

INQUIRY INTO THE OPERATION OF THE BANK OF
THE SERGEANT-AT-ARMS OF THE HOUSE OF REP-
RESENTATIVES

R E P O R T

OF THE

COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT
HOUSE OF REPRESENTATIVES

together with

MINORITY VIEWS

[To accompany H. Res. 393]



MARCH 10, 1992.—Referred to the House Calendar and ordered to be
printed

U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC, March 10, 1992.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Standards of Official Conduct, I herewith submit the enclosed report, "Inquiry Into the Operation of the Bank of the Sergeant-at-Arms."

Sincerely,

_____,
_____,
_____,
_____,

MATTHEW F. McHUGH,
Acting Chairman.

Enclosure.

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INQUIRY INTO THE OPERATION OF THE BANK OF THE SERGEANT-AT-ARMS

MARCH 10, 1992.—Referred to the House Calendar and ordered to be printed

Mr. McHUGH, from the Committee on Standards of Official
Conduct, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 393]

INTRODUCTION

On September 18, 1991, the United States General Accounting Office (GAO) submitted to the Speaker and the Sergeant-at-Arms of the House of Representatives a report detailing the results of its audit of the House Office of the Sergeant-at-Arms for the period July 1, 1989 to June 30, 1990. Among the elements of the office audited was the facility known as the House Bank.

GAO had previously expressed to the Sergeant-at-Arms, the Director of the Bank, and others, its concern that the House Bank did not effectively control check-writing and check-cashing practices at the facility. For example, in its audit report published in February 1990, GAO noted that the absence of check-cashing procedures resulted in many checks not written on House accounts but cashed at the Bank being returned for insufficient funds. It also noted that many checks written by Members of the House on their accounts maintained at the Bank did not have sufficient funds to cover them.¹

In its report of September 1991, GAO again reported that non-account checks cashed by the Bank were still being returned for in-

¹The term "overdraft" is used in this report to describe checks written on insufficient funds. Technically, the term "overdraft" refers to the payment of such a check by the bank upon which it is drawn.

sufficient funds, largely because the Sergeant-at-Arms was not enforcing new check-cashing procedures in all cases. With respect to checks written by Members on accounts maintained at the House Bank, the report said the following:

The new check cashing procedures have not reduced the number of insufficient funds checks written on House bank accounts * * *.

For the 6-month period preceding implementation of the procedures, 4,006 House bank checks were returned because of insufficient funds.² In the 6 months following the establishment of the procedures, 4,325 checks were returned. Just considering checks written for \$1,000 or more, we found that 134 account holders cashed 581 checks that were returned because of insufficient funds.³

Publication of the GAO report generated an immediate and critical response from the media, the public, Members of the House, and the House leadership. On October 3, 1991, the Majority Leader introduced House Resolution 236. The Resolution was considered by the House the same day and adopted by a vote of 390 to 8. (See Appendix A.)

House Resolution 236 ordered that the House Bank be closed by December 31, 1991, and that GAO provide the Committee on Standards of Official Conduct with copies of its two most recent audits of the Sergeant-at-Arms Bank and its supporting work papers. In addition, the Committee, or a Subcommittee thereof, was directed to examine the operations of the House Bank for the period commencing July 1, 1988, and to determine whether those operations or the use of the Bank by Members, officers, or employees involved "questions of potential violations of the Rules of the House or any other applicable standards of conduct."

In making this determination the Committee was instructed by the House to consider the following factors:

(1) Whether Members, officers, employees or others abused the banking privileges by *routinely* and *repeatedly* writing checks for which their accounts did not have, by a *significant* amount, sufficient funds on deposit to cover (emphasis added);

(2) The bank's practices with respect to non-account holders or checks not written on House bank accounts transacted at the bank's facilities; and

(3) The general operation and management of the bank by the Sergeant-at-Arms and his employees.

If, after its review, the Committee determined that there may be a possible violation of House Rules or any other applicable standard of conduct by a Member, officer, or employee, the Resolution instructed the Committee to consider the initiation of a preliminary inquiry respecting that individual, if appropriate.

On October 9, 1991, pursuant to the foregoing Resolution, the Committee on Standards authorized the Acting Chairman and

²In fact, very few of these checks were returned. Rather, they were paid by the House Bank and not posted to the writer's account until sufficient funds were on deposit to cover them.

³The report incorrectly refers to checks cashed and returned for insufficient funds. The reference should be to checks written on House accounts that caused overdrafts that were paid by the House Bank. Very few were actually "returned"

Ranking Republican Member to designate a subcommittee to conduct the inquiry.⁴ Appointed to the Subcommittee were Representatives Matthew F. McHugh (D-NY), James V. Hansen (R-Utah), Benjamin L. Cardin (D-MD), Fred Grandy (R-Iowa), Jim McDermott (D-WA), and Porter J. Goss (R-FLA).

After its designation, the Subcommittee took extensive testimony from GAO officials, relevant employees and officers of the Sergeant-at-Arms Office, and commercial banking officials. The Subcommittee staff also interviewed current and former House Bank officials, as well as representatives of commercial banks. On November 14, 1991, Acting Chairman McHugh provided an interim report to the House on the progress, scope, and direction of the investigation.

In order to make the determinations required by the House Resolution, the Subcommittee had to reconstruct, account by account for 39 months, the history of overdrawn checks. For those accounts that appeared, on the basis of preliminary information, to be potentially the most abusive of banking privileges, the Subcommittee needed a complete reconstruction of accounts, check by check and deposit by deposit. Ten people were detailed to the Subcommittee by GAO to work full time on compiling this information. Doing so was very time consuming since the House Bank did not maintain most of its data on computers or in a form that was useful to this inquiry. The Subcommittee received all of its information from GAO in coded form so that the practices of individuals using the Bank would at all times be judged without reference to their identities.

On March 5, 1992, the Subcommittee unanimously reported its findings and recommendations to the Committee on Standards. On the same day, by a vote of ten to four, the Committee adopted the Subcommittee's findings and recommendations and ordered them reported to the House.

HISTORY OF THE HOUSE BANK

THE DISBURSING FUNCTION

At the beginning of the First Congress, Members of the House were paid by warrants drawn on the U.S. Treasury and delivered to each Member by a Treasury officer. Soon thereafter, pursuant to an informal agreement with the Secretary of the Treasury, the Speaker began to serve as the unofficial disbursing agent for the House. Sometime later, in the early 1800's, again through informal agreement and without any legislative underpinning, the Speaker began to use the Office of the Sergeant-at-Arms as a disbursing office and the latter began to issue paychecks signed by the Speaker.

In 1837, this informal practice was recognized in a House Resolution which directed the Speaker, at the beginning of each Congress,

⁴Earlier the same day, the Chairman of the Committee on Standards, Representative Louis Stokes (D-OH), recused himself from participation in the investigation. The Speaker appointed Representative Kweisi Mfume (D-MD) to act as a member of the Committee during the pendency of any Committee proceedings pursuant to H. Res. 236. In addition, Representative McHugh, a member of the Committee, was appointed Acting Chairman of the Committee for all matters involving the investigation.

to appoint a "Committee on Mileage whose duty it shall be to ascertain and report the distance to the Sergeant-at-Arms for which each Member shall receive pay."⁵ One year later, the House officially designated the Sergeant-at-Arms as disbursing agent. The resolution read, in part:

Resolved, That it shall be the duty of the Sergeant-at-Arms to keep the accounts for pay and mileage of the Members of the House, to prepare checks for Members, and, if required to do so, to draw the money on such checks for the Members, the same being previously signed by the Speaker, and endorsed by the Member in whose favor the same may be drawn, and pay over the same to the Member entitled thereto.⁶

CHECKING ACCOUNTS

In 1889, at the conclusion of an inquiry into a substantial theft of cash from the Office of Sergeant-at-Arms, a House Report indicated that a checking service had been added to the functions of the office:

In the ordinary course of business as transacted in the Office of the Sergeant-at-Arms, it has been his custom for years to receive money and checks from Members of Congress on deposit, and to either discount himself or have discounted the notes of Members for their own benefit.⁷

In 1890, in response to the theft and ensuing scandal, statutory safeguards were enacted directing that pay and mileage of Members and Delegates be paid at the Treasury on requisitions drawn and disbursed by the Sergeant-at-Arms. The statute also required that the Sergeant-at-Arms be bonded, file accountings, and employ a deputy, cashier, teller, bookkeeper, messenger, page, and laborer.

By 1928, it was evident that the Office of the Sergeant-at-Arms had become a full service disbursing office. In a March 14 letter to the Committee on Appropriations the then Sergeant-at-Arms, Joseph C. Rodgers, stated:

In the banking department of the office, as you know, a total of \$4,405,000 is disbursed in Members' salaries and \$175,000 in mileage every year. As a part of this work a large number of Members, about forty percent, keep deposits of salaries in the office * * *. These deposits are checked on daily and monthly statements of account are rendered just as in the most modern banks. In fact the Sergeant-at-Arms bank was one of the first in the City of Washington to install up-to-date methods of returning monthly statements to its depositors.

This disbursement of salaries and keeping of Members' checking accounts, however, constitutes only a part of the financial work of the office. Members cash checks for

⁵ Cong. Globe, 25th Cong., 1st Sess. 35 (1837).

⁶ Cong. Globe, 25th Cong., 2d Sess. 278 (1838).

⁷ 51st Congress, 1st Session, House of Representatives, Report No. 5, Accounts of Late Sergeant-at-Arms, "View of Mr. Hemphill," at 9.

themselves and their constituents on banks all over the United States which have to be cleared daily. This is the most cosmopolitan checking business in the country.⁸

GENERAL ACCOUNTING OFFICE AUDITS

A seminal event in the evolution of the House Bank was the 1947 conviction of former Sergeant-at-Arms Kenneth Romney for making false statements to the GAO in an effort to cover up a series of embezzlements going back over 20 years. The Romney affair led to the creation of the Members' Deposit Fund as a Treasury general account and to a statutory requirement that the Comptroller General audit the financial records of the Sergeant-at-Arms at least every six months.⁹ The results of the audits were to be reported to the Speaker and the Sergeant-at-Arms.

The Committee has obtained copies of most GAO audit reports dating back to the early 1950's.¹⁰ Until 1977, such reports were not publicly available. It is noteworthy that prior to that time GAO consistently expressed misgivings about the volume of overdrafts on Members' accounts. Also noteworthy is the consistent response of the Sergeant-at-Arms, who characterized the overdrafts as draws on the Members' next month's salaries.

The 1954 and 1955 audit reports both recommended that the Committee on House Administration prescribe regulations for the House Bank, noting that the same recommendation had been made in previous reports. They both took note of the overdraft problems. For example, the 1954 report observed that "some members frequently overdraw their accounts, sometimes in excess of their monthly salary and expenses * * * [and] one-third of all active members' accounts showed overdrafts at one time or another during the periods covered by this audit."¹¹

The Sergeant-at-Arms responded to the concerns of GAO in a letter to the Comptroller General:

While it is true that there are overdrafts, yet it must be borne in mind that the practice of paying overdrafts is entirely based on the fact that in practically every instance, the Member is notified and requested to make a deposit * * *. That overdrafts are sometimes honored is not considered a real sin when there is a deposit available to cover the amount or where a promise has been made by the Member that he will make a deposit.¹²

The practice of the Bank in honoring overdrafts by Members continued, as did the rationale employed by the Sergeant-at-Arms to justify the practice. GAO noted this rationale in its audit reports for 1964, 1965, 1966, and 1967:

⁸U.S. Congress, House, Committee on Appropriations, Hearings on Legislative Establishment Appropriations Bill, 1929 (Washington, 1928), at 81.

⁹2 U.S.C. § 81a.

¹⁰Neither the GAO, the Sergeant-at-Arms, nor the Speaker's office was able to locate the audit reports for the periods 1950-1952 and 1955-1963. All other audit reports are in the possession of the Committee.

¹¹Comp. Gen., Report on Audit of Sergeant-at-Arms, House of Representatives, For the Period January 4, 1953, through January 3, 1954, at 9 (Nov. 5, 1954).

¹²Letter from William R. Bonsell, former Sergeant-at-Arms, to the Comptroller General of the United States (Feb. 15, 1955) (on file with the Committee).

The Sergeant-at-Arms advised us that he had worked continuously to see that no loss resulted from the practice. He informed us that many items were outstanding for only a few days and that occasionally checks processed through commercial channels were returned to the banks unpaid. *Generally, he considers that the members are drawing against their accruing salary which will be paid on the first of the following month.*¹³ (Emphasis added)

For the next several years the GAO reports expressed the same concern over the large number of overdrafts, while also repeating the Sergeant-at-Arms' rationale that they were a draw on salary. In 1968, the concern was more particularized than usual, referring to the "increase in the amount of unpaid checks outstanding after salaries had been credited to the members' accounts * * *"¹⁴ Moreover, the report noted that in response to a GAO suggestion the Sergeant-at-Arms had consulted with the Speaker and was advising Members of regulations which, among other things, would require Member overdrafts to be redeemed within 24 hours of notice thereof or be returned unpaid to the bank of origin.

While a list of regulations appears as an appendix to the 1968 GAO report, the Committee found no evidence that the list was actually promulgated or that Members were notified. The very next year, noting that the volume of Members' unpaid checks had more than tripled over the previous 10 fiscal years, the GAO stated its increasing concern that "members' unpaid checks have been allowed to accumulate in excess of one month's salary."¹⁵ The Sergeant-at-Arms was asked to make a greater effort to enforce the 1968 regulations, but he either failed to do so or was singularly ineffective: the number of unpaid checks over the next several years fluctuated from a high of 12,309 in fiscal year 1972 to a low of 8,428 in fiscal year 1976. In the years for which such statistics were compiled—1973 through 1976—well over one-half of House Members wrote overdrafts.

Beginning in 1977, the GAO audit reports were made available to the public. Thereafter, until the two reports that gave rise to this inquiry, there was no criticism of the overdraft practices in the audit reports, no call for new or more rigorously enforced regulations, and no listing of overdraft numbers. Rather, the 12 audit reports beginning in 1977 each contained a curious accounts receivable line item, labeled "Due from Members" or "Amount Receivable from Members" that reflected such amounts only for the last day of each six month audit period. The item was accompanied by a "Note" which read with minor variations through the years:

Amounts due from Members represent checks drawn on and cashed or paid by the Sergeant-at-Arms but not charged to the Members' accounts. Checks are held for

¹³Comp. Gen. Report on Audit of Sergeant-at-Arms, House of Representatives, Fiscal Year 1964, at 4-5 (Sep. 29, 1964). In one form or another, the "draw" against next month's salary persisted as the rationale for the House Bank's overdraft practices until the Bank was closed by H. Res. 236.

¹⁴Comp. Gen., Report on Audit of Sergeant-at-Arms' Financial Transactions, Fiscal Year 1968, at 6 (Dec. 20, 1968).

¹⁵Comp. Gen., Report on Audit of Sergeant-at-Arms Financial Transactions, Fiscal Year 1969, at 7 (Dec. 9, 1969).

reasons such as insufficient funds, missing signature, incorrect date, or a stop payment order. The Sergeant-at-Arms monitors all such items daily, and no financial losses have occurred under these procedures.¹⁶

There was no other mention of the Bank's overdraft practices until publication of the two GAO audit reports covering the period July 1, 1988, to June 30, 1990, which are the reports within the purview of this inquiry.

CLOSING THE HOUSE BANK

The events which were the proximate cause of the House Bank being closed began in August 1988, and, ironically, did not relate to the previously expressed concern of GAO with overdrafts on Members' accounts. At that time, in the course of conducting its regular audit of the Office of the Sergeant-at-Arms, GAO noted that a significant number of insufficient funds checks were cashed at the Bank by the Sergeant-at-Arms and a Bank employee. The Sergeant-at-Arms promised GAO that he would cease such activities and, further, that he would implement written regulations for the guidance of tellers in cashing checks at the Bank. Given these assurances, GAO did not mention these problems in its audit report of November 1988.

The promised regulations, dated September 1, 1988, and circulated to tellers at approximately that time, consisted of a document labeled "Teller's Responsibilities." It memorialized in writing for the first time what had been House Bank check-cashing policies, policies not uniformly enforced either before or after this period. The document did not mention Member overdraft practices.

During the course of the next audit GAO auditors discovered that the regulations were not being enforced and that the Sergeant-at-Arms and the Bank employee were still cashing bad checks at the House Bank. On December 19, 1989, the Comptroller General delivered a draft audit report and a personal letter to the Speaker of the House.¹⁷ The letter summarized the foregoing problems and focused in some detail on the checking activities of the Sergeant-at-Arms and the Bank employee. The letter contained a passing reference to Members' unpaid checks, but the matter was not discussed at the meeting.

Two days after the Comptroller General met with the Speaker, the Sergeant-at-Arms, in a letter to the Assistant Comptroller General, stated that, at the direction of the Speaker, he was implementing interim procedures to address the problems raised in the draft audit report. The letter noted that the procedures would, among other things, withdraw check-cashing privileges from a non-account holder if two checks were bounced during a calendar year, permit Bank employees to cash checks only with the approval of the Bank manager, and place a limit of \$75 on the cashing of non-account holders' personal checks. In addition, the Sergeant-at-Arms

¹⁶Comp. Gen., Financial Audit, House Office of the Sergeant-at-Arms—Periods Ended 6-30-87 and 1-31-86, at 15 (Jan. 8, 1988).

¹⁷The Speaker had assumed office in June of that year. Apparently, he, his staff, and other Members of the leadership on both sides of the aisle had not been aware of any serious problems at the House Bank.

said he would refrain from all personal banking activity at the House Bank. He also reported that an outside banking professional was being consulted and that, based on the latter's recommendations, permanent procedures would be presented to the Speaker prior to the convening of the Second Session of the 101st Congress in January 1990. The Sergeant-at-Arms' letter contained no mention of Member overdrafts.¹⁸

On January 8, 1990, the Executive Vice President of the National Bank of Washington, Brian McQuaid, who had been asked to assist by the Speaker's office, wrote the Sergeant-at-Arms recommending four additions to what was thought to be current policy:

1. The Sergeant-at-Arms should receive a weekly report of all overdrawn Members' accounts which are 15 days or greater.
2. The Sergeant-at-Arms should prepare a monthly summary of charge backs and overdrafts to include date and amount of charge back/overdraft. This should be forwarded to the Speaker's office.
3. Members with five or more overdrafts or overdrafts over 30 days will have their check cashing privileges revoked until reinstated by Joint House Leadership.
4. Explicitly state that no 3rd party checks will be cashed.¹⁹

On January 31, 1990, the Sergeant-at-Arms sent proposed regulations to the Speaker. They included the items set forth in the interim procedures, additional restrictions on check-cashing by non-account holders, and a section on account holders. The latter did not adopt the recommendations proposed by the National Bank of Washington official. Rather, it dealt primarily with the side issue of account holder deposits and check-cashing, noting in regard to Members' overdrafts only that "[a]ccount holders with a continuing pattern of overdrafts may also have their accounts suspended."²⁰

The Committee has obtained from GAO a document on Sergeant-at-Arms stationery, presumably written at the same time as the January 31 letter, which contains the regulations described therein. The Sergeant-at-Arms testified that he ordered the Bank Director to implement them. The Bank Director testified that the regulations were implemented, but that no account holders ever had their accounts suspended. In any event, Members were never notified of any new regulations.

On February 7, 1990, GAO published the audit report that had been presented in draft form the previous December. It was very critical of House Bank check-cashing practices, the paucity of regulations thereon and lack of enforcement of those that existed, and it specifically mentioned the Sergeant-at-Arms and the Bank employee in connection with returned checks. In addition, the report stated:

¹⁸Comp. Gen., Report on Financial Audit, House Office of the Sergeant-at-Arms—Periods ended 6-30-89 and 12-31-88, at 18-19 (Feb. 7, 1990).

¹⁹Letter from Brian P. McQuaid, Executive Vice President, The National Bank of Washington, to Jack Russ, Sergeant-at-Arms, (Jan. 8, 1990) (on file with the Committee).

²⁰Letter from Jack Russ, Sergeant-at-Arms, House of Representatives, to Thomas S. Foley, Speaker, House of Representatives (Jan. 31, 1990) (on file with the Committee).

We found that if a check is written on a House bank account which does not have sufficient funds to cover the check, the bank makes the check good and then notifies the account holder to deposit funds to cover the check. We tested transactions for 12 days during the 12-month period covered by our audit and found that a daily average of 30 checks totaling nearly \$18,900 were being held due to insufficient funds. These checks had been written by more than 90 Members of the House.²¹

This was the first public comment by GAO on the Member overdraft issue. On February 12, 1990, *Roll Call* reported on the GAO audit and on the contents of the January 31 letter from the Sergeant-at-Arms to the Speaker.²² On February 21, the *Washington Post* ran a longer article which cited the GAO audit report, the House Bank's responses thereto, and provided some background on the Bank's operations. It also noted that:

In the past, House members could write checks that exceeded their account balance at the Sergeant-at-Arms bank without any penalty. They were given 24 hours to cover the overdrafts, but if they did not, the bank would do nothing as long as the outstanding checks did not exceed the members' next payroll check, or roughly \$5,000, the sources said.²³

The same "congressional sources" were quoted as saying that the House Bank would no longer let Members repeatedly overdraw their accounts.²⁴

Werner Brandt, the Speaker's Executive Assistant, and Steven Ross, the General Counsel to the Clerk of the House, had worked closely with GAO, House Bank officials, and representatives of the National Bank of Washington to resolve the problems GAO had previously identified. According to their testimony, they had every reason to believe at this point that those problems were under control, particularly after the Speaker's receipt of the January 31 letter from the Sergeant-at-Arms. Accordingly, they stated they were shocked when, approximately one year later, GAO circulated a draft of its audit report for the next period, July 1, 1989 to June 30, 1990. In that draft GAO focused attention on the problem of overdrafts by Members, something which had gotten little attention for some years.

The draft report prompted the Speaker to request the Riggs National Bank to review the operations of the House Bank and to offer recommendations on how it could be better managed. Riggs officials spent approximately 10 days at the House Bank and communicated their findings and recommendations to the Speaker's Chief of Staff on April 8, 1991. Included in the Riggs report were the following pertinent comments:

²¹ Comp. Gen. Report, *supra*, note 19, at 6-7.

²² Timothy J. Burger, *New Procedures in Place After Bank Audit*, *Roll Call*, Feb. 12, 1990, at 3.

²³ Walter Pincus, *House Bank Changes Overdraft Policy*, *Washington Post*, Feb. 21, 1990, at A19.

²⁴ *Id.*

A relatively small number of Members have checks in the receivables and an even smaller number (est. 3-4%) make excessive use of what are essentially advances against future salary. For those that use this availability of funds, such transactions seem to be expected, even habitual.

The fundamental decision that must be made relates to the ability to draw, in effect, salary advances. Three possibilities exist:

1. allow the practice to continue, in which case it should be expected and accepted, but uniformly controlled,

2. restrict the practice by limiting items held in receivables to some acceptable number and/or dollar amount and time held, or

3. eliminate the practice and require Members to rely on actual deposit balances or other sources of funds.

Any decisions made in this regard will create some communications issues. If a general policy is published, Members who do not use this facility may begin if it is continued, enlarging the number of checks in the receivables. Since the practice seems to be one of long standing, restrictions or limitations will probably meet with numerous questions and concerns, and possibly enforcement difficulties in the early stages * * * ²⁵

It is not clear precisely what, if any, effect the Riggs report had on Bank practices. However, on July 16, 1991, the Sergeant-at-Arms, acknowledging receipt of the draft GAO audit report and "further consultation with (GAO), the House Leadership, and banking industry experts," wrote the Comptroller General to inform him of steps being taken to "implement further procedural safeguards." ²⁶ Among the proposed actions were to be an arrangement, through the Wright Patman Federal Credit Union or other commercial facility, by which overdraft protection would be extended to account holders, and the provision to each account holder, in writing, of a clear statement of the check-cashing policies of the Bank. Neither of these steps was taken.

On September 18, 1991, GAO issued its report of the audit for the period July 1, 1989, to June 30, 1990. Expanding on the prior report's clipped reference to the overdraft problem, it revealed that 581 insufficient funds checks with face amounts of \$1,000 or more had been written by 134 Members. Further, a total of 8,331 overdrafts had been written during the audit period. GAO noted in its report that more than half the overdrafts were written after "check-cashing procedures" were implemented. ²⁷

²⁵ Letter from David L. Brown, Executive Vice President, The Riggs National Bank of Washington, D.C., to Heather S. Foley, Chief of Staff to the Speaker, (April 1, 1991) (on file with the Committee).

²⁶ Comp. Gen. Report on Financial Audit, House Office of the Sergeant-at-Arms—Periods Ended 6-30-90 and 12-31-89, at 24-25 (Sep. 18, 1991).

²⁷ This may be a reference to the regulations referred to in the letter of January 31, 1990, from the Sergeant-at-Arms to the Speaker. The interim procedures contained in the letter of December 21, 1989, from the Sergeant-at-Arms to the Assistant Comptroller General, dealt only with check-cashing policies, not with the Member overdraft practice.

This report resulted in the passage of House Resolution 236 on October 3, 1991.

OPERATIONS OF THE HOUSE BANK

OFFICE OF THE SERGEANT-AT-ARMS

The Sergeant-at-Arms is an officer of the House of Representatives elected at the beginning of each Congress by vote of all Members of the House.²⁸ Pursuant to statute and the Rules of the House, the Sergeant-at-Arms is charged, among other things, with enforcing the authority of the House, maintaining order therein, and keeping the accounts of and paying Members. The latter function includes responsibility for Members' retirement, health insurance, and Federal and state tax withholding. In addition, along with the Sergeant-at-Arms of the Senate and the Architect of the Capitol, the House Sergeant-at-Arms sits on the Capitol Police Board which directs the activities of the Capitol Police.

The Office of the Sergeant-at-Arms has 20 employees, five of whom worked primarily on House Bank matters: the Deputy Sergeant-at-Arms, who was the Bank Director; two cashiers; and two bookkeepers. According to his testimony, the Sergeant-at-Arms devoted most of his time and attention to his security, protective, and representational duties, leaving day to day operations of the House Bank to the Bank Director.

OVERSIGHT RESPONSIBILITIES

Pursuant to both statute and the Rules of the House, the Committee on House Administration has primary oversight responsibility for the Office of the Sergeant-at-Arms and the House Bank.²⁹ Among other things, that Committee has general responsibility for appropriations to and expenditures from the contingent fund of the House, the employment of persons by the Members, committees and officers of the House, and the auditing of the accounts of the House. The Committee on House Administration is also responsible for restoring any shortfalls in the trust fund account of the Office of the Sergeant-at-Arms (2 U.S.C. § 81b), and can create, eliminate, and assign appropriate pay levels to staff positions under the officers of the House (2 U.S.C. § 291).

BANK FUNCTIONS

The House Bank was actually not a bank, but a disbursing office that offered checking account and check-cashing services as an accommodation to Members and others. The salaries and other deposits of Members were used to conduct these "banking" activities. No public funds were used to cash checks or to pay checks written on House Bank accounts.

²⁸ The other officers of the House are the Doorkeeper, the Clerk, the Postmaster, and the Chaplain. At the beginning of each Congress the caucus of each party may offer a slate of candidates for these offices.

²⁹ See, *A Report of the Task Force for the Review of the Sergeant-at-Arms Disbursing Office Operations and Management of the Trust Fund Account*, prepared for the Committee on House Administration, Nov. 7, 1991.

The disbursing function was formally recognized by House Resolution in 1837. The checking account service, while not authorized by statute or resolution, has been in existence since at least 1889.

Only Members of the House were permitted to have accounts at the House Bank. They were issued personalized checks with a Capitol motif and bank routing numbers printed thereon. Account holders could grant signature authority to others, such as a spouse or a staff person. Members and their spouses, House officers and employees, and accredited press had check-cashing privileges at the Bank's window.

The House Bank did not pay interest, formally extend loans, issue credit cards, sell mortgages, exercise fiduciary or trust powers, discount notes, buy and sell coins, or engage in any activities common to banks, except for the check-cashing and check-writing services herein described. It also did not charge fees for overdrafts.

The Department of the Treasury and the Riggs National Bank of Washington facilitated House Bank operations. The Department maintained an appropriations account in the amount authorized and appropriated each year for the operations of the Office of the Sergeant-at-Arms and for Members' salaries and mileage. At the beginning of each month, the Sergeant-at-Arms would write a check drawn on the appropriations account in an amount equal to the salaries of those Members whose paychecks were to be deposited in their House Bank checking accounts. That check would be deposited in another Treasury account (called a Treasury General Account) maintained at Riggs to facilitate what are actually paper transfers of government funds between agencies and the Treasury. The House Bank referred to this account as the Members' Deposit Fund.

Checks written on a House Bank account caused a corresponding debit to the Members' Deposit Fund. Checks or cash deposited by a Member into his or her House Bank account were credited to the Members' Deposit Fund. The fund was also used by the House Bank for its daily check-cashing needs.

Checks written on House Bank accounts could be presented for cash at the Bank or directed to other payees and negotiated elsewhere. If presented for cash, the Member's account was debited and the check was canceled and returned to the Member with the Member's monthly statement.

Checks written by Members on their accounts and payable to other parties were processed by the national check clearance system through the Baltimore branch of the Federal Reserve Bank of Richmond. Each business day a messenger from the Federal Reserve System would deliver these checks to the House Bank. The House Bank could either honor them or refuse to accept them because of insufficient funds, or other technical reasons. A check drawn by the Sergeant-at-Arms on the Members' Deposit Fund in an amount equal to those checks honored that day would be delivered to the Federal Reserve System each day.

Checks drawn on commercial banks and cashed or deposited in the House Bank were processed by Riggs Bank on a daily basis. Riggs would credit the Members' Deposit Fund for the amount of each such check and send it to the commercial bank on which it

was drawn or put it in the Federal Reserve System for collection. If the check were dishonored by the bank upon which it was drawn, it would be returned through the collection system to Riggs. Rather than debit the Members' Deposit Fund, Riggs would deduct the amount of the dishonored check from the cash supply the House Bank ordered for the day and return the check to the House Bank.³⁰

THE BANK'S HANDLING OF ACCOUNT OVERDRAFTS

The current controversy arises from three long-time practices of the House Bank: with rare exceptions, the Bank honored any Member account check presented to it, whether or not the account had sufficient funds to cover it, and held it until there were sufficient funds; it immediately credited all non-account checks a Member deposited into his account; and it immediately cashed all checks presented at the window by a Member, without checking the Member's balance. According to the GAO audit reports and the Sergeant-at-Arms, despite these accommodations, no Members' Deposit Fund money was ever lost due to check-writing by a Member.

The overdraft practices of the Bank appear to have been in existence for at least forty years. As a general rule, once the Bank determined that honoring a check would cause an overdraft, the check was "held", that is, the check was not posted to the account, and the account was not debited until the Member made an adequate deposit. Because negative entries were never posted, a Member's monthly statement would never reflect a negative balance or a "held" check.

Apparently, the basis of this policy was that there was little risk of loss, if any. As one Bank official stated, "Members had a two year contract" and an account holder's next salary check would always be available to make up an insufficiency. Moreover, if a Member died in office with outstanding overdrafts, the Bank could deduct the necessary amount from the Member's death gratuity.³¹

The Bank's (unwritten) policy was to give a Member three days to arrange for a transfer of funds to cover the overdraft before returning a check. However, in practice overdrafts were returned only where they caused the account deficiency to exceed the next month's net salary deposit. Apparently, this practice was initiated only in recent years, and in any case was not uniformly followed. When an overdraft was returned, it was not marked "NSF" (for "not sufficient funds") but was stamped with the less offensive "Refer to Maker."

The practice of returning only those checks that exceeded next month's net salary reflected the long-held view by some Bank employees and Sergeants-at-Arms that overdrafts were a draw against salary. GAO had been told this for years. In addition to the instances cited in the previous section on the history of the Bank, the Committee has in its files a draft letter from the Comptroller General to the Sergeant-at-Arms dated September 11, 1990, a letter

³⁰The cash supply was the money used daily by the House Bank to cash checks at its windows. The supply was purchased with a Sergeant-at-Arms check drawn on the Members' Deposit Fund.

³¹2 U.S.C. § 40a (1988).

that may not have been sent, in which it was noted that "[a]ccording to House Bank employees it has been understood that Members have been allowed to draw checks on their accrued net salaries * * *." ³²

Similarly, in a GAO internal memo dated April 5, 1990, the situation was described as follows:

The checking services provided for the Members differs [sic] from other financial institutions in that Members may write checks on their accrued salaries during the month even though that salary will not be physically deposited in the House Bank until the first of the subsequent month. Members' unpaid checks held over from the previous month are charged against the respective Member's account, on the assumption that they will be cleared by the Members' salary transfers on the first of the month * * *. ³³

The daily accumulation of Member overdrafts was so routine that one Bank employee spent much of her time telephoning Members or their designees. The Bank caller notified each Member that one or more checks were being held because of insufficient funds, and suggested that a deposit should be made. Occasionally, the Sergeant-at-Arms was asked to assist by personally contacting a Member. Although on most occasions these notifications were made, there were some exceptions, such as in those cases where an overdraft arrived a few days before the end of the month and the Bank knew the Member's net salary deposit would cover it. In such situations a Member might not know that he or she had overdrawn the account.

In her testimony, Caroline Klemp, the person who usually made the telephone calls for the Bank, reinforced the significance Bank employees placed on overdrafts exceeding the next month's net salary deposit. The following exchange occurred at a Subcommittee hearing on October 31, 1991:

Mr. McHUGH. Focusing first on the Members that had overdrafts above the next month's salary, what exactly did you tell them? For example, did you tell them that they had to make their checks good but at the very least they had to bring them below the next month's salary?

Ms. KLEMP. That is basically what I said—you have a number amount of overdrafts. You are over your next month's salary, and I would always give them their salary figure and ask them to please make a deposit.

I didn't always say make the exact deposit, but I said, please, make a deposit. In a lot of cases, the Member would clear up the whole amount. In other cases, they would just drop themselves back below the next month's salary.

³² Draft letter from Charles A. Bowsher, Comptroller General, to Thomas S. Foley, Speaker, U.S. House of Representatives (Sep. 11, 1990) (on file with the Committee).

³³ General Accounting Office, House Sergeant-at-Arms Client Profile, Job Code 916679 (on file with the Committee).

Mr. MCHUGH. In terms of what you communicated to them, based on what you said to them, should they have known that their overdrafts should never exceed their next month's salary?

Ms. KLEMP. Yes. I did make that very clear. In fact, when I would call and again often talk to a staff person I would say at that time, if I started to see a lot of overdrafts coming in all of a sudden, sometimes a lot came in, sometimes it was a trickle all month, if a lot came in and I could see there was going to be a problem, I would always say, you are not to exceed your next month's salary or checks will start to be returned.³⁴

On the basis of Ms. Klempe's testimony, Members should have known after receiving her calls that overdrafts beyond next month's net salary were unacceptable even at this Bank. Members who had overdrafts returned by the Bank had greater reason to understand that.

House Bank officials and others have pointed to a now discontinued signature loan arrangement the House Bank maintained with the National Bank of Washington as a possible source of confusion for Members. Pursuant to the arrangement, any Member could borrow from the National Bank of Washington, at prevailing interest rates, up to six months of salary. The loan could be obtained quickly, with all paperwork handled at the House Bank and the borrowed money dispensed therefrom or deposited in the Member's account. Repayment would automatically be deducted from the Member's account. Although the loan papers clearly referred to the National Bank of Washington, the House Bank's pervasive involvement in the application process may have created the impression that the House Bank was providing an advance on pay.

The signature loans were discontinued in the early 1980's by the National Bank of Washington for purely commercial reasons. It is difficult to understand how they could have been a rationale for significant overdrafts during the period of this inquiry. Unfortunately, as the GAO statistics demonstrate, there were numerous overdrafts even when the signature loans were available.³⁵

THE BANK'S HANDLING OF NON-ACCOUNT OVERDRAFTS

The problem of bad non-account checks being cashed at the House Bank window was not as pervasive as the overdraft problem with Members' accounts. Although there were seldom any written procedures to guide tellers in cashing non-account checks, there were certain informal limitations on staff check-cashing that, while not always adhered to, were well known to both staff and House Bank employees.

Employees and other non-account holders who cashed checks at the House Bank were generally subject to a limit on the amount of a check that could be cashed. The limit was increased from \$35 in 1978 to \$50, and finally to \$75 in December 1989. As a rule, third-

³⁴Executive Session transcript, Committee on Standards of Official Conduct, at 7-8, Oct. 31, 1991.

³⁵If the proceeds of a signature loan were used to cover or anticipate a negative balance, use of the proceeds would not be counted in the overdraft statistics.

party checks could not be cashed (exceptions were made), and Members had to co-sign staff checks that exceeded the dollar threshold. Also, in December 1989, existing policy was modified to subject employees and other non-account holders to suspension of their check-cashing privileges if they wrote two or more insufficient funds checks during a calendar year.

Previously, in September 1988, the House Bank developed a computerized system to monitor the overdrafts of employees and other non-account holders. The system contained the names of all non-account holders who bounced checks after September 1988, and listed the last four such checks.

The practice of the Bank was to call each person who bounced a non-account check and ask that it be covered quickly. The practice was adhered to with some regularity, primarily because there was no automatic salary deposit from which to deduct the amount of the paid overdraft. However, this risk of loss was mitigated by the Bank's authority, pursuant to 2 U.S.C. § 89a, to garnishee the salaries of employees to cover any uncollected overdrafts.

HOUSE BANK RECORDS

The House Bank maintained three sets of records that were relevant to the Subcommittee's examination of Member overdrafts: the daily settlement sheets, the account statements of each Member, and microfilms of their canceled checks.

Each day the House Bank received from the Federal Reserve System checks which had been written to third parties by Members on their House accounts. These checks were first sent to the bookkeeping department for posting to the appropriate Member's account. If the amount of a check exceeded the funds in an account, the check was returned to the teller section. The bookkeepers kept no record of an overdraft. It was not recorded as a debit and it was not otherwise noted on a Member's bank statement, which never reflected a negative balance. Except in those rare cases when an overdraft was returned, it was simply held by the Bank until it was made good. Only then was it posted to the Member's account.

At the end of each day a cashier collected all the checks returned by bookkeeping, which were called "throwouts" by Bank employees. The cashiers placed them in the Bank vault, where they were held until made good, and then typed on the back of that day's settlement sheet the last name of each Member who had overdrafts and the face amount of the check or checks. The daily settlement sheet was a composite of each cashier's balance sheet for the day, and it was the only Bank document that reflected Member account overdrafts.

The Bank's designated caller collected each day's throwouts to make the necessary telephone calls. If a call was not made, or if the Member or his designee could not be reached (because of leave, recess, or other similar reason), a Member might not know that he had an overdraft or that his name would appear on an overdraft list. In fact, the only evidence of an overdraft other than the daily settlement sheet were red and blue date notations stamped on the Member's check, indicating, respectively, the date of a throwout and the date the check was made good. The red notation was made

after a check was initially sent to bookkeeping, but before it was returned to the teller section. When the check was returned to bookkeeping because sufficient funds were available, it was stamped with the blue notation.

The records for bad non-account holder checks were less complete. When these checks were cashed by the House Bank they were taken to Riggs Bank for processing through the collection system. If any of the checks were drawn on accounts with insufficient funds, they were returned to Riggs where they were photocopied and returned to the House Bank. When such checks were received by the House Bank, they were given to the cashiers who had cashed them and held in their cash drawers until redeemed. The copies were discarded at the end of each GAO audit period. Therefore, the House Bank did not retain, and the Committee was unable to examine, such checks written prior to July 1990. In addition, due to unexplained error, the House Bank could not find copies of checks it should have retained pursuant to its customary practice, namely, those for the period July 1, 1990, to February 6, 1991. The Bank did retain copies of the returned non-account checks for the period February 7, 1991 to October 3, 1991.

The copies of the non-account returned checks were the most reliable evidence of such returned checks. The only other source of such information was the non-account computer program. However, this program only maintained a record of the last four returned checks.

COMMERCIAL BANKING PRACTICES

Unlike commercial banks, the House Bank was not guided by the profit motive and it was not subject to any of the laws, rules or regulations to which commercial banks must adhere. It was not a commercial bank. However, the practices of commercial banks regarding overdrafts are relevant to this inquiry, if only to put in some context the practices engaged in by the House Bank and many Members.

An overdraft, or the "payment by a bank of a check drawn upon it by a depositor who does not have sufficient funds on deposit to pay the check," ³⁶ is essentially an unsecured loan:

An overdraft occurs when a depositor of a bank checks out more money than he has in the bank. Sometimes the bank permits this to be done without security, and without previous arrangement; and sometimes a previous arrangement is made, and security for the repayment of that amount is given, and a rate of interest is agreed upon. But every overdraft, whether by previous arrangement or not, and whether secured or not, and whether drawing interest or not is a loan * * *. ³⁷

Generally, neither the customer nor the bank violates any statutes or Federal regulations by writing or permitting overdrafts, and a "depositor has no contractual or statutory obligation to re-

³⁶American Surety Co. of New York v. First National, 50 F. Supp. 180, 183 (N.D. W. Va. 1943).

³⁷United States v. Allis, 73 F. 165, 178 (E.D. Kan. 1893).

frain from drawing checks for amounts in excess of the balance in his account * * *,"³⁸ Whether or not a bank chooses to honor an overdraft, and under what circumstances, is a normal business decision which the law leaves to the bank to make unless an overdraft involves a bank officer.

As explained by local bank officials and banking trade association representatives with whom the Committee consulted, overdraft practices vary widely depending on the size of the bank, the amount of the overdraft, and the nature and deposit history of the customer. Many banks countenance no overdrafts. Some permit them, and employ a variety of practices regarding notice to the customer, the time for making the overdraft good, and when to write them off as uncollectible. The essential determinants are the risk of loss of funds, the cost of overdraft processing, and knowledge of the customer. These factors generally produce stringent overdraft requirements in big city banks. Small town banks are more likely to afford overdraft deference to well-known, long-term customers who make regular deposits and have never caused a loss. By and large, these factors applied to the House Bank. As one commercial bank official noted, "It's a unique bank that has a picture of each of its customers on the wall."

This is not to say that any commercial bank would have tolerated or encouraged the rampant overdraft practices maintained by the House Bank. None would have. But the primary reason is not the intrinsic nature of the conduct, but the analysis of risk and the cost involved.

THE SUBCOMMITTEE'S DELIBERATIONS

COLLECTION OF INFORMATION

At the first meeting of the Subcommittee, it became readily apparent that in order to judge the practices of those using the House Bank, much more information would have to be gathered than was available. To determine whether any Members potentially violated any relevant rules or standards or abused banking privileges in overdrawing their accounts, a detailed and accurate history of those accounts was necessary. The House Bank did not maintain such account histories and prior audits by the GAO did not compile them. Such audits were conducted to determine whether the financial statements of the Office of Sergeant-at-Arms reasonably reflected its financial condition and were not designed to track the accounts of individual Members.

During the last two audit years, the GAO did sample the daily lists of overdrafts maintained by the House Bank (lists that were never computerized or otherwise aggregated). The sole purpose of the sampling was to determine the general magnitude of the overdraft problem. For example, for the audit period July 1, 1988, through June 30, 1989, GAO calculated the number and face amount of overdrawn checks for one day in each month of the twelve month period. It employed a different sampling technique for the second audit year. For the period July 1, 1989 through June

³⁸ Michie on Banks and Banking, ch. 9, § 301, at 318 n. 5 (1991 repl.).

30, 1990, the GAO counted all overdrawn checks, but only presented some analysis for checks with a face amount of \$1,000 or more.

In summary, the GAO audits that led to this inquiry sampled only a limited number of checks for a limited time period, and considered only the face amount of those checks. Although these samples were useful in assessing the general magnitude of the overdraft problem, they were wholly inadequate if the Subcommittee was to discharge its responsibilities under the House Resolution.

This is not meant to be a criticism of GAO. Additional information was not available to its auditors because of the manner in which the House Bank kept its records. As noted elsewhere, there was no master list of overdrafters, computerized or otherwise. The monthly account statements provided to Members did not report negative balances and only listed checks for which sufficient funds were on hand.³⁹ Therefore, in order to provide the Subcommittee with meaningful information on individual accounts, GAO was required to carefully review over 800 daily settlement sheets, over 8,000 monthly statements, and microfilm of thousands of canceled checks.

Among the first decisions the Subcommittee made was to direct GAO to provide all account information in coded form, that is, without providing the Members' names or actual account numbers. Names were not needed to judge account practices and the lack of names permits the Committee to provide full assurance that its judgments were made without regard to personalities or party affiliation. The Subcommittee and Committee strictly adhered to this policy. Indeed, as this report is written, no Member or employee of the Committee has been informed of the names of those Members determined to have abused banking privileges.

Initially, the Subcommittee had hoped to reconstruct the complete account histories of all Members who had written overdrafts during the 39 month period under review, and so stated to the House in its Interim Report of November 14, 1991. However, the Subcommittee was informed by GAO that such a task could not be completed until May of 1992 at the earliest.⁴⁰ Therefore, in the interests of a timely report, the Subcommittee was required to make a judgment as to which accounts appeared, on the basis of preliminary information, to present the most serious cases of potential abuse. It was on these accounts that complete histories were eventually compiled by GAO.

The Subcommittee first directed GAO to compile a coded list of all Member accounts on which overdrafts had been written from July 1, 1988 to October 3, 1991. For each account, GAO provided the total number of overdrafts for the period and their face

³⁹ During its inquiry the Subcommittee requested that the Sergeant-at-Arms deliver to GAO, among other materials, each Daily Settlement Sheet for the 39 month period, microfilm of each Member's monthly statements, and microfilm of all checks written on House Bank accounts during the 39 month period. These records have been maintained by GAO detailees in secure facilities maintained by the Committee.

⁴⁰ The detailed examination of account information, reconstruction of account histories, and other information collection, as well as all computerization and analysis, were conducted by 10 GAO accountants and computer specialists detailed to the Committee throughout the course of the inquiry. The detailees were physically located in Committee spaces and were subject to the exclusive control and direction of the Committee.

amounts in the aggregate. This and related information was provided to the Subcommittee in mid-December 1991.

The total number of overdrafts was consistent with aggregate figures from previous years and, in fact, lower than some. However, this was the first time an account-by-account compilation had been prepared. It revealed that 296 current Members of the House, and 59 former Members, had overdrawn their accounts at least once during the period, many on dozens of occasions and some much more. The number ranged from 996 overdrafts for the Member at the top of the list to one overdraft for the several Members at the bottom of the list. One hundred Members of the House wrote at least 45 overdrafts during the period. One hundred and thirty-three Members had 5 or fewer overdrafts.

At the same time, GAO provided the Subcommittee with information on non-account checks that were bounced at the House Bank. Due to the nature of House Bank record-keeping, especially its policy of discarding records after GAO audits were completed, the non-account statistics are incomplete. At a minimum, in the period at issue 60 Members cashed or deposited at the House Bank 134 checks, drawn on other banks, that bounced. In addition, 288 other individuals—former Members, House employees, spouses of Members, and others—cashed over 600 such checks. Some of the checks in both categories were third-party checks. The top non-account holder on the list cashed 28 bad checks. The next person on the list cashed 19.

STANDARDS AND CRITERIA

The Committee on Standards of Official Conduct derives its authority from the House of Representatives, and specifically from the Rules of the House and Resolutions of the House. The investigative and adjudicatory responsibilities of the Committee are set forth in the Committee's Rules, as are the procedures for conducting a preliminary inquiry by an investigative subcommittee and a disciplinary hearing by an adjudicatory subcommittee. However, this inquiry into House banking practices was not conducted pursuant to these rules and procedures. Rather, the Committee's authority to conduct the inquiry derives solely from House Resolution 236. The Committee's authority to, among other things, take and compel testimony, swear witnesses, and meet in executive session is derived from, and has been exercised in accordance with, the Rules of the House.

The Committee was charged by the House in House Resolution 236 to determine whether use or operation of the House Bank presented questions of potential violation of the Rules of the House or other applicable standards and, if so, whether a preliminary inquiry should be initiated under Committee rules. The Resolution further directed the Committee, in making these determinations, to consider whether *any Members, officers, employees, or others "abused the banking privileges by routinely and repeatedly writing checks for which their accounts did not have, by a significant amount, sufficient funds on deposit to cover."* (Emphasis added)

House Resolution 236 clearly established the criteria for determining abuse of banking privileges. Although the Subcommittee

may not have been absolutely bound by such criteria, it believed that great weight had to be given to the specific terms of the House Resolution. Therefore, in judging the practices of account and non-account holders, the Subcommittee sought to determine when overdrafts had been written repeatedly, routinely, and in significant amounts.

ACCOUNT HOLDERS

After obtaining, in mid-December, 1991, the list of 355 accounts (296 of which are accounts of current Members) that had at least one overdraft during the 39 month period of this inquiry, the Subcommittee had to decide which of those accounts merited complete reconstruction by GAO. The Subcommittee first considered the number of months (out of 39) that an account's overdrafts, using aggregate face amounts, exceeded the next month's net salary deposit. This standard reflects the Bank's view that overdrafts in that amount constituted "a significant amount," as well as the Bank's practice of orally notifying Members to this effect and, in recent years, of returning overdrafts on this basis. The net salary standard also reflects the view, expressed by Sergeants-at-Arms to GAO in the past, that overdrafts were a "draw" on next month's salary.

Of course, the Subcommittee recognized that overdraft face amounts could not ultimately be used to judge abuse of banking privileges—only actual deficiency amounts were relevant for that purpose—but face amounts were acceptable to identify accounts for which the Subcommittee wanted GAO to provide complete information. In identifying such accounts for further collection of information, the Subcommittee also considered the total number of overdrafts for each account.

On the basis of these directions from the Subcommittee, GAO began the very tedious job of reconstructing complete account histories. In essence, GAO constructed for each identified account a running daily balance for each day during the 39 months that a deposit was made or a debit occurred because a check was honored. These account histories were provided to the Subcommittee, still in coded form, in early February 1992.

The Subcommittee was then able to accurately analyze each account's overdraft practices. Of particular interest was the number of months an account's actual negative balance exceeded the next month's net salary deposit.

NON-ACCOUNT CHECK-CASHING

House Resolution 236 also directed the Subcommittee to determine whether there was abuse of banking privileges by Members who cashed or deposited non-account checks at the House Bank, or on the part of those who, while not account holders, presented bad checks at the Bank window for cashing.

The non-account overdraft activity of account holders was not considered separately, that is, such activity was factored into the judgments made on those Members with account overdrafts. In no case did non-account practices alone place a Member on the list of those who abused banking privileges.

In considering non-Member check-cashing practices, the Subcommittee concluded that the actual amount of the overdraft in each case was less important than for account holders. This is because, unlike account holders, non-Members had no money in the Bank which could be used to offset the bad check. Regardless of how small the overdraft, the total face amount of the check was the potential loss to the Members' Deposit Fund. Therefore, the Subcommittee made no effort to determine the actual amount of the overdraft in these cases.

Since non-Members did not have accounts at the Bank, and since their checks were cashed as an accommodation using only funds that account holders maintained in the Bank, the Subcommittee decided that in judging the banking practices of non-Members, the criteria of the House Resolution should be applied somewhat differently for non-account holders than for those who had accounts.

POTENTIAL VIOLATIONS OF HOUSE RULES OR OTHER APPLICABLE STANDARDS

House Resolution 236 requires the Committee to determine whether the operation or use of the House Bank presents "questions of potential violation of the Rules of the House or any other applicable standards of conduct." Thus, if the Committee determines that any Member, officer, or employee of the House abused the banking privileges, it must consider what standards of conduct apply and whether any may have been violated.

The Code of Official Conduct of the House of Representatives is found in House Rule XLIII (43). The only provision of the Code that might apply in this case is paragraph one, which reads as follows:

1. A Member, officer or employee of the House of Representatives should conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

The legislative history is not clear on when Rule 43(1) should apply, if at all, to personal conduct. Should it apply only to official conduct, or is it broad enough to encompass private behavior which reflects badly not only on the individual but on the House?

In interpreting Rule 43(1) at the time of its adoption, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the code to deal with "flagrant" violations of the law, that reflect on "Congress as a whole," and that otherwise might go unpunished.⁴¹ The Committee believed "that this standard would remain untested," but nonetheless concluded that "it should be a part of a code of standards in the interest of, and as a safeguard for, the House as a whole."⁴²

In floor debate preceding adoption of the Code, Representative Melvin Price, Chairman of the Select Committee, stated the Committee's intention to avoid "open[ing] the door to stampedes for investigations of every minor complaint or *purely personal accusation* made against a Member. At the same time there was a need for retaining the ability to deal with *any given act or accumulation of*

⁴¹ H.R. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

⁴² *Id.*

acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress." ⁴³ (Emphasis added)

On the other hand, Representative Les Arends, also a member of the Select Committee, said:

[T]he Congress has the constitutional right to determine its own rules. And this right, too, has its limitations. The rules are applicable only in connection with the operation of the Congress itself. Somehow a line must be drawn as between what is personal conduct and what is official conduct.⁴⁴

Typically, the Committee has considered the scope of House Rule 43(1) as a jurisdictional matter. That is not necessary in this case, however, because House Resolution 236 mandates that the Committee review the operations and use of the House Bank.

In considering the circumstances of the House Bank, the Committee concluded that the activities of Members in writing, cashing, and depositing checks at the House Bank bore some relationship to their official duties. If they had not been Members of Congress, they would not have had accounts at the Bank. Similarly, officers and employees of the House would not have been able to cash checks at the Bank if they had not had an employment relationship to the House. Given this nexus between the foregoing individuals in their official capacities and their activities at the House Bank, the Committee did not have to determine whether Rule 43(1) would apply when individual conduct brought discredit on the House but no such nexus existed.

Accordingly, the Committee found that if any Member, officer or employee abused the banking privileges, Rule 43(1) could apply and there might be a potential violation of House Rules.

The Committee then had to determine whether there were any other applicable standards of conduct that might apply. There were three other possibilities: commercial banking standards; the criminal laws; and the policies and practices of the Bank itself.

As previously explained, the House Bank was not actually a bank but a disbursing office that offered check-writing and check-cashing services. In all other respects it lacked the indices of a commercial enterprise. Therefore, the Committee concluded it would not be appropriate to apply commercial banking standards to its use or operation.

Regulations promulgated by the Comptroller of the Currency and the Federal Reserve System did not apply to the House Bank. Even if they did, such regulations govern the operations of the bank and not behavior of the customers. As has been stated by an established authority on banking laws: "To overdraw one's account with the acquiescence of the bank's officials violates neither statutory nor common law, and a customer's overdrawing of his checking account is not an offense against the bank."⁴⁵

Writing an overdraft is not in itself a violation of criminal laws. To commit a crime, one writing an overdraft must have an intent

⁴³ 114 CONG. REC. 8778 (daily ed. Apr. 3, 1968).

⁴⁴ *Id.* at 8785.

⁴⁵ Michie, *supra*, note 37, at 320.

to defraud at the time the check is written, that is, an intent not to cover the check. The Committee was not charged with determining, and did not inquire into, motivation or intent. Moreover, during the course of the inquiry no evidence of criminal intent emerged, and, in fact, all account checks were ultimately covered.

Finally, the Committee did find that the policies and practices of the Bank itself could constitute an applicable standard of conduct in this case. Therefore, if the Committee concluded that a Member, officer, or employee of the House had reason to believe that his or her use of the Bank violated the policies of the Bank, this could be a potential violation of an "applicable standard."

Thus, the Committee determined that abuse of banking privileges could be a potential violation of House Rule 43(1) or the policies of the House Bank, which the Committee believes is a relevant or applicable standard in this case. The Committee then had to decide whether to initiate disciplinary proceedings, i.e., a preliminary inquiry under the Committee rules. For the reasons hereinafter set forth, the Committee believes such proceedings would not be useful or appropriate.

FINDINGS AND RECOMMENDATIONS

THE PRACTICE OF THE BANK IN HONORING OVERDRAFTS

The Committee finds that the long-standing practice of the House Bank in honoring overdrafts on Members' accounts was unwise and should have been discontinued years ago. Since at least 1951, and continuing until the Bank was closed in December 1991, the practice was routine. Many Members were unaware of the practice, but many others knew about it and took full advantage. It ultimately brought discredit to all Members and, most seriously, to the House as an institution.

There have been a number of explanations offered for the practice over the years. A series of Sergeants-at-Arms viewed overdrafts as a draw on the Member's next month's salary. Many also believed, correctly, that the risk of loss was very slight, since the House Bank could always debit a Member's salary, or, in the case of death, deduct the amount of an overdraft from the death gratuity. And, in fact, no money was ever lost as a consequence of account overdrafts. All overdrafts were ultimately made good, and in any case the funds available to the House Bank consisted only of Members' salaries and other deposits.

Nevertheless, when this Bank practice became publicly known, it inevitably created the impression that Members of the House had given themselves another special privilege which was not available to their constituents. The impression was only reinforced when it was learned that the Bank charged no penalties for overdrafts and had never closed a Member's account for excessive overdrafts.

It is true that the House Bank was not a bank, but essentially a disbursing office that offered check-writing and check-cashing services as an accommodation. To say the least, it was very informally run. For example, most of its records were not computerized. Moreover, the Bank never provided any written advice to Members or others with respect to its overdraft and check-cashing policies.

When an overdraft was received an employee of the Bank would generally call the Member to advise that the account was overdrawn. However, in some cases the call would not be made, such as in those instances when an overdraft arrived at the Bank a day or two before the next net salary deposit. Undoubtedly, there were other times when contacts did not occur, as, for example, during a Congressional recess. In those situations a Member might not know that he or she had an overdraft and would appear on a list of overdrafts maintained at the Bank.

Overdrafts were very seldom returned to their maker. Although calls would generally be made, bad checks were almost always honored and held until an adequate deposit was made. According to the Bank Director, sometime in 1990 it became the Bank's policy to return overdrafts if the account's negative balance exceeded the Member's next net salary deposit. However, this was rarely done.

The Bank did consider overdrafts in excess of next month's net salary significant. Apparently, this reflected the long-held view that overdrafts were a draw on salary. Moreover, while Bank personnel did not tell Members that overdrafts below a certain amount were permissible, they did, according to their testimony, often tell Members to bring the account deficiency to at least below next month's net salary deposit when that figure was exceeded.

It has been suggested that, based upon such statements by Bank employees, Members could draw an inference that overdrafts that exceeded the next salary deposit were acceptable at the Bank so long as the deficiency was eliminated or brought below the next month's net salary deposit at the end of the month. Bank employees have testified that they never told a Member or a Member's designee that deficiencies in any amount were acceptable, let alone those above the next month's salary deposit.

The Bank's practice of honoring overdrafts was consistently noted and criticized in many GAO audit reports from the early 1950's through the mid-1970's. In those years audit reports were not publicly available, but were delivered to the Sergeant-at-Arms and the Speaker. However, when GAO began making public its audit reports in 1977, it deleted all direct reference to overdrafts. Not until the audit reports relating to the period of this inquiry did GAO again mention this problem.

Responsibility for the overdraft practices of the Bank must be shared. A series of Sergeants-at-Arms and Bank Directors should have insisted upon a much more professional operation. The Committee on House Administration should have exercised more diligent oversight of the Sergeant-at-Arms Office.⁴⁶ The House Leadership should have intervened in those earlier years when GAO was highlighting the problem, and GAO might have been more aggressive in expressing its concerns. In the final analysis, however, major responsibility must be borne by all those Members who, with

⁴⁶ A Task Force of that Committee has noted: "The Task Force finds that failure to exercise statutory oversight in the past contributed greatly to the problems uncovered in the Sergeant-at-Arms disbursing office with respect to the trust fund account * * *. [O]versight of the trust fund account was nonexistent, particularly in recent history." House Committee on Administration, 101st Cong. 2d Sess., *A Report of the Task Force for the Review of the Sergeant-at-Arms Disbursing Office Operations and Management of the Trust Fund Account* at 30 (Comm. print 1991).

some regularity, month after month, year in and year out, wrote significant overdrafts on their House Bank accounts.

THE MANAGEMENT OF THE HOUSE BANK

The management and operation of the House Bank were not professional. Its record-keeping was haphazard, its internal accounting controls were lax, and its consistent failure to promulgate and distribute formal guidelines and procedures for its users contributed to the problems herein described.

The Sergeant-at-Arms, Jack Russ, must accept ultimate responsibility for the Bank's management. He chose to delegate day-to-day management to the Bank Director, and he spent most of his time on security and representational matters. This was not an unreasonable judgment in itself, but it did not relieve him of responsibility for the Bank's operations.

It is true that the Sergeant-at-Arms inherited the practice which the Committee and others now criticize. He did not initiate these practices, and indeed they went on for many years before the tenure of the current Sergeant-at-Arms began. Under these circumstances, it would not have been easy for him to change the system, particularly since there were so many Members who found it convenient.

However, there came a time when the GAO, the Speaker, and outside consultants from the banking industry made concrete recommendations to the Sergeant-at-Arms for reforming the old system. The Sergeant-at-Arms personally represented that many of these reforms would be implemented. Yet, necessary reforms were either not implemented, or were pursued in a half-hearted and untimely fashion. In any event, some of the most serious problems at the Bank were not resolved.

The Sergeant-at-Arms testified that he delegated the job of implementing these reforms to the Bank Director, and that he was surprised to later learn that they were not always carried out. This may be true, and indeed the Bank Director must assume his share of responsibility for not addressing the Bank's problems in a more aggressive fashion. However, as previously indicated, the Sergeant-at-Arms cannot escape ultimate responsibility for management of a facility within his jurisdiction, particularly after having been put on notice regarding its deficiencies and having personally undertaken to remedy them.

Despite the foregoing criticism, the Committee believes that the Sergeant-at-Arms and the Bank Director always acted in ways which they thought best served the interests of Members. They are both long-term employees of the House and have devoted a large measure of their time and energy to the institution. The fact is that they have worked in a system which has traditionally put a premium on service to Members, and they both were loyal to that tradition. But times have changed. What best serves individual Members does not always best serve the House, and the practices of the House Bank are a classic illustration of that.

The Committee also concluded that Jack Russ and a former Bank teller misused their positions in the Sergeant-at-Arms Office by cashing a number of bad checks. Specifically, between July 1988

and August 1989, Mr. Russ presented 19 such checks drawn on other banks, having an aggregate face value of \$56,100. In addition, five of those checks were re-presented for payment and were again returned for insufficient funds. In May of 1991, he also cashed a third-party check for \$200, which bounced.

Between July 1988 and November 1989, the Bank teller cashed 28 bad checks at the House Bank, which checks had an aggregate face value of \$9,138. Nine of those checks were re-presented for payment and again were returned for insufficient funds, and seven of them were third-party checks. In December, 1989, the Bank teller was reassigned from her position in the Bank to another job which did not require the handling of funds.

All of the foregoing checks were made good by Mr. Russ and the Bank teller, but they clearly misused their positions at the House Bank in cashing checks with insufficient funds to cover them.

MEMBERS WHO ABUSED BANKING PRIVILEGES

The Committee concluded that 19 current Members and 5 former Members abused their banking privileges. Since the Committee insisted that GAO provide all account information in coded form, the Committee does not know the identities of the individual account holders.

House Resolution 236 directed the Committee to consider whether Members, officers, employees or others abused the banking privileges "by *routinely* and *repeatedly* writing checks for which their account did not have, by a *significant* amount, sufficient funds on deposit to cover * * *." (Emphasis added) Accordingly, the Committee had to determine what these terms meant.

The easiest term to define in the context of this Bank's operations was "significant amount." The Committee found that overdrafts were significant when they caused an account's deficiency to exceed next month's net salary deposit. The Bank's employees clearly considered a deficiency in that amount to be significant. The Bank's designated callers testified that, while they never told Members or their designees that overdrafts in any amount were permissible, they did tell them that deficiencies had to be reduced, at the very least, below the next month's net salary deposit. In doing so, they did not intend to convey the impression that deficiencies above that amount were acceptable to the Bank so long as they were thereafter made good.⁴⁷

When the Bank began its practice of returning some overdrafts to Members, it employed the net salary deposit as a standard. This standard also conforms to the stated view of Sergeants-at-Arms over many years that overdrafts were a draw on salary.

No doubt many who are unfamiliar with how the House Bank operated for many years will find this definition of "significant

⁴⁷As previously indicated, it has been suggested that some Members might have inferred that overdrafts exceeding the next month's salary were acceptable so long as they were eliminated or brought below that level before the end of the month. Even assuming such an inference were reasonable, it would be relevant only in a disciplinary proceeding where the Member's knowledge and intent have to be established to find an ethical violation. The Committee is not recommending any disciplinary proceedings, but is simply determining what constitutes abuse of the banking privileges pursuant to House Resolution 236.

amount" generous. It is. However, it is the one which most closely conforms to what the House Bank considered significant.

The Committee's definition of "repeated" and "routine" was necessarily more subjective. There was no Bank practice which suggested an objective standard for these terms. The Committee simply had to use its own judgment, and reasonable people can differ. In common parlance, the term "repeated" means more than once, and "routine" suggests a pattern of conduct. The Committee concluded that repeated and routine should mean a course of conduct engaged in at least 20 percent of the time.

Accordingly, the Committee determined that any Member whose negative account balance exceeded the next month's net salary deposit at any time during the month, for 20 percent of the months the Member had an account, abused the banking privileges. A Member who had an account for all 39 months of the period covered by this inquiry would have to have had at least 8 months when the account deficiency exceeded the next month's net salary deposit.

Twenty-four account holders met this standard, five of whom are no longer Members. The number of months these account holders exceeded their next month's net salary deposit is set forth in Appendix B. Most of these account holders also had written a substantial number of overdrafts; the lowest number of overdrafts on the list is 81, and the highest is 996. Five of the Members had overdrafts returned by the Bank; the number of such checks returned ranged from 2 to 53. Ten Members also cashed or deposited bad non-account checks at the Bank window; the number ranged from 1 to 30.

In the judgment of the Committee, the twenty-four account-holders referred to abused their banking privileges.

USE OF THE HOUSE BANK BY NON-MEMBERS

The Committee found that there were no non-Members who abused their banking privileges, as abuse is defined in House Resolution 236. There were several non-Members who cashed insufficient funds checks at the Bank window, but the Committee determined that their overdrafts were not sufficiently repeated, routine, and significant to meet the standards for abuse.

The most non-account overdrafts were written by the Sergeant-at-Arms, Jack Russ, and by a former Bank teller. As previously indicated, the Committee concluded that they misused their positions in the Sergeant-at-Arms Office in so doing.

PRELIMINARY INQUIRIES

The Committee found that abuse of banking privileges is potentially a violation of House Rule 43(1), and also determined that the unwritten policies and practices of the House Bank could be another applicable standard of conduct that might have been violated. However, the Committee concluded that no useful purpose would be served by initiating a formal preliminary inquiry under the Committee Rules.

As indicated below, the Committee is recommending public disclosure of the names and pertinent information relating to the

banking activities of those who abused their banking privileges. For public officials, particularly those who run for elective office, this can have serious consequences. In these cases, a disciplinary proceeding, even if it resulted in a finding of ethical violations, would be no more serious in practical terms to public officials than public disclosure of their banking practices. Moreover, disciplinary proceedings would take many more months to complete, and would not be likely to develop much more of substance than this inquiry already has pursuant to House Resolution 236.

Although the Committee is convinced that the practices outlined in this report constituted abuse of banking privileges, a higher standard of proof might be required to formally establish ethical violations in disciplinary proceedings. As has been fully explained elsewhere in this report, the House Bank's practices in handling overdrafts were not put in writing and distributed to Bank users, and the oral communications of Bank employees were not documented. While the testimony of Bank employees about their standard practices, together with the evidence of individual conduct by Bank users, is enough to establish abuse of banking privileges, it is quite possible that the Committee would be reluctant on this basis to find ethical violations in a formal disciplinary proceeding.

Accordingly, the Committee does not believe that the initiation of a formal preliminary inquiry under Committee Rules is appropriate in these cases.

PUBLIC DISCLOSURE

The Committee recommends that the House of Representatives direct the Committee to publicly disclose the names and pertinent information regarding the banking activities of those the Committee has found to have abused their banking privileges. At an appropriate time, the Committee will seek to offer a Resolution to the House for its consideration.

The Committee believes that the final decision to disclose is one more appropriately made by the House than by the Committee. The Committee has conducted this inquiry pursuant to House Resolution 236, which says nothing about public disclosure. Under the Committee Rules, public disclosure would not normally occur until after a formal preliminary inquiry, which the Committee does not believe is necessary or appropriate in these cases. Finally, the records of the Bank are House records relating to essentially private transactions. While the Committee might have the right to disclose them, it believes that the judgment should be made by the House.

The Committee is concerned that prior to any public disclosure, individuals should have the opportunity to demonstrate to the Committee that they did not abuse their banking privileges by repeatedly and routinely writing overdrafts in significant amounts. The Committee has not provided that opportunity previously so that it could preserve anonymity and make all its judgments without reference to personalities or party affiliation. The Committee believes it would be best to preserve such anonymity on the House floor. However, individuals should be afforded the opportunity for review before names are publicly disclosed.

Accordingly, the Resolution the Committee proposes to offer to the House will direct disclosure no sooner than ten days after passage. This would enable the Committee to privately identify the individuals involved, notify them, give them an opportunity to review their own banking histories compiled by GAO, and be heard by the Subcommittee if they wish. After ten days, the Committee would be afforded discretion on when to disclose, and on whom to disclose, depending upon the circumstances at the time.

The Resolution will also direct the Committee to give any Member who requests it, a letter specifying certain information compiled by GAO for the Committee relating to that Member's banking history, namely, the number of overdrafts the Member wrote during the 39-month period of this inquiry, the particular time-frame during which those overdrafts were written, and, where the information is available to the Committee, the number of months that the negative balance in the Member's account may have exceeded the next month's net salary deposit.

Statement under rule XI, clause 2(1)(3)(A) the Committee's oversight findings and recommendations are as stated above. No budget statement is submitted.

APPENDIX A

102D CONGRESS
1ST SESSION

H. RES. 236

Instructing the Committee on Standards of Official Conduct to review the operation of the Bank of the Sergeant-at-Arms of the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 1991

Mr. GEPHARDT submitted the following resolution; which was considered and agreed to

RESOLUTION

Instructing the Committee on Standards of Official Conduct to review the operation of the Bank of the Sergeant-at-Arms of the House of Representatives.

Whereas audits by the General Accounting Office have raised questions concerning the operation of the bank in the Office of the Sergeant-at-Arms: Now, therefore, be it

1 *Resolved*, That as soon as practicable, but no later
2 than December 31, 1991, the Office of Sergeant-at-Arms
3 shall cease all bank and check-cashing operations; and be
4 it further

5 *Resolved*, That the House of Representatives directs
6 the General Accounting Office to provide to the House
7 Committee on Standards of Official Conduct copies of the

1 two most recent audits of the Sergeant-at-Arms Bank and
2 the supporting work papers; and be it further

3 *Resolved*, That the Committee on Standards of Offi-
4 cial Conduct, or a subcommittee of the committee des-
5 igned by the committee and appointed by the chairman
6 and ranking minority member are hereby instructed to re-
7 view those audits, and the operation of the Sergeant-at-
8 Arms Bank for the period of time covered by those audits
9 through the present and to determine whether the oper-
10 ation of the bank or the use of the bank facilities by Mem-
11 bers, officers, employees, or other individuals presents
12 questions of potential violation of the Rules of the House
13 or any other applicable standards of conduct. In making
14 this determination, the committee should consider—

15 (1) whether Members, officers, employees, or
16 others abused the banking privileges by routinely
17 and repeatedly writing checks for which their ac-
18 counts did not have, by a significant amount, suffi-
19 cient funds on deposit to cover;

20 (2) the bank's practices with respect to
21 nonaccount holders or checks not written on House
22 bank accounts transacted at the bank's facilities;
23 and

3

1 (3) the general operation and management of
2 the bank by the Sergeant-at-Arms and his employ-
3 ees.
4 If, in reviewing the audits and practices of the bank, the
5 committee determines that any individual Member's, offi-
6 cer's, or employee's conduct constituted a possible vio-
7 lation of the Rules of the House or any other applicable
8 standard of conduct, it should consider the initiation of
9 an inquiry respecting that Member, officer, or employee,
10 if appropriate.

O

APPENDIX B

	Current Member	Number Months Negative Balance Exceeded Next Month's Salary	Number of Months with House Account
1.	Yes	35	39
2.	Yes	31	39
3.	Yes	30	39
4.	Yes	23	39
5.	Yes	23	39
6.	Yes	21	39
7.	Yes	20	39
8.	Yes	18	39
9.	No	16	33
10.	No	16	31
11.	Yes	15	39
12.	Yes	15	39
13.	Yes	14	39
14.	Yes	13	39
15.	Yes	13	39
16.	No	12	32
17.	No	12	18
18.	Yes	11	39
19.	Yes	10	39
20.	Yes	9	39
21.	No	9	31
22.	Yes	8	39
23.	Yes	8	39
24.	Yes	8	39

MINORITY VIEWS

INTRODUCTION

The Majority report contains important information to implement H. Res. 236, but fails to come to grips with the overriding issue before the Congress; to wit, what must the House do to begin to restore its lost credibility with the American people?

By applying narrow, overly technical criteria for determining what constituted abuse of House banking privileges and how best to disclose information about overdrafts generally, we fear the Majority report will be seen as Congress conducting "business as usual," protecting its own.

Instead of getting this matter behind us, the partial and indirect disclosure recommended by the Majority report will fuel continued public criticism of the House generally and individual Members specifically.

We believe the House must be more forthcoming; that all people who abused banking privileges should be identified; and that the public should at least be allowed to know how many insufficient-funds checks were written by current and former representatives. While this may be very uncomfortable for many and require explanation of legitimate errors by others, in the long run it will result in the public having more confidence in the institution.

DISCLOSURE OF OVERDRAFTS

There are two basic issues before the House:

1. How to disclose information about Members and former Members who overdrew their accounts at the House Bank; and
2. How to define who abused banking privileges.

The first issue is how to disclose the overdraft information as to all 355 Members and former Members who wrote non-sufficient funds (NSF) checks at some point during the period studied by the General Accounting Office (GAO). The Committee's proposal will justifiably be seen as less than forthcoming by the American people. By simply offering to give a letter to any Member and former Member who requests one, the Majority is not ensuring complete, timely and accurate disclosure. In fact, it leaves wide open the possibility of powerful Members avoiding disclosure by stonewalling, while many of lesser fault are held accountable. It will not enhance, but will further erode the credibility of the House.

We propose simply to release a full list of all Members and former Members showing how many checks were written on insufficient funds, if any, and the time frame in which those checks were written. In addition, for those Members and former Members whose accounts have been reconstructed by the GAO, the number

of months in which their accounts were overdrawn by more than their next month's net salary deposit would also be released.

The list should be released ten days after the release of the list of those who abused banking privileges.

Some argue this is not necessary—that, under the Majority report, the information will all come out eventually. If so, then the House should do it and get the credit from the American people for being forthright and open. To the extent that the information will not become public by political or media pressure, the House will again be criticized as not being willing to disclose information the American people believe they have a right to know. Better it be done in a timely and accurate fashion, we believe, than to rely on the vagaries of political and media pressure. And, most importantly, better the House volunteer the information to the public rather than perpetuate secrecy by only disclosing it to Members and former Members who request it.

ABUSE OF BANKING PRIVILEGES

The Majority report established a definition of abuse so narrow that many others who, by any common-sense standard would qualify as abusers, escape designation and disclosure.

If the House chooses full disclosure, and lets the American people know the facts so that they can decide for themselves what constitutes abuse, this would go far toward mediating the flaws of the Majority's overly narrow definition of abuse.

If, however, the House chooses not to disclose the names of those Members and former members who overdrew their accounts, it is extremely important to have a more defensible definition of what constitutes abuse of House banking privileges, so that all those in similar circumstances are identified. In our view, a more appropriate definition would identify 55 Members and former Members as having abused the privileges of the House Bank.

The majority report provides that, to be classified as one who abused banking privileges, an individual had to be overdrawn to such an extent that for at least eight months of the thirty-nine months at issue, the individual's next month's net salary deposit would not cover the overdraft.

Under that definition, Members and former Members with significant numbers and face amounts of overdrafts would be excluded. A few examples of Members and former Members who would not be deemed abusers show the unwarranted narrowness of the Majority's criteria:

Number of NSF checks	Dollars of NSF checks	Number of months overdrawn
Over 850	Over \$150,000	7
Over 700	Over \$100,000	6
Over 500	Over \$85,000	4
Over 500	Over \$100,000	4
Over 500	Over \$100,000	5
Over 400	Over \$180,000	6

Note—Pursuant to Committee direction, exact numbers are not given

We find it impossible to defend a definition of "abuse" that is so narrow that it excludes an individual who wrote over 850 NSF checks totaling over \$150,000, with seven separate months of negative balance exceeding next month's net salary deposit.

Indeed, the distinction between abuse and non-abuse in the Majority report is so arbitrary as to be unfair to those who meet the report's definition.

By its own admission, the Majority's definition is "generous" and a "compromise." While any distinction is subject to criticism, we believe a more credible definition is possible.

The factors for identifying those who abused the banking privileges should include at least the number of checks written on insufficient funds; the number of months accounts were overdrawn for more than monthly net salary deposit; and the total face amount of the checks written on insufficient funds.

The Majority report concedes that the full House can establish any standard it wishes and that the Committee was not bound by H. Res. 236 in defining abuse; but the Committee nevertheless limited itself to a standard which excluded anyone who did not, for eight or more months, have overdrafts which exceeded monthly net salary deposit.

The Majority definition ignored both the number of insufficient-funds checks written and total face amounts of those checks. Yet, the number of checks certainly bears on whether the practice was routine and repeated, and the total face amount clearly bears on the question of whether the overdraft amounts were substantial.

We agree that another (but not the exclusive) measure of abuse is whether there were any occasions in which an account holder's overdrafts exceeded next month's net salary deposit. That's important because many Members apparently contend that they regularly overdrew their accounts because they had been told it was permitted as a draw on the next pay check. That, of course, would not justify overdrafts of more than the net monthly salary deposit.

Where a Member or former Member overdrew beyond that amount the Majority agrees that abuse occurred; just not enough abuse to be disclosed unless it occurred in eight separate months. We have examined all of the accounts reconstructed by the GAO, and have concluded that a comparison of all of the data, including the total number and face amount of checks written on insufficient funds, and number of months exceeding the next month's net salary deposit is the proper way to determine abuse of the banking privileges.

Applying these criteria to those Members and former Members whose accounts were reconstructed by the GAO, and to all of those accounts in which overdrafts exceeded net monthly salary deposit in at least two months, 55 Members or former Members would be identified as abusing banking privileges. Comparison of all of the information available from the GAO reconstruction justifies each of those accounts being the subject of disclosure.

Applying this standard, there were no account holders whose overdrafts totaled as little as \$54,000, the lowest of those identified by the Majority report as abusers.

Likewise, there were only eight cases in which the number of NSF checks was fewer than the lowest identified by the Majority

as abusers. (The least number of NSF checks written by those identified as having abused their banking privileges was 81.)

In some cases, the number of overdrawn checks may be relatively high, but the months exceeding net monthly salary deposit are below eight. In other cases, the reverse is true. And the total face amounts are high in some cases where the number of checks is less. Using just one criterion does not, in other words, show a true picture of each account.

Under our analysis, two months over net monthly salary deposit would establish the cut-off point for review. Considering that criteria and the numbers and face amounts of NFS checks, and days of overdraft, we believe a total of 55 persons must be deemed to have abused their banking privileges. Disclosure of these accounts (the same information recommended for disclosure by the Majority report) should occur either as part of the group designated as having abused their banking privileges or, at a minimum, as a part of a direct disclosure for everyone with at least one overdraft.

NANCY L. JOHNSON.
JIM BUNNING.
JON KYL.
DAVID L. HOBSON.

