

ADOPTED BY THE COMMITTEE ON ETHICS ON DECEMBER 10, 2014

**113TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE ALCEE L. HASTINGS**

DECEMBER 11, 2014



Mr. CONAWAY from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED THIRTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 11, 2014

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The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Alcee L. Hastings."

Sincerely,


K. Michael Conaway
Chairman


Linda T. Sánchez
Ranking Member

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R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On October 13, 2011, the Office of Congressional Ethics (OCE) referred to the Committee on Ethics (Committee) a Report and Findings (OCE's Referral) concerning allegations that Representative Alcee L. Hastings had sexually harassed an employee (Complainant) of the United States Commission on Security and Cooperation in Europe (Helsinki Commission),¹ and that Complainant faced retaliatory employment action in response to reporting these allegations.² OCE's referral in this matter was unique, insofar as it recommended that the Committee further review the allegations, even though OCE was unable to conclude that there was "substantial reason to believe" the alleged violations had occurred, which is its typical standard for recommending that the Committee further review an allegation. In this case, OCE referred the matter to the Committee upon concluding that its investigation had revealed "probable cause" to believe that a violation had occurred, a lower standard which only suffices in cases where, such as here, OCE concluded that it was "unable to obtain information necessary to reach" the "substantial reason to believe" standard.³ OCE notes that either a finding of "probable cause" or a finding of "substantial reason to believe" that an alleged violation occurred "does not constitute a finding that a violation has actually occurred."⁴

¹ The Helsinki Commission is an independent agency of the federal government charged with monitoring compliance with the Helsinki Final Act; the Commission consists of nine Members of the House, nine Senators, and one member each from the Departments of State, Defense, and Commerce.

² The Committee published OCE's Referral on January 11, 2012.

³ OCE Rule 9(A).

⁴ OCE Rules 8(A), 9(A) (commentary).

The Committee did conduct further review of the allegations in the OCE Referral. Its independent inquiry involved reviewing not only the OCE Referral, but more than one thousand pages of documents and interviewing eight witnesses, some more than once. These interviews included both the Complainant and Representative Hastings. In addition, OCE identified four witnesses as non-cooperative during its own review. The Committee interviewed all four of those witnesses, who fully cooperated with the Committee. Further, during the entirety of OCE's review and much of the Committee's review, the allegations in this matter were also the subject of ongoing litigation initiated by Complainant.

At the conclusion of its investigation, the Committee found no additional evidence supporting Complainant's allegations. In fact, a significant amount of evidence reviewed by the Committee cast further doubt on Complainant's allegations. Accordingly, the Committee concurred in OCE's determination that there was not "substantial reason to believe" the allegations, much less the standard of "clear and convincing evidence" necessary to recommend a sanction to the House. For this reason, the Committee unanimously voted to release this Report and take no further action in this matter.⁵

Importantly, while the most serious allegations in this case were not supported by the evidence, Representative Hastings has admitted to certain conduct that is less than professional. That conduct, as well as the Committee's explanation for concluding that it does not rise to the level of a violation of House Rules, laws, regulations, or other standards of conduct, is described below. We hope that this description serves as a necessary corrective for Representative Hastings in the future, and a reminder to all Members of the importance of these issues. Sexual harassment in the workplace is an extremely serious problem, in part because it is often perpetrated by very powerful people – supervisors, managers, owners, etc. – against people with significantly less power, such as subordinate employees. This power imbalance surely could exist in the relationship between a Member and his employees, and Members must be held to account if they abuse that imbalance of power, especially in a fashion that discriminates on the basis of gender. In cases where such discrimination can be proven, this Committee will hold those who engage in such misconduct accountable.

In this case, there is simply not sufficient proof of such discrimination. Accordingly, upon publication of this Report, the Committee will take no further action on this matter, and considers it closed.

II. HOUSE RULES, LAWS, REGULATIONS, OR OTHER STANDARDS OF CONDUCT

Sexual harassment and, other forms of employment discrimination are prohibited in the House both by statute and by House Rule. The CAA, 2 U.S.C. §§ 1311 *et seq.*, prohibits discrimination based on sex, and it also prohibits intimidation, reprisal, or other discrimination

against a person in relation to their opposition to sexual harassment. House Rule XXIII, clause 9 states that “[a] Member . . . may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into consideration the domicile or political affiliation of such individual.”

The CAA created the Office of Compliance as a forum for resolving claims of discrimination. The Office of Compliance’s guidance defines sexual harassment as “[u]nwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature if the implication is that submission to such conduct is expected as part of the job.”⁶

Sexual harassment, if proven, would also likely violate the basic parameters of House Rule XXIII, clauses 1 and 2, which state that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House,” and that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House....”

III. BACKGROUND

Complainant worked as a policy advisor for the Helsinki Commission from May 2007 until approximately June 2014. Representative Hastings was instrumental in Complainant’s hiring. After he learned that Complainant, who had previously been employed by the House Committee on Homeland Security, was looking for work, Representative Hastings arranged for the Complainant to apply for a position with the Helsinki Commission. She was subsequently hired after going through the typical hiring process. Eventually, in 2008, Complainant moved to Vienna, Austria, where she handled duties for the Helsinki Commission and the State Department. She returned to Washington, D.C., permanently in July 2010.

In August 2010, Complainant filed a request for counseling with the Office of Compliance, asserting claims of sexual harassment and retaliation against the Helsinki Commission. The Office of Compliance’s dispute resolution processes established by the CAA begin with mandatory counseling and mediation phases, both of which are confidential. If the parties are unable to resolve their disagreement through counseling or mediation, an employee may then either pursue a non-judicial administrative hearing or file suit in federal district court. In this matter, after the mandatory counseling and mediation phases did not resolve the dispute, on or about March 7, 2011, Complainant filed a complaint in the United States District Court for the District of Columbia based on the same allegations. Complainant named the Helsinki Commission, Representative Hastings, and the Helsinki Commission Chief of Staff (Chief of

⁶ Office of Compliance, *CAA Handbook* at 44 (2010), available at <http://www.compliance.gov/wp-content/uploads/2010/01/CAA-Handbook.pdf>.

Staff) as defendants. Complainant also announced the filing of her lawsuit at a public news conference on March 7.

OCE began its preliminary review of the matter on May 3, 2011. Complainant provided information about her allegations to OCE on or about May 26, 2011. The OCE Board voted to refer the matter to the Committee and adopted its Findings on September 27, 2011. The OCE Referral was transmitted to the Committee on October 13, 2011.

Representative Hastings and the Helsinki Commission Chief of Staff were dismissed as parties to Complainant's suit on February 14, 2012. However, the litigation against the Helsinki Commission continued until that lawsuit was ultimately dismissed on June 5, 2014, following a confidential settlement between the Complainant and the Commission. Thus, throughout OCE's review and until June 2014, civil litigation regarding these issues was ongoing in federal court.

Throughout this time period, Complainant's allegations have taken slightly different forms when stated in various forums, but the basic narrative is consistent between her statements to OCE, the Committee, and in her lawsuit. In essence, her allegations can be separated into four distinct categories.

First, Complainant alleged that, on a number of occasions beginning shortly after she was hired until approximately January 2010, Representative Hastings made a number of unwelcome sexual or intimate advances towards her, at times connecting those advances to her career. Specifically, Complainant alleged that Representative Hastings asked to visit her personal residence in the Washington, D.C., area and her apartment in Vienna, which Complainant interpreted as a request for a sexual liaison. Complainant also alleged that, on a trip to Kazakhstan in July 2008, Representative Hastings told Complainant that he wanted to help advance her career, and told her that nobody would treat her less than professionally if she had a relationship with him. Complainant also alleged that, on a trip to Lisbon, Portugal, in 2009, Representative Hastings met Complainant in the lobby of their hotel, stated that he was coming to Complainant "as a man comes to a woman," and asked Complainant to accompany him to his hotel room, or, alternatively, asked for her room number. Finally, Complainant alleged that a number of senior members of the Helsinki Commission staff conspired with Representative Hastings to place Complainant and Representative Hastings in proximity to one another. Specifically, Complainant alleged that the Chief of Staff engineered the encounter between Complainant and Representative Hastings in Portugal in 2009, and she also alleged that a Helsinki Commission staffer cancelled her trip from Kiev, Ukraine, to Odessa, Ukraine, so that she would be in Kiev when Representative Hastings arrived there.

Second, Complainant alleged that, on at least three occasions during this period, Representative Hastings touched her in an inappropriately sexual way. Specifically, Complainant alleged that on at least two occasions, Representative Hastings hugged her and pressed his body against her. Complainant also alleged that, in February 2010, Representative Hastings greeted her with the European "air-kiss," and asked her to pose for a photo with him.

Third, Complainant alleged that, on a number of occasions during this period, Representative Hastings made inappropriate comments of a suggestive or sexual nature. While not propositions for sexual activity like those discussed above, Complainant nevertheless alleged that these comments contributed to a hostile work environment. Specifically, Complainant alleged that, while they were in a car together in Vienna in 2008, Representative Hastings told her that he was unable to sleep after having sex. Complainant also alleged that, while in a hotel bar with a number of other Helsinki Commission staffers, Representative Hastings stated that he does not understand how male and female Members of Congress, but especially female Members, can wear the same underwear all day; Complainant further alleged that Representative Hastings followed that comment by asking Complainant what kind of underwear she was wearing.

Fourth, Complainant alleged that Representative Hastings and senior members of the Helsinki Commission staff retaliated against her in response to her complaints about the above mentioned allegations. Specifically, Complainant alleged that the Chief of Staff reassigned work in her portfolio to other employees, failed to keep Complainant informed of information necessary to do her job, and delayed approval of her requests to travel.

As noted above, the Committee began its inquiry after OCE referred the matter to the Committee on October 13, 2011. The Committee recognized the importance of not interfering with parallel proceedings, including the civil lawsuit, and consequently its inquiry took somewhat longer than other investigations, but it was still thorough and complete. The Committee interviewed eight witnesses, including the Complainant, Representative Hastings, and other witnesses – both those witnesses previously identified by OCE, and others. The Committee reviewed over 1,000 pages of written evidence, including emails and internal memoranda.

IV. FINDINGS

Complainant's allegations are quite serious. If proven, those allegations would almost certainly constitute a series of violations of House Rules, federal statutes, and other standards of conduct, and the Committee would not hesitate to take action against such violations.

Accordingly, the Committee conducted a thorough investigation into these allegations. That investigation yielded no additional credible evidence supporting Complainant's claims. In fact, much of the evidence reviewed cast further doubt on many of the most serious allegations. Because the Committee was unable to substantiate the claims, it concurred with OCE's determination that there was not a substantial reason to believe the allegations in question. This section of the Report details the evidence that the Committee reviewed in its inquiry, and analyzes it in light of existing law and precedent.

A. EVIDENCE

OCE noted in its Report and Findings that “most of the information obtained by the OCE was testimonial evidence from Representative Hastings and [Complainant.]”⁷ The Committee found a similar paucity of independent corroborating evidence, although it, unlike OCE, was able to obtain information from other Helsinki Commission staffers. Put simply, there is very little non-testimonial evidence that corroborates the Complainant’s allegations at all, and a significant number of materials that call at least some of Complainant’s allegations into question. In fact, the Committee identified only two documents in which it can be said definitively that Complainant (a) was at the time alleging sexual harassment, and (b) was at the time reporting that sexual harassment to others at the Helsinki Commission. Both of these documents were created in February 2010, after the bulk of the allegations are purported to have occurred. First, on February 5, 2010, the General Counsel of the Helsinki Commission (General Counsel) emailed Complainant to memorialize a meeting with the Chief of Staff, General Counsel, and Complainant, held a few days prior to the email. The General Counsel stated:

[The Chief of Staff] described his conversation with Mr. Hastings regarding the issues you had raised and indicated that, while Mr. Hastings said he had a different assessment of the situation, Mr. Hastings is sensitive to your concerns and will proceed accordingly. [The Chief of Staff] also indicated that both he and Mr. Hastings are satisfied with your job performance and support your decision to leave Vienna and resume your work full-time in Washington before the end of the year – most likely in July.

It is our hope and expectation that if you have any further concerns regarding the matters we discussed, or any other issues, you will contact us immediately.

In interviews with the Committee, both the Chief of Staff and General Counsel stated that the meeting discussed in the February 5, 2010, email above was the first such meeting either of them had with Complainant regarding her allegations, and both stated that they learned of Complainant’s allegations, at most, a few weeks prior to the meeting. The Chief of Staff confirmed that, prior to this meeting, he met with Representative Hastings to discuss (for the first time) Complainant’s allegations; at that time, Representative Hastings vehemently denied having sexually harassed the Complainant. Regardless, however, the Chief of Staff advised Representative Hastings to refrain from any behavior that the Complainant might perceive as harassment.

Complainant responded the same day to the General Counsel’s email:

Most of what you say below has my concurrence, but I completely disagree with the statement that Mr. Hastings “had a different

⁷ OCE Referral at 3.

assessment of the situation.” What [the Chief of Staff] said was that he had a different assessment of some of the issues, which [the Chief of Staff] did not elaborate on. I completely stand by the fact that Mr. Hastings has sexually harassed me since December 2007, after I was offered the position in Vienna, and I have no intention of sugar-coating what has happened to me.

This email, again, is the first instance the Committee could definitively conclude that Complainant explicitly alleged sexual harassment in writing.⁸

A second email from Complainant to the General Counsel and the Chief of Staff dated February 19, 2010, detailed Complainant’s interactions with Representative Hastings earlier that week, accusing Representative Hastings of acting in apparent contravention of the conversation between him and the Chief of Staff a few weeks earlier:

First of all, even though I specifically asked you and [General Counsel] to advise Mr. Hastings that I do not want him to hug me in greeting me or saying good bye, when he entered the control room...on Wednesday, he came over to where I was seated at the table and briefly placed his cheek against mine. [OSCE Staffer] was sitting there with me and can attest to it. As I stressed to you and [General Counsel], I do not want Mr. Hastings to hug me because I am uncomfortable with it and I insist at this point that it is not repeated.

Second, this evening, [a military officer] and I had just discussed tomorrow’s itinerary and I was walking toward the control room to look it over when [a Helsinki Commission staffer] called out that I was needed. I paused, and he said that Mr. Hastings wanted to take a photograph with me. Mr. Hastings walked over to where I was standing, stood extremely close to me, and held out both of his arms in a pose while I kept mine at my side. He looked at me and said, “We have to do our favorite pose,”⁹ indicated that I too should hold out my arms. I did and [the Helsinki Commission

⁸ Complainant provided OCE with handwritten notes that Complainant contends to have written during her service in Vienna, purportedly memorializing her allegations contemporaneously. But the document bears no evidence of the date of its creation, and no witness can attest to having seen it. Similarly, the Complainant sent the Committee text that purported to be an email she sent to friends in 2009, detailing her allegations. The Committee contacted the supposed recipients of the email, who testified that they were not in possession of a copy of the email. When the Committee asked the Complainant to authenticate the email’s date by providing it in a native form, she failed to respond. Accordingly, the Committee could not conclude that either of these materials were truly contemporaneously dated with the allegations. And in any event, neither document was ever shared with anyone at the Helsinki Commission.

⁹ Representative Hastings and a variety of other witnesses indicated that the pose in the photograph was one that Representative Hastings commonly performs, stretching his arms to represent “having the world in his hands.” He did not actually touch Complainant in the photograph.

staffer] took the picture. The situation made me feel extremely uncomfortable and I am suspicious as to why I was placed in this awkward and ridiculous circumstance.

Other than these two emails in which Complainant made her position clear, the rest of the written record contained no mention of the allegations as they were happening.

Complainant contended in her testimony before the Committee that a number of emails should be read to imply her allegations. However, the Committee reviewed additional evidence alongside those emails, which cast doubt on an interpretation that would constitute evidence of sexual harassment. For example, one of Complainant's more troubling allegations pertained to a trip to Ukraine to monitor elections in January 2010. Complainant was originally scheduled to observe the elections in Odessa, but Representative Hastings, through a staffer (Helsinki Commission Staffer 1), requested that she (and other observers) stay in Kiev, where Representative Hastings was scheduled to observe the election. Complainant alleges that she believed Representative Hastings was, through this request, attempting to keep Complainant close to him, where he could continue to harass her.

As evidence of her concerns, Complainant pointed to an email she sent the Chief of Staff, stating, "I wanted to ask your advice on what to do because at this point I think if I went to Odessa Mr. Hastings will be upset." The Chief of Staff responded, "for reasons previously discussed, I think you should still go to Odessa. I'm not on the ground with you and don't really understand what's going on, but that would still be my suggestion. I will help explain the issue to [Representative Hastings] if he is upset." Complainant alleged in her testimony that the "reasons previously discussed" were her allegations of sexual harassment, which she claimed to have repeatedly reported to the Chief of Staff by this time.

If an observer were to pick these statements out of context and rely solely on Complainant's characterization of them, one might conclude that the statements are evidence of the truth of Complainant's allegations. But when read in context, and when coupled with the testimony of multiple witnesses, a different, more innocuous picture emerged. In fact, while Complainant asserted in her interviews with OCE and with the Committee that the prospect of staying in Kiev, so close to Representative Hastings, caused her to "hyperventilate," her own words in emails around the same time suggest that Complainant was at least indifferent about the change in plans, if not outright pleased. When notified that she might be staying in Kiev, Complainant emailed Helsinki Commission Staffer 1 saying "I really prefer to observe in Kiev but [Chief of Staff] suggested the staff spread out. I also was not looking forward to flying on a tiny Ukrainian plane to Odessa." So Complainant's allegations about this trip to Ukraine simply do not conform with her own contemporaneous statements on the matter.

Additionally, many other witnesses and documents in the record show that the justification for changing Complainant's travel plans in Ukraine was wholly unrelated to Representative Hastings' alleged interest in her. Representative Hastings did ask that election observers (including Complainant) remain in Kiev, as opposed to fanning out across Ukraine. But the evidence suggests that this request may not have been motivated by a desire to be close to Complainant; rather, Representative Hastings knew that a winter storm was expected across

much of the country and was concerned about his staff traveling on Ukrainian flights through the snow. And the “reasons previously discussed” between Complainant and the Chief of Staff were not Complainant’s allegations, but instead the Chief of Staff’s belief that, inclement weather notwithstanding, the task of monitoring Ukraine’s elections required staff to travel to a variety of voting stations around the country.

Many of the documents that Complainant proffered as support for her claims followed this pattern: Complainant wrote or said something vague that, in hindsight, could be tied to her allegations, but only by ignoring other written and testimonial evidence to the contrary. Indeed, there are a number of alternative explanations for the correspondence between Complainant and others that do not imply sexual harassment. For example, as discussed above, Complainant claimed that her cancelled trip from Kiev to Odessa in 2010 was an instance of sexual harassment, and she relied on her email to the Chief of Staff to support that claim, but that email is equally open to the interpretation that both parties were discussing the bad weather in Ukraine, as opposed to Representative Hastings’ alleged sexual interest. Furthermore, in many cases, the alternative reading of these vague emails was supported by the evidence, for at least two reasons.

First, in most other situations, Complainant was not vague when writing emails. Complainant regularly updated other Helsinki Commission staffers on her work in Vienna via email. Complainant repeatedly wrote paragraphs of prose to the Chief of Staff regarding difficulties she was having with colleagues. One such email detailed Complainant’s struggle to locate “personal hygiene items” as an explanation for a report of poor performance. And, like her email expressing a desire to stay in Kiev, many of Complainant’s contemporaneous writings directly or implicitly contradict her allegations.

Once, around the time that Complainant’s allegations were supposed to have occurred, Complainant emailed, “I don’t know what I would do without [Chief of Staff]. I cannot believe what a comfort you are to me and the sense of security and calm you provide every time I come to you in anxiety about something.” Complainant also wrote, at other times when the sexual harassment was purportedly occurring, that having spoken with Representative Hastings, she felt “100 percent better than she began the week,” and that Representative Hastings was “truly amazing.” And, in another email, she told the Chief of Staff that she “had a crush on [Representative Hastings] since I first met him...” Complainant’s own communications at the time these events allegedly took place, therefore, call into question the claims Complainant made thereafter.¹⁰

Second, while Complainant alleges that she was constantly reporting her allegations to the Chief of Staff and the General Counsel for years prior, the response of both the Chief of Staff and General Counsel as reflected in the written record changed dramatically after their meeting in January 2010. Before the meeting, the Committee found no evidence that either the Chief of

¹⁰ OCE did not ask Complainant about either of these emails, although they are discussed in the OCE Referral. For each email, OCE indicated that it was “unable to interview [Complainant] about this statement because the production containing this email came to the OCE well after the OCE had interviewed [Complainant].” OCE Referral, at 10, 24

Staff or the General Counsel had ever discussed the allegations in writing, but after the meeting, both the Chief of Staff and General Counsel openly acknowledged having heard the allegations from Complainant and reflected their attempts to develop an action plan in response. To believe Complainant's version of events, one must also believe that both the Chief of Staff and General Counsel avoided discussion of these allegations for years, only to meticulously and professionally respond to them, as if hearing them for the first time, in February 2010.¹¹

B. TESTIMONY

OCE's referral to the Committee was rooted in a lower standard for referral than is usually the case, in large part because OCE was unable to speak with a number of witnesses identified by Complainant. As discussed above, civil litigation regarding this matter was pending in federal court before OCE began its review and continued throughout the entirety of its review. The Committee spoke with all such witnesses, all of whom cooperated with the Committee's review, but those witnesses (as well as others interviewed by the Committee) did not provide any additional evidence supporting the Complainant's allegations.

No witness could testify to having directly observed a single specific allegation made by Complainant. Those witnesses who were purportedly in the same room when the misconduct occurred denied having seen anything of the sort. Some witnesses testified that they had heard rumors related to the allegations, but when pressed, every single such witness admitted that the sole source of those rumors was Complainant herself. Credible witnesses described Representative Hastings as a genial and familiar, but ultimately professional, supervisor, and noted that they observed nothing at all untoward about his relationship with Complainant.

Similar to the issues described above regarding the written record in proper context, witness testimony provided perspective that cast additional doubt on Complainant's allegations. For example, on a trip to Portugal in 2009, Complainant attended a dinner for the OSCE Parliamentary Assembly, along with Representative Hastings and the Chief of Staff. Complainant alleged that, after the dinner, in the hotel, Representative Hastings expressed a sexual interest in her, told her she was not a "sport," told her that he had come to her "as a man comes to a woman," and asked her to come to his hotel room. These are among the most explicit and troubling allegations made by Complainant. But while no third parties witnessed this interaction, the Chief of Staff provided context regarding the evening that brought Complainant's story into doubt. The Chief of Staff testified that, as is Representative Hastings' custom, he left the Parliamentary Assembly dinner very early – before most of the courses had been served. When he left, Complainant came to Chief of Staff and insisted that they should accompany Representative Hastings back to the hotel. The Chief of Staff disagreed:

¹¹ While the Committee did not believe it directly relevant to the allegations, Representative Hastings – in his testimony before the Committee and elsewhere – has repeatedly referred to the fact that Complainant authored a novel in 2006, and that novel contains themes and storylines with remarkable similarities to the allegations that Complainant made. The Committee found no evidence that Complainant's allegations were manufactured to generate publicity for her book, but it did note the similarities between characters and events in the book and persons and events in her allegations, and believes those similarities cast additional doubt on Complainant's credibility.

And I said...you know, you don't know this because you haven't traveled with him a whole lot, but our job is to stay here and make sure that people aren't saying, oh, the Americans left. He's leaving because he hates, you know, these 3-hour dinners, you know. So we're going to sit right here and eat our dinner and socialize with the other parliamentary staff and all these kind of, and sort of show the flag, you know.

And she said to me, she's like, I really don't think it's responsible for both of us to be here when he's leaving or he's left. And she says, I really think one of us ought to go back to the hotel and make sure, you know, if he needs us to work on remarks or whatever. And I said, I disagree. I said, I've staffed him long enough to know I'm not skipping dinner just to go back to the hotel and do nothing.

I think it's important for you to understand how, you know, how we got to that point and why I wasn't there. Now, why somebody who is alleging all this crazy stuff solicited the trip to Lisbon and then, when there's no requirement for her to actually be alone with the Congressman, she gets up from a dinner when I'm sitting there, telling her stay put, and goes back to the hotel and puts herself in a position to be alone with the Congressman and then allegedly all this stuff happens.

When the Committee asked Complainant about leaving the dinner early, Complainant admitted that Representative Hastings left the dinner early, but characterized such a departure as highly irregular, and stated that the Chief of Staff's decision to stay at the dinner was a conspiracy between the Chief of Staff and Representative Hastings to ensure additional harassment:

I just didn't know what was going on. I really didn't. But in retrospect, I believe it was contrived. I believe that [the Chief of Staff] and Mr. Hastings had agreed to this scenario and that is why [the Chief of Staff] didn't blink when Mr. Hastings said he was leaving. I think it was all engineered.

Q: To do what?

A: That he would leave and that I would probably feel like -- because one of the things I noticed with Mr. Hastings is that he did, he created these situations under the guise of some other justification to lead a conversation or to get a -- to prompt a reaction.

To believe Complainant's interpretation, therefore, one must believe not only that the Chief of Staff ignored or marginalized Complainant's allegations for years, but that he actively aided

Representative Hastings in a ploy to sexually harass Complainant. This leap in logic is simply not credible when viewed next to the Chief of Staff's more cogent and reasonable explanation.

Other witnesses interviewed by the Committee provided a similar perspective, stating that while Complainant's allegations arose from circumstances rooted in fact, the operative parts of Complainant's allegations simply did not accord with the witnesses' understanding of events. Put another way, the Committee, despite interviewing witnesses in a position to observe the events related to the allegations, obtained no additional direct testimony corroborating Complainant's allegations, and was left in much the same position as OCE – evaluating the testimony of the Complainant and Representative Hastings against one another.

C. REPRESENTATIVE HASTINGS' TESTIMONY

Representative Hastings appeared before OCE during its inquiry, and Committee staff interviewed him with the Chairman and Ranking Member present. Representative Hastings' statements in both forums were consistent. Specifically, Representative Hastings stated that he has never had a physical or personal relationship with Complainant, and has never expressed a sexual or physical interest in Complainant. He stated that the events Complainant described in which he allegedly propositioned Complainant, or asked to visit her living quarters, or invited her to his hotel room, simply never happened. He stated that, far from taking action to retaliate against Complainant after she made her allegations, he urged the Chief of Staff to approve every travel request she made, and was careful to make clear to Complainant that he was satisfied with her performance. He admitted that he hugged Complainant "every time she said I did," but stated that these hugs were not intimate or sexual in nature; rather, Representative Hastings noted that hugs are his preferred form of greeting for everyone male or female, and that he did not press his body against Complainant or touch her sexually during any of those hugs. Other than Complainant, none of the witnesses that the Committee interviewed contradicted Representative Hastings' testimony on these matters, and a number of witnesses confirmed his statements in their own recollection.

Representative Hastings did admit that he made two comments that the Committee found to be less than professional. First, Representative Hastings admitted that while in a car with Complainant and a driver on the way to the International Atomic Energy Agency (IAEA) in Vienna in 2008, he stated that he had difficulty sleeping after sex. Representative Hastings noted that this comment was part of a nearly 45-minute conversation between himself and Complainant, and that the topic came up because he was tired. Representative Hastings noted that Complainant went on in the conversation, talking about how she danced in her apartment when she was unable to sleep. Representative Hastings noted that he did not at this time, nor at any other time, ask Complainant to have sex, but was talking to Complainant casually because he considered her a friend.

Representative Hastings also admitted that, on the same 2008 trip to Vienna, while in the bar at the Marriott hotel, he stated that he could not understand how male and female Members of Congress, but especially female Members, can stay in their own clothing, specifically their underwear, for 16 hours at a time. Representative Hastings noted that this conversation was part

of a three to four hour social gathering with a number of other Helsinki Commission staffers, including Complainant, as well as other American and foreign officials. He explained that he had drank at least two double Courvoisier cocktails over this period. Representative Hastings stated that he had moved into a home in the Capitol Hill neighborhood of Washington, D.C., away from his previous home in Alexandria, Virginia, and was explaining to the group that his move was motivated in part by a desire to be able to shower and change in the middle of a long congressional session. He noted that he has made this observation on a number of other occasions to other individuals. However, he stated that, contrary to Complainant's allegations, he did not follow that observation by asking Complainant what kind of underwear she was wearing. He admitted that, looking back on the conversation, he regretted making the comment.¹²

D. THE CAA AND HOUSE RULE XXIII, CLAUSE 9

Sexual harassment is strictly prohibited by the Code of Official Conduct¹³ as well as the CAA, which made Congress subject to a number of federal laws governing employee rights in the workplace – including Title VII of the Civil Rights Act of 1964.¹⁴ Furthermore, several years prior to enactment of the CAA, the Committee found that a member who had sexually harassed two employees on his personal staff had violated House Rule XXIII, clause 9, under which a Member “... may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual”¹⁵

Under current applicable law and precedent, a claimant may demonstrate harassment “in either of two circumstances: the grant or denial of an economic *quid pro quo* in exchange for sexual favors, or discrimination that has created a hostile or abusive work environment.”¹⁶ “The gravamen of a *quid pro quo* claim is that a tangible job benefit or privilege is conditioned on an employee's submission to sexual black-mail and that adverse consequences follow from the employee's refusal.”¹⁷ Where the actions of an employer do not rise to an explicit *quid pro quo*, sexual acts by a supervisor may nevertheless be actionable where the “workplace is permeated

¹² Representative Hastings also admitted telling Complainant that she “looked nice” while on a trip to Kazakhstan in 2008. He explained that he made this comment upon seeing Complainant in the CODEL room, and that it was a pleasantry, not accompanied by any other comments about Complainant's appearance or comments of a sexual or intimate nature.

¹³ *House Ethics Manual (Ethics Manual)* at 268-69 (2008) (citing House Rule XXIII, cl. 9).

¹⁴ *Id.* at 269-70.

¹⁵ *In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101st Cong. 1st Sess. 8-10 (1989).

¹⁶ *Gary v. Long*, 59 F.3d 1391, 1395 (D.C. Cir. 1995) (citations omitted); *see also Bates*, H. Rep. 101-293 at 10 (defining sexual harassment, by reference to Equal Employment Opportunity Commission regulation, as “when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment”).

¹⁷ *Gary*, 59 F.3d at 1395 (citation omitted).

with discriminatory intimidation, ridicule, and insult” and these behaviors are “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.”¹⁸ In addition to a direct claim of sexual harassment on either of these two grounds, a claimant may have a claim for retaliation where she can demonstrate “(1) that [s]he opposed a practice made unlawful by Title VII; (2) that the employer took a materially adverse action against [her]; and (3) that the employer took the action ‘because’ the employee opposed the practice.”¹⁹

The facts in the record in this case do not support a finding that sexual harassment occurred under any of these definitions. While Complainant alleged that Representative Hastings sexually propositioned her, and alleged that those propositions carried the implication that her acceptance or refusal would have consequences professional consequences for Complainant, the Committee found no evidence of these alleged propositions or *quid pro quos* save Complainant’s own testimony. Moreover, to the extent that the written materials and the testimony of third parties illuminated the circumstances surrounding Complainant’s allegations at all, it mostly served to exonerate Representative Hastings of these charges. In short, the evidence does not support these allegations, much less prove them.

Complainant’s allegations of a hostile work environment face similar weaknesses. While it is true that Representative Hastings admitted to making two comments that troubled the Committee (and which this Report analyzes below), the allegations supported by the evidence, without more, do not constitute sufficiently pervasive or severe conduct to render the work environment discriminatory. And the evidence tended to show that the occasions on which Representative Hastings touched Complainant were not sexual or intimate in nature.

Finally, Complainant’s claims of retaliation also fail. Not only are her allegations in this regard not supported by the evidence (insofar as there is no evidence that Complainant reported her allegations to her superiors before January 2010), the Committee cannot find even a theoretical basis for concluding that they would constitute actionable retaliation. Many of Complainant’s retaliation claims revolve around the delay in her return to Washington from Vienna in 2010, and requests to travel while she remained in Vienna, for which she alleged that the Chief of Staff delayed approval. As the United States District Court stated in an opinion dismissing part of Complainant’s suit, “Reluctance to approve travel requests that are subsequently approved is not the type of action that ‘could well dissuade a reasonable worker from making or supporting a charge of discrimination.’”²⁰

¹⁸ *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); see also *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013) (per curiam).

¹⁹ *McGrath v. Clinton*, 666 F.3d 1377, 1380 (D.C. Cir. 2012).

²⁰ No. 11-cv-485, Docket # 60 at 9 (June 7, 2013) (order granting, in part, Defendant’s motion for judgment on the pleadings) (citations omitted).

E. HOUSE RULE XXIII, CLAUSE 1 AND 2

As stated in previous reports, the Committee observes two basic principles when applying the first two clauses of the Code of Conduct. First, Members must at all times act in a manner that reflects creditably upon the House. This standard was created to provide the Committee “the ability to deal with any given act or accumulation of acts which, in the judgment of the [C]ommittee, are severe enough to reflect discredit on the Congress.”²¹ Clause 1 “encompass[es] violations of law and abuses of one’s official position.”²² It is a “purposefully ... subjective” standard.²³ In fact, misconduct of the sort alleged in this case could violate clauses 1 or 2 without forming the basis for a more formal violation of clause 9 or the CAA. The Committee has previously found that a Member who committed sexual harassment violated Clause 1.²⁴

Second, the Committee notes the proposition that the Code of Conduct and other standards of conduct governing the ethical behavior of the House community are not criminal statutes to be construed strictly, but rather – under clause 2 of House Rule XXIII – must be read to prohibit violations not only of the letter of the rules, but of the spirit of the rules. Ethical rules governing the conduct of Members were created to assure the public of “the importance of the precedents of decorum and consideration that have evolved in the House over the years.”²⁵ The standard “provide[s] the House with the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.”²⁶ The practical effect of Clause 2 is to allow the Committee to construe ethical rules broadly, and prohibit Members, officers and employees of the House from doing indirectly what they would be barred from doing directly. The *Ethics Manual* states that “a narrow technical reading of a House Rule should not overcome its ‘spirit’ and the intent of the House in adopting that and other rules of conduct.”²⁷

Applying these principles to this case is difficult. If the Committee had found a substantial reason to believe that Representative Hastings had engaged in the more egregious allegations leveled by Complainant, it would be an easier matter. If proven, those allegations would almost certainly constitute a series of violations of House Rules, federal statutes, and other standards of conduct, and the Committee would not hesitate to take action against such violations.

²¹ 114 Cong. Reg. 8778 (Apr. 3, 1968) (Statement of Representative Price).

²² *Ethics Manual* at 16.

²³ 114 Cong. Reg. 8778 (Apr. 3, 1968) (Statement of Representative Price).

²⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gus Savage*, H. Rept. 101-397, 101st Cong. 2d Sess (1990).

²⁵ Homse Comm. on Standards of Official Conduct, *Report under the Authority of H. Res. 418*, H. Rept. 90-1176, 90th Cong. 2d Sess. 17 (1968).

²⁶ 114 Cong. Reg. 8778 (Apr. 3, 1968) (Statement of Representative Price).

²⁷ *Ethics Manual* at 17 (citing House Select Comm. on Ethics, *Advisory Opinion No. 4*, H. Rept. 95-1837, 95th Cong. 2d Sess. app. 61 (1979)).

But that is not this case, based on the record before the Committee following a lengthy and thorough investigation of the allegations. Indeed, Complainant's credibility is strained by the incongruity of her own statements when placed in context. Without more, the Committee cannot believe Complainant's version of events, and so not only is there not sufficient proof of sexual harassment, there is also not sufficient proof of violations of clauses 1 and 2 of the Code of Conduct. Nor is there sufficient proof of retaliation against Complainant.

Despite the fact that the conduct in this case does not rise to the level of actionable violations of the rules, the Committee does not want to leave the impression that Representative Hastings' behavior was at all times appropriate. He admitted to some conduct that, while not wrongful *per se*, certainly could be misunderstood. For example, Representative Hastings admitted that he hugged Complainant on a number of occasions. It is true that a hug, on its own, is not sexual harassment, and that a number of witnesses testified that (1) Representative Hastings hugs many people frequently; (2) when hugging others (including Complainant), Representative Hastings did not place his hands or body in such a fashion that indicated the hug was sexual or intimate in nature; and (3) given Representative Hastings' work with Complainant often occurred in Europe, such contact was within the customary forms of greeting for the relevant locale. Nevertheless, hugging is not the most professional way to greet coworkers, and different individuals have different comfort levels for touching others.

Similarly, Representative Hastings admitted to making two comments in the presence of Complainant: one about not being able to sleep after sex, and another about female Members of Congress wearing the same underwear all day. It is true that Complainant attempted to make more of these comments than appears to be supported by the evidence, and that on their own, they do not constitute sexual harassment. Nevertheless, the Committee finds it concerning that in the year 2014 it has to remind a Member that such comments show poor judgment.

So long as the office environment complies with House Rules, laws, and other standards of conduct, the Committee is not in the business of regulating that office environment for each of the nearly 500 separate employers in the House. At the same time, the Committee fervently hopes that those employers, charged as they are with the duty of upholding the honor of this august institution, would be an example for how workplaces should function professionally in the modern world. While the conduct proven in this case does not constitute misconduct violating the standards under the Committee's jurisdiction, it is far from perfectly professional. The Committee advises Members and others in a supervisory role to scrupulously avoid even the impression of a workplace tainted by sexism.

V. CONCLUSION

The OCE Referral that began this investigation did not find "substantial reason to believe" the allegations in question. Instead, because OCE was unable to obtain certain information – specifically, statements from four witnesses that it identified as non-cooperative – OCE referred the matter to the Committee based on a lower "probable cause" standard. The Committee interviewed all four of those witnesses, who fully cooperated with the Committee as part of its own thorough investigation, and did not find any proof of the allegations beyond what

OCE had already discovered. In fact, the Committee's investigation revealed additional evidence that cast further doubt on Complainant's claims. The Committee's review took time, given that the allegations were so serious and that litigation was ongoing in federal court. But it could not find evidence of the critical facts underlying Complainant's contentions. Without such evidence, the Committee cannot conclude that further action is warranted, and so upon the issuance of this Report, considers the matter closed.

VI. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.