003, available at http://archive.newsmax.com/archives/articles/2003/3/31/133514.shtml

30 U.S. Department of Labor, "U.S. Department of Labor's Office of Labor-Management Standards reports four indictments, six convictions during July for union funds embezzlement" available at http://www.dol.gov/opa/media/press/esa/ESA20071210.htm.

31 "Union Leader Fraud & Corruption," UnionFacts.com, available at http://www.unionfacts.com/articles/crimeFraud.cfm.

32 Ibid.

33 Al Kamen, "Who Gets the Not-So-Coveted Rosemary?" *Washington Post*, March 13, 2006, A13.

34 Citizens for Responsibility and Ethics in Washington, "CREW Forces Dept. of Labor to Release Anti-Union Docs; Details Cozy Relationship between Dept. of Labor and Anti-Union Group." June 22, 2007, available at http://www.citizensforethics.org/node/19028.

35 Union Corruption Update Newsletter. February 18, 2002, Vol. 5, Issue 4, available at http://www.nlpc.org/olap/UCU3/05_04_01.htm

36 Pete Winn, "Union Fund Embezzlements 'Epidemic,' Analyst Says." *CNSNews.com*, September 19, 2007, available at http://www.cnsnews.com/ViewPolitics.asp?Page=/Politics/archive/200709/POL20070919a.html

37 Americans for Tax Reform, "Union Racketeering on the Rise." July 8, 2004, available at http://www.atr.org/content/pdf/2004/jul/PR-UnionRacket7-8-04.pdf

38 One entry involved the denial of motion made by an individual who had been previously convicted.

39 Case record, means an entry that represents a single criminal case involving one defendant.

40 John Lund, Deborah Greenfield, and Catherine Fayette, "Lies, Damn Lies and Statistics." *New Labor Forum*, Winter 2007.

41 Ibid.

42 Elaine L. Chao, Secretary of Labor, "Derailing the little agency that could." *McClatchy-Tribune News Service*, July 16, 2007.

43 U.S. Department of Labor, "Office of Labor-Management Standards 2005 Annual Report," available at https://www.youth-2work.gov/esa/regs/compliance/olms/highlights_05.htm

44 The FBI reports that in 2005 there were a total of 13,700 arrests for embezzlement nationwide. State statistics on conviction rates for embezzlement were not readily available, but in federal courts more than 93 percent of arrests for embezzlement result in convictions. The Bureau of Labor Statistics data indicates that average employment in 2005 was about 141,000,000 which means that about 1 out every 10,000 workers was convicted for embezzlement, assuming state conviction rates parallel those in federal courts. The 39 union convictions represent about 2 in every 10,000 individuals employed in the labor movement. But a much larger portion of the employees of unions work in the types of smaller, less well supervised offices where financial embezzlement is easier to perpetrate and where it most frequently occurs.

45 The examples provided by Religion New Service are anecdotal but it is useful to note that the Bureau of Labor Statistics estimates that the total number of clergy and others who are employed in religious occupations total less than 60,000—less than a third of the number employed in the labor movement. Only 13 convictions in the space of a year among this group would provide employees of churches with an embezzlement conviction rate higher than employees of unions. Anecdotal evidence indicates that the problem in churches may be considerably greater than that.

46 Bob Smietana, "New Interfaith Report Focuses on Pastors Who Steal from Unsuspecting Congregations." *Religion News Service*, 2005, available at http://www.adventistreview.org/2005-1508/story5.html.

Acknowledgements

The author would like to thank Anne Shoup for her help in preparing this document.

Center for American Progress

ABOUT THE CENTER FOR AMERICAN PROGRESS

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is "of the people, by the people, and for the people."

Center for American Progress
1333 H Street, NW, 10th Floor
Washington, DC 20005
Tel: 202.682.1611 • Fax: 202.682.1867
www.americanprogress.org