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HOUSE OF REPRESENTATIVES

{ REPORT  
{ 104-401

## INQUIRY INTO VARIOUS COMPLAINTS FILED AGAINST REPRESENTATIVE NEWT GINGRICH

DECEMBER 12, 1995.—Referred to the House Calendar and ordered to be printed

Mrs. JOHNSON of Connecticut, from the Committee on Standards of Official Conduct, submitted the following

### REPORT

The Committee began meeting on the complaint filed by Mr. Ben Jones in the last Congress on February 9, 1995, shortly after the Committee was constituted for the 104th Congress. Since February 9 1995, the Committee has held in excess of fifty meetings on this and the succeeding complaints, either in Executive Session of Members or to depose witnesses. The Committee took sworn testimony from over twenty witnesses in relation to these complaints, and all witnesses were afforded the opportunity to have counsel present during their depositions.

The complaints fall into different groups. There are some that involve no dispute as to the facts and required only that the Committee make a judgment, for example, as to the appropriateness of special order material. Another group of complaints required the examination of documents or the deposition of witnesses, but by preserving the right of Committee members to directly evaluate the facts, a solid foundation was established for Members to make the determination as to the disposition of these charges. Other complaints involved fairly complex issues and would require a review of a significant number of documents, knowledge of tax law, and a major investment of time for the members of this committee.

On December 6, 1995, the Committee on Standards of Official Conduct met in executive session and took the following actions by unanimous vote in regard to six complaints against Representative Newt Gingrich.

## DISCUSSION OF COMPLAINTS

The Jones complaint filed on September 12, 1994, contained allegations regarding Representative Gingrich's course "Renewing American Civilization." Mr. Jones alleged that Representative Gingrich used official resources in preparing for his course. These allegations were examined by the Committee during the 103rd Congress, Representative Gingrich made restitution to the U.S. Treasury, and the Committee recommended no further action.

Mr. Jones also alleged a conflict of interest in a \$25,000 contribution by Mr. Richard Berman to the Kennesaw State College Foundation. Mr. Berman made this contribution after testifying before a House subcommittee. Telephone interviews by staff and documentary evidence reviewed by the Committee failed to support the allegation of a quid pro quo or other conflict of interest. Therefore, this allegation was dismissed.

Finally, Mr. Jones alleged that Representative Gingrich misused entities organized under § 501(c)(3) of title 26 of the United States Code in support of his course entitled "Renewing American Civilization." The Committee voted a Preliminary Inquiry as to whether Representative Gingrich's activities in relation to the course "Renewing American Civilization" were in violation of § 501(c)(3) of title 26, United States Code, or whether any § 501(c)(3) entity, with respect to the course, violated its status with his knowledge and approval. The Committee agreed to hire special counsel to assist the Investigative Subcommittee that will conduct the preliminary inquiry.

The Jones complaint filed on January 26, 1995, contained a number of separate allegations and repeated three charges from his first complaint, filed on September 12, 1994.

Mr. Jones alleged that Representative Gingrich's book contract with HarperCollins violated the principles set forth in House Select Committee on Ethics Advisory Opinion No. 13, (October 1978), in which it is noted that being a Member of Congress is a full-time job. The Committee has never ruled that writing a book in itself violates the responsibilities of being a Member; in fact, the Committee has approved numerous book contracts over the past few years. The Committee, therefore, dismissed the allegations that writing a book is inconsistent with being a full-time Member of Congress.

Mr. Jones also alleged that the amount of money Representative Gingrich is expected to earn abuses the copyright royalties exception to the outside earned income limit. There currently is no limit on the amount of copyright royalties a Member may receive and, therefore, the Committee dismissed that allegation in the complaint.

Mr. Jones further alleged that Representative Gingrich violated the Code of Ethics for Government Service by accepting favors or benefits from Mr. Rupert Murdoch in the form of a book contract with his company, HarperCollins. Mr. Jones also alleged that at the meeting with Mr. Murdoch, an attempt was made to influence Representative Gingrich to aid the Fox Network in its dispute with NBC by providing him with a lucrative book contract.

The Committee examined fifteen witnesses under oath including every participant in the November 28, 1994 meeting. The Committee found no evidence that either the book or the negotiations were mentioned at the meeting between Representative Gingrich and Mr. Murdoch. Further, the Committee concluded that the November 28, 1994, meeting was a courtesy visit of a routine nature, with the pending NBC complaint before the Federal Communications Commission being mentioned only briefly in passing. In view of this testimony, the Committee concluded this allegation did not merit further inquiry and it was dismissed.

Mr. Jones also alleged that the auction process was improper. The Committee examined numerous witnesses under oath who were involved in the auction process, including representatives of each of the major publishing houses that bid on the Gingrich book. The Committee also deposed individuals from HarperCollins who were involved in either the auction or the contract negotiations. The auction process and the contract were examined by the Committee and by an outside expert not associated with Representative Gingrich's book or the auction. The auction process which initially resulted in a \$4.5 million advance, later renegotiated to a one dollar advance, was found to be in compliance with industry practices.

The Committee found that Representative Gingrich did not violate the House Rule governing book contracts or royalty income. While the original advance greatly exceeded the financial bounds of any book contract contemplated at the time the current rules were drafted, the Committee concluded that Representative Gingrich's book contract was in technical compliance with the "usual and customary" standard of House rules regarding royalty income. However, the Committee strongly questions the appropriateness of what some could describe as an attempt by Representative Gingrich to capitalize on his office.

The Committee believes that the existing House rule must be changed to clearly restrict the income a Member may derive from writing books. As recent events demonstrate, existing rules permit a Member to reap significant and immediate financial benefits appearing to be based primarily on his or her position. At a minimum, this creates the impression of exploiting one's office for personal gain. Such a perception is especially troubling when it pertains to the office of the Speaker of the House, a constitutional office requiring the highest standards of ethical behavior, but it is also a factor to be strongly considered by each Member of Congress.

Therefore, the Committee recommends that House Rule 47 be changed to subject royalty income derived from books written while one is a Member to the same limits as other sources of outside earned income. A copy of the proposed rule is attached.

Mr. Jones further alleged that Representative Gingrich asked chief executive officers at the Business Roundtable to provide volunteers to help him downsize government and that he asked that group and the Managed Futures Association to buy the tapes of his course.

The Committee found no evidence of any contribution of goods or services in support of congressional operations, and so concluded there had been no violation of Rule 45. This count of the Jones complaint merited no further inquiry and it was dismissed.

Further, the Committee found that no House rule or regulation is violated when a Member, without using any official resources, mentions the availability of a product such as a videotape collection, particularly when the beneficiary of any sales is an organization recognized under § 170(c) of the Internal Revenue Code. In fact, the Committee's memorandum of October 9, 1990 allows such solicitations by Members, officers, and employees without any requirement for prior approval by this Committee. This count of the Jones complaint merited no further inquiry and it was dismissed.

It was further alleged that Representative Gingrich improperly intervened with Executive Branch officials on behalf of Direct Access Diagnostics, a contributor to the Progress and Freedom Foundation. The Committee took sworn testimony from four witnesses and reviewed written submissions provided by Representative Gingrich, the Foundation, and Johnson & Johnson, the corporate parent company of Direct Access Diagnostics.

The Committee found no credible evidence of any improper linkage between the actions of Representative Gingrich and the contributions to the Progress and Freedom Foundation, and, therefore, determined that the matter did not merit further inquiry and it was dismissed.

The Miller complaint alleged that the Speaker improperly used the services of Mr. Gaylord in the operations of his office in violation of House Rule 45, which prohibits the use of private resources for official purposes. Mr. Gaylord's alleged activities included attending leadership meetings, interviewing prospective employees, and making salary recommendations in the transition period during which Representative Gingrich was reorganizing his office to assume the responsibility of Speaker.

The Committee found that the utilization of Mr. Gaylord to interview employees during the transition, a task that is properly associated with the official responsibilities of House Members and employees, is inappropriate. The routine presence of Mr. Gaylord in congressional offices creates the appearance of the improper commingling of political and official resources and is inappropriate. The Committee concluded that these actions taken together violate House Rule 45. The Committee has so notified Representative Gingrich and will take no further action.

The complaint brought by Representatives Schroeder, McKinney and Johnston alleged that the receipt of free cable time by Representative Gingrich for the broadcasting of his lectures constituted a gift and was an improper solicitation and/or acceptance of something of value in violation of House rules and applicable standards.

Based on sworn testimony before the Committee, a review of documentary evidence, and interviews by Committee staff, the Committee found that the broadcasting of the lectures did not constitute either a gift or a favor to Representative Gingrich within the meaning of House rules or applicable standards, nor was there an improper solicitation. The receipt of an incidental benefit of publicity does not constitute a gift or an improper benefit as it does not meet the test of something of value required by § 7353 of title 5 of the U.S. Code. The Committee found further that there was no evidence of Representative Gingrich's involvement in the solicitation of free cable time; that he was not compensated for the

broadcasting of the lectures; and that there was nothing special or unusual about the broadcasting arrangement. The Committee concluded this matter merited no further inquiry and it was dismissed.

Representative *Bonior's* first complaint alleged, in substance, that between February 2, 1993, and April 24, 1994, Representative Gingrich improperly used official resources for unofficial purposes by speaking about his course, *Renewing American Civilization*, and by giving out a 1-800 number during his Special Orders and Extension of Remarks.

Representative Gingrich had informed the Committee of his intention to discuss the subject matter of the course on the House Floor, and the Committee confirmed it was within his right to do so. However, the Committee regards the mentioning of the 1-800 number for the purpose of selling audio or video tapes of the college course to be an improper use of the House Floor. The Committee's standing policy on solicitation by Members was outlined in an August 3, 1993, letter to Representative Gingrich regarding fundraising for the course, at Kennesaw State College. In that letter, the Committee's rule covering Member fundraising was restated: "Members may solicit funds on behalf of charitable organizations qualified under §170(c) of the Internal Revenue Code, provided that no official resources are used, no official endorsement is implied, and no direct personal benefit results." By referring to the 1-800 number, through which tapes are offered for sale, Representative Gingrich used official resources in a solicitation for a §170(c) organization. This violates, as well, the proscription noted in the House Ethics Manual against inserting commercial advertising in the Congressional Record.

The Committee thus found a misuse of a Member's prerogative to speak in the House Floor in the one instance in which the 1-800 number established to sell tapes was mentioned. The Committee has so notified Representative Gingrich and will take no further action. The remaining four allegations were dismissed because no solicitation was involved.

On May 8, 1995, Representative *Bonior* alleged that Representative Gingrich had violated House Rules by using official resources to publicize a GOPAC-sponsored activity, the *American Opportunities Workshop*, by the use of twelve Special Orders between January 23, 1990, and June 11, 1990. During these Special Orders, there were references to a 1-800 number through which tapes of the televised program could be obtained. Of special significance to the Committee was that the workshop being discussed was sponsored by a partisan organization. The respondent's assertions in the Special Orders that the endeavor was nonpartisan did not overcome the perception created by its being organized and run by a partisan political action committee. The Committee found that this use of Special Orders violated House Rules by using the official resource of the House Floor for political purposes. The Committee has so notified Representative Gingrich and will take no further action.

While the Committee chose to take no further action, the Committee will ask that the interpretations of House Rules be clarified to better guide Members on the appropriate use of Special Orders.

## CONCLUSION

The Committee has taken final action on five of the six pending complaints, citing violations or dismissing allegations as appropriate. The Committee has voted a Preliminary Inquiry in regard to certain portions of the Jones complaint filed on September 12, 1994, and will hire special counsel to assist in this inquiry. The Committee is recommending a change in House rules regarding the treatment of royalty income.

The Committee acknowledges that a complaint has been filed alleging that Mr. Donald Jones volunteered his services in the office of Representative Gingrich in violation of Rule 45 of the Rules of the House of Representatives. The Committee has asked Representative Gingrich to respond to this complaint and will take such action as may be appropriate when that response is received.

### RESOLUTION OF PRELIMINARY INQUIRY

Whereas, complaints have been filed with the Committee alleging improper conduct by Representative Newt Gingrich in connection with a college course and certain foundations qualified under section 501(c)(3) of Title 26 of the United States Code; and

Whereas, the Committee determines that these allegations are within the jurisdiction of the Committee and merit further inquiry. Now, therefore, be it

*Resolved*, That the Committee conduct a Preliminary Inquiry, in accordance with Rule 17 of the Rules of the Committee, to determine if there is reason to believe that Representative Gingrich's activities in relation to the college course "Renewing American Civilization" were in violation of section 501(c)(3) or whether any foundation qualified under section 501(c)(3), with respect to the course, violated its status with the knowledge and approval of Representative Gingrich; and be it further

*Resolved*, That the Chair and Ranking Democratic Member appoint four Members of the Committee to serve as Members of the Investigative Subcommittee that will conduct the Preliminary Inquiry; and be it further

*Resolved*, That the Committee appoint a Special Counsel to assist the subcommittee.

### LIMITATION ON ROYALTY INCOME

H. Res. \_\_\_\_\_

#### SECTION 1. AMENDMENT TO HOUSE RULES.

(a) Clause 3(e) of rule XLVII of the Rules of the House of Representatives is amended to read as follows:

(e) The term "outside earned income" means, with respect to a Member, officer, or employee, wages, salaries, fees, and copyright royalties earned while a Member, officer or employee of the House, and other amounts received or to be received as compensation for personal services actually rendered but does not include—

(1) the salary of such individual as a Member, officer, or employee;

(2) any compensation derived by such individual for personal services actually rendered prior to the effective date of this

rule or becoming such a Member, officer or employee, whichever occurs later;

(3) any amount paid by, or on behalf of, a Member, officer or employee, to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such individual from such a plan;

(4) in the case of a Member, officer, or employee engaged in a trade or business in which the individual or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by such individual so long as the personal services actually rendered by the individual in the trade or business do not generate a significant amount of income; and

(5) copyright royalties for works published before becoming a Member, officer, or employee of the House.

(b) Clause 3 of rule XLVII of the Rules of the House of Representatives is further amended by adding at the end the following new paragraphs:

(g) A Member, officer, or employee of the House may not—

(1) receive any copyright royalties pursuant to a contract entered into after becoming a Member, officer, or employee—

(A) unless the royalty is received from an established publisher pursuant to usual and customary contractual terms; and

(B) without the prior approval of the contract by the Committee on Standards of Official Conduct; or

(2) receive any advance payment for any such work. However, this rule does not prohibit literary agents, research staff, and other persons working on behalf of the Member, officer, or employee, from receiving advance payments directly from the publisher.

(h) The Committee on Standards of Official Conduct, subject to such exceptions as it deems appropriate, shall not approve any contract which permits the deferral of royalty payments beyond the year in which earned.

#### SEC. 2. EFFECTIVE DATE.

The amendments made by this resolution shall apply to copyright royalties earned by a Member, officer, or employee of the House of Representatives after December 31, 1995.

