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**U.S. House of Representatives**  
**Committee on Standards of Official Conduct**  
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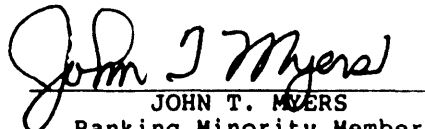
March 8, 1990

Attached is the Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Representative Newt Gingrich. The Statement was approved by the Committee on March 7, 1990, and emanates from the Committee's analysis of complaints against Representative Gingrich submitted by Representative Bill Alexander.

While the Committee historically has not issued documents such as this at this stage of its proceedings -- analyses regarding whether to initiate a Preliminary Inquiry -- it is the Committee's view that doing so in the present matter is appropriate for a number of reasons. First, outside counsel was employed to assist the Committee in analyzing many of the allegations contained in the complaints. Second, there has been considerable media and other attention devoted to the complaints. Accordingly, this document reflects the Committee's decision to make full public disclosure of its deliberations and the reasons underlying the determinations made regarding the complaints.

The attached Statement includes: A discussion of all allegations submitted by Representative Alexander; all laws, rules, regulations, or other standards of conduct raised by the complaints; a detailed analysis of issues presented; and an explanation of the Committee's decisions relevant to each count in the complaints.

  
\_\_\_\_\_  
JULIAN C. DIXON  
Chairman

  
\_\_\_\_\_  
JOHN T. MYERS  
Ranking Minority Member

Attachment

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

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**U.S. House of Representatives**

**COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT**

**Washington, DC 20515**

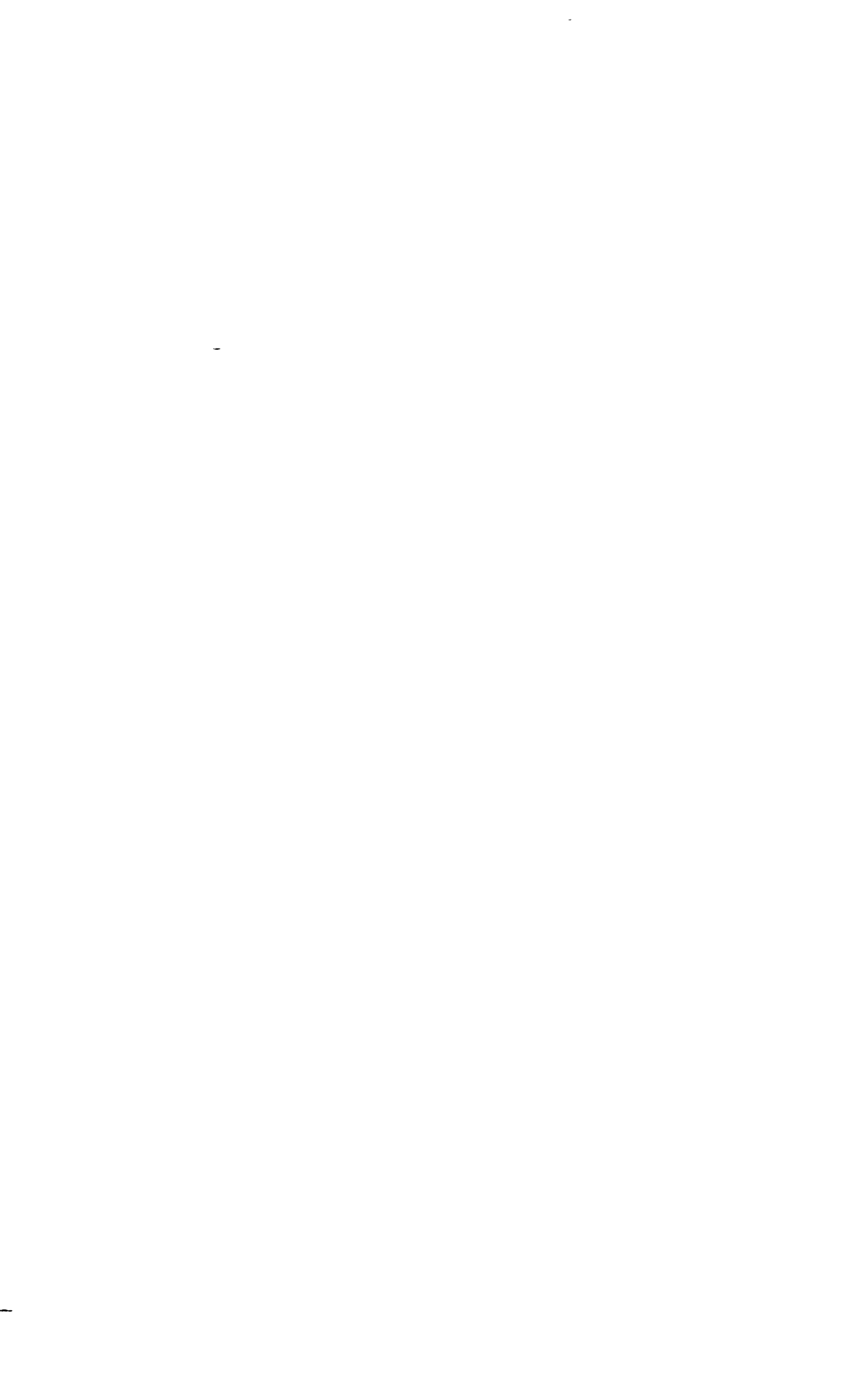
**STATEMENT**

**OF THE**

**COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT**

**REGARDING COMPLAINTS AGAINST REPRESENTATIVE NEWT GINGRICH**

**March 8, 1990**



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#### ATTACHMENTS

- A. Phelan, Pope & John, Ltd. analysis of allegations against Representative Newt Gingrich, October 17, 1989.
- B. Committee letter to Representative Newt Gingrich posing questions related to the first complaint and amendment, October 24, 1989.
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- D. Committee letter to Representative Newt Gingrich regarding issues raised during its review of the complaints against him, March 8, 1990.

**STATEMENT OF THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
REGARDING COMPLAINTS AGAINST REPRESENTATIVE NEWT GINGRICH**

**March 8, 1990**

**I. BACKGROUND and CHRONOLOGY**

**A. FIRST COMPLAINT AND AMENDMENT**

On April 11, 1989, Representative Bill Alexander submitted a complaint to the Committee on Standards of Official Conduct (the Committee) against Representative Newt Gingrich. The complaint, organized into 10 counts, was sworn to by Representative Alexander as true and correct, "based on information and belief." Appended to the complaint, and explicitly incorporated as part of it, were three newspaper articles, a letter posing questions to Representative Gingrich from Representatives Barney Frank, Martin Sabo, and Lawrence Smith, and a floor statement by Representative Alexander. The complaint centered on the COS Limited Partnership, created in 1984 to promote Representative Gingrich's book, Window of Opportunity.

The complaint was examined by staff and found to be in proper form under House and Committee rules. Accordingly, the complaint was filed with the Committee on May 4, 1989, pursuant to Committee Rule 10(a)(3).

On April 24, 1989, in response to press reports that Representative Alexander had filed a complaint against him, Representative Gingrich submitted to the Committee nearly 500 pages of documentation relating to the publication and promotion of Window of Opportunity and the COS Limited Partnership. Included were materials regarding establishment of the COS Limited Partnership, detailed annual financial performance summaries and tax records, the book contract itself, and the names of all of the partners. Representative and Mrs. Gingrich prepared written answers to a number of questions.

A June 13, 1989, staff memorandum reviewed the complaint against Representative Gingrich and presented a preliminary analysis. In summary, the staff analysis noted that: Many of Representative Alexander's allegations were conjectural; certain charges were not supported by facts and appeared to be more in the nature of speculation; in other instances, the complaint advanced unusual legal arguments; and in certain respects, facts were presented which, even if true, did not constitute violations of applicable standards based upon prior Committee interpretations. Staff expressed the view that the complaint did not appear to meet the standards in Committee rules for proceeding with a Preliminary Inquiry.

On July 14, 1989, Representative Alexander filed an Amendment to his original complaint, comprised of 13 charges. The original allegations of improper conduct were largely reiterated in the Amendment, although certain new issues were raised. The Amendment still focused, however, on the COS Limited



Partnership and Window of Opportunity. Five additional newspaper and magazine articles were also submitted.

While the complaint was placed on the agenda of a Committee meeting, the Committee did not take any formal action. The Committee reasoned that additional time was needed to review Representative Gingrich's April 24, 1989, response. During this review period, the July 14, 1989, Amendment from Representative Alexander was submitted.

The complaint and Amendment were considered by the Committee at its meeting of July 20, 1989, at which time staff presented a preliminary analysis. Staff expressed the view that an adequate basis for initiating a Preliminary Inquiry had not been demonstrated. The Committee decided that the materials should be given additional analysis. After discussion, the Committee resolved to enter into a contract with the firm of Phelan, Pope & John, Ltd., of Chicago, Illinois, to obtain such legal assistance. This action was publicly announced by the Committee on July 25, 1989.

The contract, which was subsequently approved by the Committee on House Administration, provided for the law firm to render legal assistance to the Committee for the specific purposes of providing its independent analysis of the complaint and associated materials, and its recommendation whether, based upon the documents, a Preliminary Inquiry should be commenced. The firm thereafter began its review of Representative Alexander's April 11, 1989, complaint and July 14, 1989, Amendment, the April 24, 1989, response from Representative

Gingrich, Financial Disclosure Statements filed by Representative Gingrich pursuant to the Ethics in Government Act of 1978 for calendar years 1978-1988, various relevant news articles relating to Representative Gingrich, and a copy of Window of Opportunity.

On October 5, 1989, Representative Alexander wrote to the Committee expressing "concern that the investigation was not progressing at a satisfactory pace," and asked for a report on the work being performed by Phelan, Pope & John, Ltd. He further stated that he had retained a private attorney to assist him "in the investigation of this matter." He enclosed a report from the attorney which stated, among other things, that he could not "find evidence of any investigative effort by the Committee." This statement was, of course, correct, since the Committee had not voted to initiate a Preliminary Inquiry but, instead, was proceeding in an analysis of the complaint materials. This course of action was entirely appropriate under the Committee's Rules of Procedure.

The report of Representative Alexander's attorney also addressed, in part, allegations against Representative Gingrich which were not included in Representative Alexander's complaint or Amendment. Accordingly, the Committee acknowledged its receipt of the letter from Representative Alexander, but took no substantive action on it. Furthermore, Representative Alexander was informed that his request for information on the Committee's deliberations was inappropriate under controlling House and Committee rules. Because Representative Alexander's October 5, 1989, letter was released to the public, the Committee decided to

make public its October 10, 1989, response, described above, in order to avoid any confusion on the matter.

On October 17, 1989, Phelan, Pope & John, Ltd. formally submitted to the Committee its "Analysis of Allegations Against Representative Newt Gingrich." The next day, October 18, 1989, representatives of the firm made a detailed presentation to the Committee summarizing the results of the law firm's legal analysis. That document is included as Attachment A to this Committee Statement.

The law firm reviewed, in detail, each of the allegations in the light of applicable standards of conduct. The law firm concluded that, in all but one instance, the allegations in Representative Alexander's complaint and Amendment "fail to state facts which, even if assumed to be true, constitute violations of the Code of Official Conduct or any law, rule, regulation or other standard of conduct." Even with respect to the one count that "even arguably states a violation," the firm stated its belief that, in view of corrective action which had been taken by Representative Gingrich, "the Committee may reasonably determine that the issue does not merit further inquiry."

After consideration and discussion of the Phelan, Pope & John, Ltd. report, the Committee determined that there were certain factual issues which warranted clarification. To this end, the Committee sent a letter to Representative Gingrich on October 24, 1989, requesting a written response to a number of questions, as well as certain additional documentation. The Committee's letter of inquiry is included as Attachment B to this Committee Statement.

On October 25, 1989, during the pendency of the Committee's information request to Representative Gingrich, Representative Alexander submitted to the Committee two volumes, consisting of 450 pages, of "additional materials and supporting documents" said to relate to his complaint and the Amendment thereto. Included were numerous news reports, selected data from Federal Election Commission (FEC) records and Financial Disclosure Statements filed by Representative Gingrich, correspondence either sent by or referring to Representative Gingrich, and copies of documents previously provided the Committee by Representative Gingrich on April 24, 1989.

Much of the information in Representative Alexander's October 25th submission had already been considered by Phelan, Pope & John, Ltd. and Committee staff. Review of these materials established that many of the news articles were repetitive and that a significant portion of the submission, including nearly all of Volume II, were unrelated to the original complaint and Amendment. New allegations regarding Representative Gingrich were raised for the first time. For example, some items, such as fundraising appeals by Representative Gingrich critical of congressional ethics, did not appear to relate to any specific allegation contained in the original or amended complaint.

The response from Representative Gingrich to the questions posed by the Committee was received on November 9, 1989. Included was additional information and documentation regarding operation of the COS Limited Partnership and promotion of Window of Opportunity. Also addressed were Representative Gingrich's

relationships to investors in the partnership, and the use of official resources. The text of the congressman's November 9, 1989, response, not including the several hundred pages of documentation submitted as attachments, is included as Attachment C to this Committee Statement.

The counts and charges in Representative Alexander's first complaint and Amendment against Representative Gingrich may be summarized as follows:

COUNT I: Because the book, Window of Opportunity, was not promoted normally, royalties should be treated as earned income, placing Representative Gingrich in violation of the 30-percent limit on outside earned income imposed by Rule XLVII.

COUNT II and Amendment Charge 4: Because the purpose of the COS Limited Partnership was to earn money for the Gingriches, partner contributions should be treated as gifts, possibly violating Rule XLIII, clause 4.

COUNT III and Amendment Charge 2: The solicitation of limited partners should be treated as a Gingrich campaign fundraising activity under Rule XLIII, clause 7.

COUNTS IV & V and Amendment Charges 5, 6, & 7: Receipt by Mrs. Gingrich of a \$10,000 general partner's fee and a 2-percent partnership interest should be treated as gifts to Representative Gingrich, possibly subject to Rule XLIII, clause 4.

COUNT VI: If the cost to solicit limited partners was paid for by campaign funds, there could be a conversion to personal use in violation of Rule XLIII, clause 6.

COUNT VII: If the solicitations were paid for by official resources, government funds were misapplied.

COUNT VIII and Amendment Charge 11: Use of congressional staff to help on the book was a misuse of government resources.

COUNT IX and Amendment Charges 8 & 9: Bulk sales of the book might not be a bona fide purchase and could be a gift subject to Rule XLIII, clause 4.

COUNT X and Amendment Charge 10: Representative Gingrich did not report reimbursements for book-related travel on his Financial Disclosure Statements.

Amendment Charge 1: Funds from a 1977 book partnership

involving Representative Gingrich, before he came to Congress, were used for political and personal purposes. This is "evidence of a continuing course of questionable and possibly illegal conduct of which the 1984 agreement" is a part.

Amendment Charge 3: The book partnership was an "impermissible tax avoidance measure" violating I.R.S. rules and benefiting Gingrich.

Amendment Charges 12 & 13: Use of the Capitol for a promotional event for the book was an improper use of government property; reference to the Capitol event in partnership solicitation documents was an improper use of position.

B. SECOND COMPLAINT

On October 25, 1989, Representative Bill Alexander submitted a second formal complaint against Representative Newt Gingrich to the Committee. The complaint, comprised of 120 pages with attachments, raised new allegations against Representative Gingrich not included in Representative Alexander's first complaint or the Amendment thereto.

The complaint was sworn to by Representative Alexander as true and correct "based upon information and belief, as opposed to first hand knowledge." After the complaint was examined by staff and found to be in proper form under House and Committee rules, it was filed with the Committee on November 3, 1989, pursuant to Committee Rule 10(a)(3). (Nonetheless, the complaint was discussed at the October 31, 1989, Committee meeting and action deferred thereon.)

The complaint was comprised of 467 counts. However, the charges actually related to only eight "incidents" (the term used by Representative Alexander). For each incident, Representative Alexander charged multiple violations of various standards of conduct by Representative Gingrich.

Although the Committee did not publicly acknowledge receipt of the October 25, 1989, complaint, it was the subject of media attention. On November 9, 1989, when responding to the questions posed by the Committee relating to the first complaint against him, Representative Gingrich also submitted information related to the second complaint.

The eight incidents underlying the charges in the second complaint are summarized below, followed by a list of the rules and statutes which Representative Gingrich is alleged to have violated in each. As noted, the same standards are asserted to apply to several or all of the incidents. (For example, each of the eight incidents is said to involve a violation of House Rule XLIII, clauses 1 and 2.)

1. INCIDENTS UNDERLYING SECOND COMPLAINT

Incident 1. Representative Gingrich improperly expended campaign funds in 1986 by commissioning political advertisements on behalf of, and borrowing money to assist, the campaign of Senator Mack Mattingly. (Counts 1-3.)

Incident 2. Representative Gingrich improperly used official resources in 1986 by sending out a letter promoting a senior citizens' cruise sponsored by Marathon Travel Company. (Counts 4-15.)

Incident 3. Representative Gingrich improperly used official resources in 1982 by writing to some 40 newspapers asking them to publish columns about military affairs written by Mr. Mike Bressler, an employee of a company in his congressional district. (Counts 16-445.)

Incident 4. Representative Gingrich acted improperly when he assisted Mr. Chester Roush, a campaign contributor and business associate, with Federal agencies, but failed to provide similar assistance to another constituent. (Counts 446-449.)

Incident 5. Representative Gingrich failed to properly report on his Financial Disclosure Statements a house he purchased with his daughter and the mortgage on that property. (Counts 450-458.)

Incident 6. Representative Gingrich improperly used the mail on behalf of Conservatives for Hope and Opportunity, a political action committee, because most of the money raised did not go to support conservative candidates. (Counts 459-460.)

Incident 7. Representative Gingrich was a party to the improper use of House facilities when he and nine other Members distributed a book, House of Ill Repute, from the office of then-Representative Joseph DioGuardi. (Counts 461-464.)

Incident 8. Representative Gingrich improperly used campaign funds in 1988 when his political advertisements advocated defeat of a proposed state constitutional amendment which was on the ballot. (Counts 465-467.)

2. STANDARDS ALLEGED TO HAVE BEEN VIOLATED

Incident 1 (Campaign assistance to Senator Mattingly)

- House Rule XLIII, cl. 1 - Reflecting discredit on the House
- House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules
- House Rule XLIII, cl. 6 - Proper use of campaign funds
- 2 U.S.C. §434 - Reporting of campaign receipts and disbursements
- 2 U.S.C. §441a - Limits on campaign contributions & expenditures

Incident 2 (Mailing on behalf of Marathon Travel seniors cruise)

- House Rule XLIII, cl. 1 - Reflecting discredit on the House



House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules  
 House Rule XLIII, cl. 8 - Employees to perform commensurate with pay  
 House Rule XLIII, cl. 11 - No private use of official terms  
 House Rule XLVI, cl. 3 - Approval of postal patron mail  
 18 U.S.C. §713 - Improper use of the Great Seal  
 18 U.S.C. §1719 - Misuse of the frank for private purposes  
 31 U.S.C. §1301(a) - Misapplication of appropriated funds  
 39 U.S.C. §3210(a)(4) and (5) - Franking prohibitions on Congress  
 40 U.S.C. §193d - No commercial solicitation on Capitol grounds  
 40 U.S.C. §193m-1 - Audits of private groups using the Capitol

Incident 3 (Letter asking newspapers to publish military column)

House Rule XLIII, cl. 1 - Reflecting discredit on the House  
 House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules  
 House Rule XLIII, cl. 8 - Employees to perform commensurate with pay  
 House Rule XLIII, cl. 11 - No private use of official terminology  
 House Rule XLVI, cl. 3 - Approval of postal patron mail  
 18 U.S.C. §713 - Improper use of the Great Seal  
 18 U.S.C. §1719 - Misuse of the frank for private purposes  
 31 U.S.C. §1301(a) - Misapplication of appropriated funds  
 39 U.S.C. §3210(a)(4) and (5) - Franking prohibitions on Congress  
 40 U.S.C. §193d - No commercial solicitation on Capitol grounds

Incident 4 (Official assistance provided to Chester Roush)

House Rule XLIII, cl. 1 - Reflecting discredit on the House  
 House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules  
Ethics Manual, ch. 9 - Communications with government agencies --  
 Code of Ethics for Government Service, ¶5 - No special favors

Incident 5 (Disclosure of property purchased with daughter)

House Rule XLIII, cl. 1 - Reflecting discredit on the House  
 House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules  
 2 U.S.C. §102 - Disclosure of transactions, holdings, liabilities  
 2 U.S.C. §106 - Attorney General's authority for civil actions

Incident 6 (Solicitation for Conservatives for Hope and Opportunity)

House Rule XLIII, cl. 1 - Reflecting discredit on the House  
 House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules  
 39 U.S.C. §3005 - False representations to obtaining money by mail

Incident 7 (Distribution of private book from House office building)

- House Rule XLIII, cl. 1 - Reflecting discredit on the House
- House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules
- 2 U.S.C. §42 et seq. - Postage stamp allotments for Congress
- 31 U.S.C. §1301(a) - Misapplication of appropriated funds

Incident 8 (Advocating defeat of state constitutional amendment)

- House Rule XLIII, cl. 1 - Reflecting discredit on the House
- House Rule XLIII, cl. 2 - Adhering to the spirit and letter of the rules

**II. PERTINENT RULES, STATUTES, and OTHER STANDARDS**

The laws, rules, statutes, and other standards of conduct in effect at the time of Representative Gingrich's alleged improper conduct and which are relevant to Representative Alexander's complaints (either based on assertions in the complaints, or as independently determined by the Committee) are set forth below.

**A. RULES OF THE HOUSE OF REPRESENTATIVES**

**House Rule XLIII - Code of Official Conduct**

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

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.

4. A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of \$50 or less) in any calendar year aggregating \$100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by

such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

\* \* \* \*

6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.

7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events.

8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

\* \* \* \*

11. A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States", "House of Representatives", or "Official Business", or any combination of words thereof, on any letterhead or envelope.

House Rule XLIV, clause 2 - Financial Disclosure

For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the House as it pertains to Members, officers, and employees of the House of Representatives.

House Rule XLVII - Limitations on Outside Earned Income

1. (a) Except as provided by paragraph (b), no Member may, in any calendar year beginning after December 31, 1978, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

\* \* \* \*

3. For the purposes of this rule --

\* \* \* \*

(d) The term "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for

personal services actually rendered \* \* \* .

House Rule XLVI, clause 3 - Limitations on Use of the Frank

Any Member entitled to mail franked mail under section 3210(d) of title 39, United States Code, shall, before making any such mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether such proposed mailing is in compliance with the provisions of such section.

**B. CODE OR ETHICS FOR GOVERNMENT SERVICE, paragraph 5**

Any person in Government service should:

\* \* \* \*

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

**C. COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
ADVISORY OPINION NO. 1, Issued January 26, 1970  
(Ethics Manual, pages 175-177)**

**Principles To Be Observed  
When Communicating with an Executive or Independent Agency**

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

**D. FEDERAL LAWS AND STATUTES**

**2 U.S.C. §42 - Postage**

(a) In addition to postage stamps authorized to be

furnished under any other provision of law, until otherwise provided by law, the Clerk of the House of Representatives shall procure and furnish United States postage stamps (1) to each Representative, the Resident Commissioner of Puerto Rico, and the Delegate from the District of Columbia in an amount not exceeding \$210. \* \* \*

\* \* \* \*

(c) There shall be paid out of the contingent fund of the House of Representatives such sums as may be necessary to carry out this section.

2 U.S.C. §102 - Contents of Financial Disclosure Reports

(a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement of the following:

\* \* \* \*

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating \$5,000 or less in a personal savings account. \* \* \*

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed \$10,000 at any time during the preceding calendar year, excluding -

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; \* \* \*

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1,000 -

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse or dependent children.

2 U.S.C. §106 - Failure to File or Falsifying Reports

The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.

2 U.S.C. §431(8)(A) - Definition of Contribution (FECA)

The term "contribution" includes -- (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

2 U.S.C. §434 - Reporting Requirements (FECA)

(a) Receipts and disbursements by treasurers of political committees; filing requirements.

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

\* \* \* \*

(b) Contents of reports. Each report under this section shall disclose -

\* \* \* \*

(4) For the reporting period and the calendar year, the total amount of all disbursements.

\* \* \* \*

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee.

2 U.S.C. §441a - Limitations on Contributions and Expenditures

(a) Dollar limit on contributions

(1) No person shall make contributions -

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate exceed \$1,000; \* \* \*

**2 U.S.C. §441b(a) - Contributions or Expenditures**

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section \* \* \* .

**18 U.S.C. §713(a) - The Great Seal of the United States**

Whoever knowingly displays any printed or other likeness of the great seal of the United States \* \* \* or any facsimile thereof \* \* \* on any \* \* \* stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsoring or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined not more than \$250 or imprisoned not more than six months, or both.

**18 U.S.C. §1719 - Franking Privilege**

Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than \$300.

**26 U.S.C. §165(c) - Limitation on Losses (Internal Revenue Code)**

In the case of an individual, the deduction [for uncompensated losses] shall be limited to \* \* \* losses incurred or any transaction entered into for profit \* \* \* .

**26 U.S.C. §212 - Expenses for Production of Income**

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year -

- (1) for the production or collection of income;
- (2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

26 U.S.C. §262 - Personal, Living, and Family Expenses

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

31 U.S.C. §1301(a) - Application of Appropriations

Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

39 U.S.C. §3005(a) - False Representations

Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations \* \* \* the Postal Service may issue an order which -

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representatives, to return such mail to the sender . . . and

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note.

39 U.S.C. §3210(a) Franked Mail Transmitted by Congress

(4) It is the intent of Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail -

(A) Mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of \* \* \* Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member \* \* \* .

(B) mail matter which constitutes or includes -



(i) greetings \* \* \* unless it is a brief reference in otherwise frankable mail;

(ii) reports on how or when such Member \* \* \* spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member \* \* \* or

\* \* \* \*

(C) mail matter which \* \* \* solicits political support \* \* \* or financial assistance for any candidate \* \* \* .

40 U.S.C. §193a - United States Capitol Grounds

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks and other areas as defined on a map \* \* \* dated June 25, 1946, approved by the Architect of the Capitol \* \* \* .

40 U.S.C. §193d - Sales and Solicitations, Capitol Grounds

It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, or subscriptions, or contributions therein.

40 U.S.C. §193m-1 - Audit for Private Organizations

Any private organization, except political parties and committees constituted for election of Federal officials, whether or not organized for profit and whether or not any of its income inures to the benefit of any person, which performs services or conducts activities in or on the United States Capitol Buildings or Grounds, as defined by or pursuant to law, shall be subject, for each year in which it performs such services or conducts such activities, to a special audit of its accounts which shall be conducted by the General Accounting Office. The results of such audit shall be reported by the Comptroller General to the Senate and House of Representatives.

E. SENATE REGULATIONS ON USE OF FACILITIES

The Senate Committee on Rules and Administration has jurisdiction over assignment and use of space in the Senate Office Buildings, the Senate Wing of the Capitol, and the Courtyard of the Russell Building. \* \* \*

The following regulations have been established for use by all offices in the assignment of their rooms:

1. Rooms are available only for Senate-related business \* \* \* .

\* \* \* \*

9. \* \* \* No products may be sold on the premises or displayed for future sale. No campaigns, fundraising, commercial, or profit-making purpose may be served by the use of Senate space. The Senator sponsoring the function will be held accountable for the enforcement of this regulation.

### III. ANALYSIS

#### A. FIRST COMPLAINT AND AMENDMENT

##### 1. FACTS UNDERLYING THE COMPLAINT

The following are the facts underlying the first complaint and Amendment, as set out in Representative Alexander's submissions, including the materials incorporated by reference.

In 1984 Representative Gingrich co-authored with his wife, Marianne Gingrich, and Mr. David Drake, a nonfiction book entitled Window of Opportunity.

Representative Gingrich received assistance in preparing the book from individuals on his congressional staff. Reportedly, the congressman asked staff members, including his then-administrative assistant, Mr. Frank Gregorsky, to read chapters and offer suggestions.

The book was published by Baen Enterprises, headed by Mr. Jim Baen, which usually publishes science fiction and high technology books. A contract was signed with Baen Enterprises, under which Representative Gingrich, Mrs. Gingrich, and Mr. Drake were to share a "standard" royalty of 10 percent of the hardcover sales. Representative and Mrs. Gingrich were to get 80 percent of the royalties, and Mr. Drake was to get 20 percent. Representative and Mrs. Gingrich each received a \$5,000 advance, while Mr. Drake received \$3,000.

Representative Gingrich formed the COS Limited Partnership for the purpose of promoting sales of the book. The limited partners were 21 individuals from whom Representative and Mrs. Gingrich had solicited \$5,000 each, for a total of \$105,000. A 22nd individual, Ms. Janet Morris, received a limited partnership interest as consideration for editing the book. The limited partners were to receive half of the publisher's profits. Mrs. Gingrich was to serve as a general partner of the COS Limited Partnership. She put no money into the partnership, but received a 2-percent ownership interest, which entitled her to tax benefits.

Representative Gingrich put together the COS Limited Partnership from among "political activists," including donors to his campaign, and business people from around the country whom he had met during a variety of talks. Among the partners were:

Mr. Howard (Bo) Callaway, chairman of GOPAC, a PAC for which Representative Gingrich had actively raised money;

Mr. Joel Cowan, a Georgia developer reportedly active in the state Democratic Party and reported to be a recipient of a 1988 HUD grant of \$200,000;

Mr. James Richards, an executive of Southwire Company, a major employer in Representative Gingrich's district who received a RVA grant of \$1.5 million in 1988.

Promotion of the book began with a reception held in the U.S. Capitol in May 1984. The COS Limited Partnership spent \$70,000 directly promoting and marketing the book, rather than the publisher. (Another \$29,000 went for legal, accounting and related costs, with \$6,000 still available.) This arrangement was reportedly characterized by the publisher as contrary to the

normal industry practice of the publisher promoting and marketing the book. Expenses included payment of promotional travel for Representative Gingrich, media publicity, and the payment of \$10,000 to Mrs. Gingrich for her services as general partner. The book was distributed by St. Martin's Press.

The 272-page hardcover book was priced at \$14.95. The publisher said that 5,000 copies were sold in bulk for \$2.00 each to a conservative book club. Overall, 12,000 hardcover copies and another 17,000 paperback editions were sold. This was enough to cover the advance and a little more.

Because of the modest sales of the book, there were no profits. The partners did, however, receive a tax benefit.

The COS Limited Partnership was not the first book partnership in which Representative Gingrich was involved. In 1977, prior to becoming a Member of Congress, he raised an estimated \$13,000 to finance the writing of a novel. The novel was not written, however. Instead, the funds may have been used by the Gingriches for personal travel, with the partners receiving a tax benefit.

Each of the allegations in Representative Alexander's first complaint and Amendment against Representative Gingrich are analyzed below. Summarized for each assertion of impropriety are the following:

Representative Alexander's allegation;

The Phelan, Pope & John, Ltd. analysis;

Additional information, if any, from:

Representative Alexander's submission of October 25, 1985;

and

Representative Gingrich's response of November 9, 1989.

The Committee's analysis and disposition.

2. COMPLAINT COUNTS AND AMENDMENT CHARGES

a. COUNT I

Representative Alexander's Allegation: Because sales of Representative Gingrich's book, Window of Opportunity, were promoted in an unusual arrangement, the business agreement with the publisher was something other than a royalty contract. Accordingly, the amounts received by Representative Gingrich from book sales were "not properly characterized as royalties" and, therefore, should be treated as outside earned income. Receipt of such income placed Representative Gingrich in violation of House Rule XLVII, which limits the amount of outside earned income a Member may receive to 30 percent of the Member's aggregate yearly congressional salary.

Phelan, Pope & John Analysis: Count I fails to state a violation of House Rule XLVII. The Complaint alleges no facts from which to infer that publisher's payments to Representative Gingrich were not true royalties, or that the publishing contract was not a bona fide royalty contract. Representative Gingrich's alleged payment of book promotion costs does not change royalty income derived from book sales into earned income subject to the limits of the rule.

Advisory Opinion No. 13 of the Select Committee on Ethics states that if amounts received by a Member are for services rendered by the Member, the mere characterization of such money

as unearned income will not prevent application of Rule XLVII. By contrast, in the Wright case, the Committee charged that bulk payments were, in fact, payments for speeches given by Representative Wright, in lieu of standard remuneration. Thus, Representative Wright's "royalties" were earned by the speeches. It is not alleged that Representative Gingrich performed any services for those who purchased the book. Regardless of any unusual partnership arrangement for promoting the book, the facts do not constitute a violation of Rule XLVII.

Additional Information Received: Representative Alexander, in his October 25, 1989, submission, included excerpts from 1988 Writer's Market, Where to Sell What You Write. Included are listings for Baen Publications, St. Martin's Press, and TOR Books, the three entities involved in publishing Window of Opportunity. The information supports their status as legitimate publishing organizations. A letter from Tom Doherty of TOR Books to Representative and Mrs. Gingrich discusses books sales and the fact that returns on the book had been high.

Also included in Representative Alexander's submission was an Atlanta Constitution article of April 27, 1989, which differentiated between Reflections of A Public Man, written by former Speaker Jim Wright, and Representative Gingrich's book, Window of Opportunity.

The Committee questioned Representative Gingrich as to why he and his wife did not receive royalties until 1987, when Window of Opportunity was reportedly on certain best seller lists in 1984. He responded that the delay was occasioned by the

intricacies of the royalty payment process. The publisher first had the right to set off the advance paid. Given the time required for this, and after book returns were accounted for, the first royalty check was not received until January 1987.

Committee Analysis and Disposition: House Rule XLVII, clause 1, limits the amount of outside earned income that a Member of the House of Representatives may accept in a calendar year to 30 percent of the aggregate congressional salary paid to the Member in that year. Clause 3(d), defines outside earned income as follows:

The term "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered \* \* \* .  
[Emphasis added.]

A copyright is "the right of literary property as recognized and sanctioned by positive law." It is an "intangible, incorporeal right" granted to the author or originator of a literary production, carrying with it for a limited period the sole and exclusive privilege of multiplying, publishing and selling copies of the work. See, Black's Law Dictionary, Revised Fourth Edition, at 406. A royalty, in the case of a copyrighted work, is a payment made to the author or composer by an assignee or licensee in respect of each copy of his work which is sold. Id., at 1496.

In its Final Report, the Select Committee on Ethics of the 95th Congress stated that when determining what constitutes earned income, "the facts of each individual case will govern."

House Report No. 95-1837, 95th Cong., 2d Sess. (January 3, 1979), p. 29. This was a summary of the position emphatically taken in the Select Committee's Advisory Opinion No. 13, issued in October 1978:

Real facts controlling. - The limitations imposed by Rule XLVII may not be avoided by the characterization or disposition of any payment for services rendered. In all cases, the real facts will control. . . . Similarly, the label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule \* \* \* .

In short, income may not be recharacterized in order to circumvent the Rule.

Id., at 81-82.

The information received by the Committee supports the conclusion that amounts received by Representative and Mrs. Gingrich, which were characterized as "royalties," were just that. The Committee concurs with the Phelan, Pope & John, Ltd. conclusion that no basis for further Committee action has been demonstrated regarding Count I of the complaint.

b. COUNT II AND AMENDMENT CHARGE 4

Representative Alexander's Allegation: Because the purpose of the COS Limited Partnership was to promote sales of the book and earn money for Representative and Mrs. Gingrich, the \$105,000 contributed by the limited partners "could be said to constitute a gift" to them. Since "it would appear" that the partners had an interest in legislation, Representative Gingrich apparently violated House Rule XLIII, clause 4, which provides that a Member may not accept gifts in a calendar year aggregating \$100 or more



from a source with a direct interest in legislation before the Congress.

Phelan, Pope & John Analysis: Count II fails to state a violation of Rule XLIII, clause 4. The complaint alleges no facts from which it may be inferred that partners' investments were gifts to Representative Gingrich. The complaint acknowledges that partnership funds were not given to Representative Gingrich, but to the publisher for advertising costs. The royalty contract was totally separate from the partnership promotional contract.

The complaint does not allege (nor is there any information suggesting) that Baen Enterprises has a direct interest in legislation, or that the royalties are somehow gifts. A gift is defined in House Rule XLIII, clause 4, as a "payment \* \* \* unless consideration of equal or greater value is received by the donor." It is not asserted that the partners did not receive consideration of equal value, either from the publisher or from Mrs. Gingrich as the General Partner. Even the materials Representative Alexander submitted acknowledge that the partners each received for their \$5,000 an equal share in one-half the publisher's profits. It is also not suggested that the chance to make a profit on the investment was not worth \$5,000.

The complaint does not allege (nor is there any information suggesting) that Mrs. Gingrich did not perform services to earn the payments she received from the partnership. Thus, even if all factual assertions in Count II were true, they do not state a violation of the gift rule.

Additional Information Received: The additional information submitted by Representative Alexander pertinent to this allegation consists mainly of articles and other documents indicating that the COS limited partners were political supporters of Representative Gingrich, and that some of them made contributions either to his campaign committee or to other organizations with which he was involved. Other articles indicate that certain of the partners may have had an interest in Federal programs in Representative Gingrich's district which received his support.

In his response to Committee questions, Representative Gingrich provided additional details regarding the operations of the COS Limited Partnership. He reported, for example, that attorney Janice Moore was paid \$4,650.00 for her services reviewing partnership documents. Attorney Jack Mollenkamp, a securities specialist, was paid \$3,155.14 for counsel on "blue sky" laws. Because the partnership was expected to make money, Janice Moore advised that the agreement should include provisions covering reinvestment and distribution of profits, as well as general language such as is often included in partnership agreements giving the partnership wide latitude in its activities.

With his response, Representative Gingrich submitted hundreds of invoices, receipts, and cancelled checks for promotional expenses for Window of Opportunity. Prior to existence of the partnership, such documented expenses totalled \$11,187.05. Representative Gingrich explained that he and his

wife turned over their advance checks, totaling \$10,000, to Baen Enterprises as a loan to defray these expenses. The loan was repaid by the partnership on October 1, 1984. Documented expenses paid by the COS Limited Partnership Promotional Fund total \$56,982.56.

Representative Gingrich reported that 25 copies of the COS Limited Partnership offering memorandum were prepared. Three individuals who were offered an opportunity to participate declined to do so.

While Representative Gingrich could not provide any office records regarding government contracts held by COS Limited Partnership investors, he did note that several of them have received such contracts. He stated that, to the best of his knowledge, he never inquired or intervened on behalf of any partnership investor with a government agency regarding a contract, grant, or loan. He reported that in 1983 he wrote to the White House in support of Mrs. Jean Hails' appointment to the President's Advisory Committee on Women's Business Ownership. In 1985, and again in 1989, he wrote to the Presidential Personnel Office in support of the candidacy of Mrs. Jeanne Ferst for an appointment in the Reagan and Bush administrations. He said that both individuals, while not residing in his district, were active Republicans who live in the Atlanta area.

Committee Analysis and Disposition: The central question raised by Representative Alexander's complaint and Amendment is whether the COS Limited Partnership was a bona fide financial arrangement. Representative Alexander's complaint asserts that

the partnership was, in fact, a scheme whereby influential friends of the Gingriches sought to funnel to them either gifts, campaign contributions, or both. In the Committee's view, there is no support for this proposition.

The strongest evidence of the partnership's status as a legitimate investment entity are the documents prepared and actions taken in 1984 when the partnership was established. For those who have had occasion to review instruments relating to other private offerings, the COS Limited Partnership offering memorandum will appear quite familiar. The partnership obtained legal opinions regarding the offering, including its tax status. Investors had to meet specific suitability criteria, as indicated by questionnaires they were required to submit. The offering was formally registered as a limited partnership in at least two states.

Also reflecting on the validity of the partnership was the professional accounting work which was performed. Tax returns, which the Committee has received, were prepared for the COS Limited Partnership each year. Each of the limited partners were given annual Forms "K-1," reporting on their share of partnership activity. Finally, the expenditures from partnership funds to promote Window of Opportunity have been well documented.

There is no evidence that the COS limited partners participated in the endeavor either in appreciation of or in return for some official action by Representative Gingrich. The partners simply may have been seeking, in addition to making investments, advancing the political or philosophical policies

which Representative Gingrich advocated in the book. Some may also have been political supporters of Representative Gingrich. Such possible considerations, however, even if assumed to be true, do not render the partnership invalid.

Accordingly, the Committee concurs with the Phelan, Pope & John, Ltd. conclusion that no basis for Committee action has been demonstrated regarding Count II of the complaint or Charge 4 of the Amendment.

c. COUNT III AND AMENDMENT CHARGE 2

Representative Alexander's Allegation: The solicitation of limited partners by Representative and Mrs. Gingrich should have been treated as a campaign fundraiser since House Rule XLIII, clause 7, provides that a Member shall treat as campaign contributions the proceeds from "fund raising events." Treated as campaign contributions, the amount of funds also violated the contribution limits of the Federal Election Campaign Act.

Phelan, Pope & John Analysis: Count III fails to state a violation of House Rule XLIII, clause 7, or of the Federal Election Campaign Act (FECA). The complaint alleges no facts from which it reasonably may be inferred that the partnership investments should be regarded as proceeds from a "fund raising event" for Representative Gingrich. Nor is it alleged that such funds were intended to be used, or were used, by Representative Gingrich as personal or campaign funds. The funds were raised for and spent by the publisher to promote the book, and to pay Mrs. Gingrich for her work. Thus, even if all facts alleged in Count III are true, they do not indicate a violation of Rule

XLIII, clause 7, or the FECA.

There is no allegation that the COS limited partners invested money to influence a federal election. Even if the "real" investment purpose were to promote Representative Gingrich, such purpose may just as easily be seen as intended to gain publicity for the book through its author. To accept Representative Alexander's construction would lead to the conclusion that all money spent by publishers to promote books written by Members of Congress are campaign contributions, on the sole ground that publicity for the book also promotes the author.

Additional Information Received: Materials submitted by Representative Alexander demonstrate that many of the COS limited partners were supporters of Representative Gingrich and had made contributions to his political campaign.

Committee Analysis and Disposition: House Rule XLIII, clause 7, provides:

A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events.

The restriction derives from H. Res. 287, 95th Congress, 1st Session. The rule formerly had allowed Members to use such proceeds for other than campaign purposes if advance notice had been given to the participants in the fund raiser. In recommending the change, the Commission on Administrative Review, 95th Congress, stated: "Proceeds from testimonial dinners should not be converted to funds for personal use under any circumstances." H. Doc. 95-73, supra, p. 14.

The House Select Committee on Ethics, 95th Congress, in its

Advisory Opinion No. 4, issued, April 6, 1977, reasoned that a direct mail solicitation by a Member or a Member's spouse of gifts for their unrestricted personal use constituted a fund raising event for the purposes of Rule XLIII, clause 7. The proceeds from such a mailing should thus be treated as campaign contributions. See, Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives, page 157-159.

Representative Alexander's complaint advances a unique legal argument regarding Rule XLIII, clause 7. It would extend the existing and long-established interpretation of the rule beyond solicitations of gifts for unrestricted personal use, to include solicitations on behalf of organizations with which the Member or the Member's spouse has a business relationship. As noted at length in Chapter 10 of the Ethics Manual, supra, Members of the House may become personally involved in unofficial activities, including lending their names to support specific causes. Acceptance of Representative Alexander's construction of the rule would lead to the conclusion and policy that the proceeds of any solicitations made by Members privately on behalf of nongovernmental activities should be treated as campaign contributions to those Members. Nowhere in the language or the history of the rule is there any support for such an interpretation of clause 7.

For these reasons, as well as those enunciated in the report by Phelan, Pope & John, Ltd., the Committee concludes that no basis for action has been demonstrated regarding Count III of the complaint and Charge 2 of the Amendment.

d. COUNTS IV AND V AND AMENDMENT CHARGES 5, 6 AND 7

Representative Alexander's Allegation: The receipt by Mrs. Gingrich of \$10,000 in fees and a part ownership interest in the COS Limited Partnership without having contributed any funds "could be found" to constitute a gift in violation of House Rule XLIII, clause 4, and were the result of Representative Gingrich's exercise of improper influence (clause 3).

Phelan, Pope & John Analysis: Counts IV and V fail to state any violation of the gift rule. Representative Alexander does not allege that Mrs. Gingrich did not perform substantial work in return for her partnership interest (Count IV) or the payments which she received (Count V).

In the Wright case, the Committee's Statement of Alleged Violation stated that Mrs. Wright's salary could be regarded as a gift only where there was reason to believe that she did not perform any identifiable work for the salary which she received. In those years when there was some evidence of work, the Committee did not allege that a gift of salary existed. In the present case, there is no allegation that Mrs. Gingrich's work was not worth the amount she was paid, much less an assertion that she did not do any work at all. Thus, even if all the factual allegations in Counts IV and V are true, they fail to state a violation of the gift rule.

Likewise the Amendment does not state a violation of Clause 3, because it fails to allege facts to support even an inference that money received by Marianne Gingrich was received by virtue of Representative Gingrich using improper influence.



Additional Information Received: In his response to Committee questions, Representative Gingrich indicated that his wife believes she is still owed at least \$2,000 for work which she performed for the COS Limited Partnership.

Committee Analysis and Disposition: The spouse of a Member of Congress is generally free to seek any employment he or she desires. Neither Federal law nor House rules specifically preclude a Member's spouse from engaging in activity that may create a potential conflict of interest under certain circumstances. However, general ethical standards require that any relationship between an individual's compensation or benefits received from a private source and the performance of congressional (official) duties be examined to determine if any impropriety exists.

House Rule XLIII, clause 3, part of the Code of Official Conduct, prohibits a Member from receiving any compensation or allowing any compensation to accrue to his beneficial interest, from any source as a result of influence improperly exerted from an official position. Additionally, the Code of Ethics for Government Service proscribes the receipt of benefits "under circumstances which might be construed by reasonable persons as influencing the performance" of the recipient's official duties. Obviously, the income received by a spouse may accrue, albeit indirectly, to the Member's interest. Nonetheless, neither of these provisions are implicated absent facts indicating that such benefits have resulted from influence improperly exerted by the Member, or that official acts have

resulted from the prospect of private compensation to the Member's spouse. In the present case, no facts have been asserted indicating Representative Gingrich's exercise of improper influence in connection with the sales or promotion of his book.

There is no prohibition against a Member and spouse becoming involved together in a private business arrangement. Mrs. Gingrich was a co-author with him of Window of Opportunity. The contract with Baen Enterprises provided for each of them to receive an identical amount of any royalties paid. It is reasonable that the author of a book would want his co-author to have a role in promotion of that book.

As noted by Phelan, Pope & John, Ltd., the complaint does not allege that Mrs. Gingrich did not do any work to justify the amounts she received as General Partner of the COS Limited Partnership. In fact, the Committee has received and analyzed substantial documentation of the services she performed. It is, therefore, clear no gift is evident in this case in view of Mrs. Gingrich's documented work on behalf of the partnership. The Committee concludes that neither Counts IV and V of the complaint, nor Charges 5, 6, and 7 of the Amendment, warrant any action by the Committee.

e. COUNT VI

Representative Alexander's Allegation: "If" the solicitations of limited partners were financed by campaign funds, "it would appear to be a conversion of campaign funds to personal use in apparent violation of House Rule XLIII, clause 6."

Phelan, Pope & John Analysis: The complaint does not allege or provide any facts supporting the conclusion that Representative Gingrich did, in fact, use campaign funds to finance the solicitation of COS limited partners. Clause 6 does not prohibit Members from engaging in private business with campaign contributors or individuals met during speaking engagements. Without an assertion that Representative Gingrich, in fact, used campaign funds to solicit or finance solicitation of COS investors, the allegation advanced in Count VI does not constitute a violation of House Rule XLIII, clause 6.

Committee Analysis and Disposition: Rule 9(a)(4) of the Committee's Rules of Procedure requires that a complaint must set forth, among other things, "the facts alleged to give rise to the violation. When the facts are alleged upon the information and belief of the complainant, the complaint shall so state and set forth the basis for such information and belief." The complaint concludes with the following statement:

I, Representative Bill Alexander, hereby swear under oath that I have read the above Complaint and that, based on information and belief, the facts and allegations set forth above are true and correct.

The complaint asserts that, "If the solicitations were in any way financed by campaign funds \* \* \* it would appear" to be a violation. Reduced to its essentials, Count VI alleges no facts in support thereof and is pure speculation. As such, this Count does not meet the standard of the rule required for the filing of a complaint. The Committee concurs with Phelan, Pope & John, Ltd., that there is no basis for Committee action.

f. COUNT VII

Representative Alexander's Allegation: "If" the solicitations to join the partnership were in any way financed by government resources, then such resources were improperly used for a personal benefit.

Phelan, Pope & John Analysis: The complaint does not allege that COS solicitations were, in fact, financed by government resources, nor does it provide any basis, either directly or by inference, to support a conclusion that government resources were so used.

Committee Analysis and Disposition: As was the case in Count VI, Count VII is merely speculation, not an allegation of improper conduct based on either information or apparent belief that such conduct occurred. It would be inappropriate for the Committee to initiate a Preliminary Inquiry based on conjecture. The Committee thus concludes that no further action is warranted.

g. COUNT VIII AND AMENDMENT CHARGE 11

Representative Alexander's Allegation: The use of congressional staff to assist in preparation of the book also "would appear to constitute" an improper use of government resources for personal purposes.

Phelan, Pope & John Analysis: "As long as employees complete those 'official' duties required by the Member and for which employees are compensated from public funds, they are generally free to engage in personal, campaign, or other non-official activities." Ethics Manual, supra, p. 86. It is not

alleged that Representative Gingrich's congressional staff worked on the book to the detriment of their official duties, or that the staff worked on the book during government office hours. Thus, even if Alexander's allegation is true that staff helped Representative Gingrich prepare the book, it does not support the conclusion that so doing constituted a violation of House Rule XLIII, clause 2 or 8.

Additional Information Received: Representative Alexander submitted a number of similar newspaper articles in which former staff members of Representative Gingrich made allegations of improprieties against him. Among the assertions were that staff members typed and edited the book. Representative Gingrich was also cited in several of the articles acknowledging such activity. He said that the work was not improper because it dealt with a public policy issue, and the employees worked at least 40 hours per week on congressional duties.

Representative Gingrich was asked about the use of staff in the Committee's October 24, 1989, letter. In his response, he said that Frank Gregorsky left his staff in September 1983, before the book contract was signed. While later working for the Republican Study Committee, Mr. Gregorsky read chapter drafts and made comments.

Representative Gingrich stated that many of the ideas in Window of Opportunity evolved from research done, papers written and speeches he made as a Member of Congress. He also said that during early stages of drafting, some members of his staff were involved in retrieving materials from computer storage, updating

statistics, and re-entering material. While this work may have been considered part of their regular duties, he stated that such work did not detract in any way from the performance of other responsibilities. The staff, he asserts, did not write the book; he did.

Committee Analysis and Disposition: No formal job descriptions or uniform work standards exist for most employees of the House. The primary consideration under the Committee's jurisdiction is House Rule XLIII, clause 8, which provided at the time in question:

A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

As noted at page 79 of the Ethics Manual, supra, employees are paid from funds from the United States Treasury to assist a Member in official responsibilities, not to perform nonofficial, personal, or campaign duties. Subject to these constraints, the employing Member has broad discretion to establish general terms, conditions, and specific duties of employment.

In Advisory Opinion No. 2, issued on July 11, 1973, the Committee noted that "due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees." Id., at 85. As long as employees complete those official duties required by the Member and for which they are compensated from public funds, they are generally free to engage in personal, campaign, or other nonofficial activities.

There may, of course, be some debate as to what "official" congressional duties entail. Members may assume various public, political and official roles in connection with their position in Congress. It is "simply impossible" to draw and enforce "a perfect line" between official and related activities. Common Cause v. Bolger, 574 F. Supp. 672 (D.C. Cir., 1982), aff'd 461 U.S. 911 (1983).

The facts alleged do not demonstrate that those employees of Representative Gingrich who worked on aspects of Window of Opportunity did so to the neglect of their official duties. The Committee concludes that this allegation does not warrant action regarding Count VIII of the complaint or Charge 11 of the Amendment.

h. COUNT IX AND AMENDMENT CHARGES 8 AND 9

Representative Alexander's Allegation: "It would appear" that the bulk sale of books to one of the purchasers "might not be a bona fide purchase," and "could constitute" an improper gift in violation of House Rule XLIII, clause 4, or a contribution by a lobbying or political action group in violation of "House Rules" and the FECA.

Phelan, Pope & John Analysis: This Count fails to allege any facts to support the conclusion that the bulk purchase was a gift or political contribution. Again, when the putative donor receives consideration of equal or greater value, there is, in fact, no gift. The complaint does not allege that the book buyer did not receive the 5,000 books paid for, nor that the books were not worth the purchase price. This conclusion is also consistent

with the Committee's approach taken in the Wright case. Thus, Count IX does not state a violation of House Rule XLIII, clause 4.

It is also not alleged that any books were bought to "influence a federal election," the operative concept of the FECA. Thus, even if all facts alleged in Count IX are true, there is still no violation of Rule XLIII, clause 6, or the FECA. Finally, the contract provided no royalties for book sales below 60 percent of the retail cover price. Thus, the \$2.00 price paid by the bulk buyer would have yielded no financial (i.e., royalty) benefit to Representative Gingrich.

Additional Information Received: In his response to Committee questions, Representative Gingrich provided more details regarding the bulk sale. He stated that the publisher negotiated a sale of 5,000 books to the Conservative Book Club for \$10,250. The Conservative Book Club is reportedly a commercial venture. Representative Gingrich said he had nothing to do with the sale and that he is not affiliated with the Book Club.

Committee Analysis and Disposition: No information has been provided which would suggest that the bulk sale of books to the Conservative Book Club was not a proper transaction. According to the materials Representative Alexander submitted, Representative Gingrich did not receive any personal financial benefit from the sale of the volumes. The additional information submitted by Representative Gingrich supports the Phelan, Pope & John, Ltd. conclusion. The Committee concludes that no action is



warranted on Count IX of the complaint and Charges 8 and 9 of the Amendment.

i. COUNT X AND AMENDMENT CHARGE 10

Representative Alexander's Allegation: "It does not appear" that Representative Gingrich reported as reimbursements promotional travel defrayed by the COS Limited Partnership on his Ethics in Government Act Financial Disclosure Statement. Section 102(a)(2)(C) of the Act, which has been incorporated as part of House Rule XLIV, requires the reporting of "the identity and brief description of reimbursements received from any source aggregating \$250 or more in value received" during a calendar year. As the Committee's instructions make clear, this applies to expenses paid directly by a private source, as well as those reimbursed.

Phelan, Pope & John Analysis: On April 24, 1989, Representative Gingrich amended his 1985 Financial Disclosure Statement to report travel expenses reimbursed by the COS Limited Partnership. He explained that he had mistakenly treated each reimbursement from the partnership separately for purposes of the \$250 aggregate limit, and thus had not reported total travel reimbursements of \$1,320.81. While a reporting oversight may have occurred, the Financial Disclosure Statement was amended.

Committee Analysis and Disposition: On the Financial Disclosure Statements which Members are required to file pursuant to title I of the Ethics in Government Act of 1978, they must report "reimbursements received from any source aggregating \$250 or more in value during the calendar year." 2 U.S.C.

§702(a)(2)(C). Representative Gingrich has acknowledged that he erred in his original Financial Disclosure Statement, and has submitted an amendment providing the information.

In its memorandum of April 23, 1986, to all Members, officers, and employees of the House (reproduced at pages 134-135 of the Ethics Manual, supra), the Committee expressed its policy regarding amendments to Financial Disclosure Statements. The Committee adopted a two-pronged test for determining whether an amendment would be considered to be filed with a rebuttable presumption of good faith: To receive such a presumption, an amendment should be submitted before the end of the applicable filing year, and the amendment should not be intended to "paper over" a matter under review by the Committee.

In this instance, Representative Gingrich submitted his amendment well after the end of the applicable filing year. While, under the Committee's policy, the amendment is not automatically afforded a presumption of good faith, the Committee does not presume in its policy that all late filings are, per se, submitted in bad faith. The Committee's policy merely places the burden on the filer to demonstrate that the amendment was occasioned either by the unavailability of information or the inadvertent omission of disclosure.

As noted above, in taking corrective action, Representative Gingrich explained why he did not report the reimbursements in question. Furthermore, Representative Alexander does not allege in the complaint that Representative Gingrich omitted the information from his Financial Disclosure in bad faith to conceal

wrongdoing. In light of the above, the Committee does not believe that action is warranted on this Count.

j. AMENDMENT CHARGE 1

Representative Alexander's Allegation: "It appears" that funds from a book promotion partnership established in 1977, before Representative Gingrich was a Member of Congress, were used by him for personal political purposes. In addition, his failure to publish the book, combined with his decision to run for Congress, "might" constitute an improper campaign finance procedure. "This constitutes evidence of a continuing course of questionable and possibly illegal conduct of which the 1984 agreement in question here is but a part."

Phelan, Pope & John Analysis: The complaint references no specific rule or law, but probably intends to assert that Representative Gingrich violated 2 U.S.C. §434, requiring that all campaign contributions be reported to the Federal Election Commission (FEC). However, it is not alleged that the money was given to Representative Gingrich in 1977 to influence a federal election. Instead, the complaint stops short of that, saying that the money was used for a family trip to Europe. As such, the money might be considered a gift, but because Representative Gingrich was not either a Member or Member-elect at the time, no rule or law over which the Committee has substantive jurisdiction prohibited his acceptance of it.

Committee Analysis and Disposition: House Rule X, clause 4(e)(1)(B) authorizes the Committee on Standards of Official Conduct to investigate "any alleged violation by a Member \* \* \*

of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member \* \* \* in the performance of his duties or the discharge of his responsibilities \* \* \* ." (Emphasis added.) Clause 4(e)(2)(C) provides:

No investigation shall be undertaken by the committee of any alleged violation of a law, rule, regulation, or standard of conduct not in effect at the time of the alleged violation.

This charge seeks to bring before the Committee conduct of Mr. Gingrich at a time prior to his becoming a Member of the House of Representatives. The basis seems to be that the prior conduct is evidence of a continued pattern of impropriety.

The Committee consistently has resisted suggestions that it should investigate the conduct of individuals prior to their election to Congress. See, e.g., In the Matter of Representative Andrew J. Hinshaw, H. Rept. No. 94-1477, 94th Cong., 2d Sess., Sept. 7, 1976. The complaint provides no compelling reason why this policy should be abandoned or the clear language of House Rule X, clause 4, should be ignored. The Committee concludes that action regarding Charge 1 of the Amendment to Representative Alexander's complaint is not warranted.

k. AMENDMENT CHARGE 3

Representative Alexander's Allegation: "If it was understood at the outset that the investment was not to be a profit-making one, but rather was offered to the investors as one in which they would sustain a tax-deductible loss, or if the investors had no reasonable expectation of economic profit before

taxes," the COS Limited Partnership was an "impermissible tax avoidance measure designed to convert nondeductible political contributions into deductible business expenses, or, in the alternative, to produce phony tax deductions for participants enriching Mr. Gingrich personally."

Phelan, Pope & John Analysis: The complaint does not specify which rule or law Representative Gingrich is alleged to have violated. Section 165 of the Internal Revenue Code limits deductions to losses incurred in any transaction entered into for profit. However, profit need not be the primary or dominant motive, and a bona fide profit motive may exist even though prospects for profit are negligible or even absent, provided the taxpayer himself believed in good faith that the chance of profit existed (case citations omitted).

Representative Gingrich had no losses to deduct. Even if Mrs. Gingrich claimed any business losses or her income taxes, the complaint does not allege that she did not have a good faith belief that a chance for profit existed. Thus, no violation of the Internal Revenue Code has been stated.

The conclusion that "losses deducted by the partners (who stated that profit was not their primary motive for investing) ought properly be disallowable" is contradicted by case law. In any event, the Committee has no jurisdiction to enforce the Internal Revenue Code against taxpayers, particularly individuals not Members, officers, or employees of the House.

Committee Analysis and Disposition: Once again, the Committee is being requested to initiate a Preliminary Inquiry on

the basis of speculation, not evidence. Furthermore, while the Committee may investigate the alleged violation of any law applicable to the conduct of a Member, it has not previously initiated a Preliminary Inquiry based solely on allegations that the Internal Revenue Code had been violated. Accordingly, the Committee concludes that action is not warranted.

1. AMENDMENT CHARGES 12-13

Representative Alexander's Allegation: The use of the United States Capitol building for a promotional event for Window of Opportunity "would appear" to constitute an improper and illegal use of governmental resources for personal use, as would the reference to the event in the promotional material for the COS Limited Partnership in violation of House Rule XLIII, clause 3.

Phelan, Pope & John Analysis: The complaint does not allege that Representative Gingrich allowed the COS Limited Partnership or anyone else to use letterhead or envelopes bearing the words "Congress of the United States" or "House of Representatives," or to state that it was conducting congressional business. Nor is it alleged that holding the reception in the Capitol conveyed the impression that the book was endorsed by Congress or was related to official congressional business. It is also not asserted that Representative Gingrich received a benefit from the reception by virtue of influence improperly exerted. Thus, the Amendment fails to state a violation of House Rule XLIII, clause 3.

Finally, the spirit of the rule cannot have been violated by holding the reception in the Senate side of the Capitol. The

reception was either improper or it was not. No issue exists of appearing to follow a rule while avoiding its effect. Thus, House Rule XLIII, clause 2, could not have been violated.

Additional Information Received: In his response to Committee questions, Representative Gingrich reports that the reception in question was held in Room S-207 of the Capitol on May 25, 1984, concurrently with the annual convention of the American Book Association (ABA). He states that attendees were mostly people in the book business attending the ABA meeting. Former Senator Mack Mattingly is said to have arranged the use of the room through the Senate Rules Committee, which approved the use. The reception occurred before Window of Opportunity was published, and no books were offered for sale.

TOR Books is reported to have paid the \$3,448.44 cost for the event, then reimbursed by the COS Limited Partnership promotional fund. Baen Enterprises was reimbursed \$397.32 for invitations, while another \$175 was spent on addressing the envelopes. Receipts for bills incurred were submitted by Representative Gingrich with his response to the Committee's questions.

Committee Analysis and Disposition: Pursuant to authority granted at 40 U.S.C. §175, the House Office Building Commission has issued regulations governing use of House premises which generally prohibit commercial activities. However, the event in question did not occur in a House Office Building, but rather in the Senate portion of the U.S. Capitol Building. Federal law, at 40 U.S.C. §193d, restricts sales of materials and display of

advertising on the Capitol grounds. It is critical to note that the Capitol grounds and the U.S. Capitol Building are considered separate and distinct areas. See, 40 U.S.C. §§193a and 193f.

The Senate Committee on Rules and Administration is responsible for establishing policy regarding Senate premises. Representative Gingrich says that the room was requested by then-Senator Mack Mattingly. Even if the facts alleged were deemed to be a violation of Senate policy, such a violation could not be enforced by a Committee of the House. The Committee concludes that the matters alleged in Charges 12 and 13 of the Amendment do not warrant action by the Committee.

### 3. OVERVIEW AND CONCLUSION

The original complaint filed by Representative Alexander against Representative Gingrich on April 11, 1989, consisted of ten counts. The July 14, 1989, Amendment to that complaint was comprised of thirteen Charges, some of which were restatements of the original allegations.

The bulk of the Charges do not assert facts which, even if assumed to be true, would constitute violations of standards applicable to Representative Gingrich's conduct as a Member of the House. Some of the assertions are pure speculation. Others advance unusual legal arguments not supported by prior Committee interpretations. With respect to the one Charge arguably stating a violation, failure to disclose travel reimbursements, there was no suggestion of bad faith by Representative Gingrich, and he has taken corrective action.

The central question presented by Representative Alexander's



first complaint and Amendment is whether publication of Window of Opportunity and the COS Limited Partnership was a scheme whereby Representative and Mrs. Gingrich sought to evade limits on outside income, or obtain benefits, either in the form of gifts or campaign contributions. In light of the facts alleged and the Committee's analysis of all available information, initiation of a Preliminary Inquiry is not warranted.

Accordingly, the Committee has determined that the complaint and Amendment do not merit further inquiry. Therefore, pursuant to Rule 10 of the Committee's Rules of Procedure, the April 11, 1989, complaint and the July 14, 1989, Amendment have been dismissed.

**B. THE SECOND COMPLAINT**

Representative Alexander's second complaint against Representative Gingrich is comprised of 467 counts. However, the charges actually relate to only eight separate "incidents" (a term used by Representative Alexander). The incidents do not relate to one underlying transaction or factual situation, but instead concern separate and independent activities in which Representative Gingrich or his office were engaged. For each incident, the complaint charges multiple violations of various standards of conduct by Representative Gingrich.

In this light, the Committee's Statement regarding the second complaint discusses and analyzes each matter raised in the complaint separately.

The following is a summary of Representative Alexander's second complaint against Representative Gingrich. Each

allegation, as well as any response from Representative Gingrich, is separately summarized and analyzed in light of applicable standards.

1. ALLEGED INCIDENTS

a. INCIDENT 1

Representative Alexander's Allegations: The complaint alleges that an "individual privy to and closely associated with Mr. Gingrich's 1986 re-election campaign \* \* \* who will only come forward under subpoena of the Committee," is prepared to testify about certain assistance given to the campaign of then-Senator Mack Mattingly by Representative Gingrich. Specifically, it is alleged that Representative Gingrich's campaign paid for \$12,000 in radio spots attacking Wyche Fowler, Senator Mattingly's opponent. Additional air time is said to have been purchased by the Mattingly campaign using \$20,000 borrowed by Representative Gingrich from two Georgia banks. Finally, these contributions were not reported to the Federal Election Commission (FEC) as required by law. No exhibits related to the incident were provided.

The complaint asserts the cited actions represent a "blatant attempt" to circumvent Federal Election Campaign Act rules and regulations, including those relating to contributions, expenditures, and reporting. Thus, Representative Gingrich is said to have violated the following provisions of House Rule XLIII, the Code of Official Conduct: Clause 6, requiring that a Member use campaign funds only for bona fide campaign purposes; Clause 1, stating that a Member shall conduct himself in a manner

reflecting creditably on the House; and, Clause 2, requiring adherence to the spirit and letter of the Rules.

The Gingrich Response: Representative Gingrich, in his November 9, 1989, response, states that his campaign committee borrowed only \$15,000 in 1986, which was properly disclosed on his FEC reports. He also says that neither Senator Mattingly nor Wyche Fowler were mentioned in any Gingrich campaign ads, and that "no contribution of any sort occurred."

Committee Analysis and Disposition: The FECA includes limitations on contributions which individuals and political committees may make in connection with a Federal election. See, 2 U.S.C. §441a. In addition, contributions and expenditures must be disclosed, if in excess of certain thresholds. See, 2 U.S.C. §434.

In the area of campaign finance and activities, both the Committee and the FEC are accorded jurisdiction. Pursuant to House Rule X, clause 4, the Committee may investigate the alleged violation of any law applicable to the conduct of a Member. The FEC is granted authority at 2 U.S.C. §§437c-g, to interpret and enforce the provisions of the FECA. See, also, 2 U.S.C. §437c(b)(2). Thus, the Committee has previously examined the financial activity of Members' campaigns, including the reporting of that activity. See, for example, Investigation of Financial Transactions of Representative James Weaver with his Campaign Organization H. Rept. No. 99-933, 99th Cong., 2d Sess., Sept. 30, 1986; Report In the Matter of Representative Charles G. Rose III, H. Rept. No. 100-526, 100th Cong., 2d Sess., March 23, 1988; and

Statement of the Committee In the Matter of Representative James C. Wright, Jr., April 13, 1989.

Alleged violations of campaign laws have never been the sole basis for the Committee initiating a Preliminary Inquiry. Such matters have only been considered as an adjunct to other issues. In view of the statutory authority of the FEC, it is appropriate for the Committee to continue this practice. This is not to suggest that the Committee has adopted or should adopt a policy to defer its investigative activities to Federal agencies given parallel jurisdiction by law. Rather, such matters should continue to be pursued once the Committee has initiated a Preliminary Inquiry.

House Rule XLIII, clause 6, prohibits Members from commingling campaign funds and personal funds, converting campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures, or expending campaign funds on anything not attributable to bona fide campaign purposes. The clear intent of the Rule is to restrict the use of campaign funds to politically related activities. In its Final Report to the 95th Congress, the Select Committee on Ethics noted that Rule XLIII, clause 6, "should not be interpreted to limit the use of campaign funds strictly to a Member's re-election campaign," and stated that, for purposes of the Rule, "campaign expenditures and political expenditures are synonymous." See, House Report No. 95-1837, at pp. 15-16 (emphasis added).

As discussed in the House debate preceding adoption of the

rule, what is an appropriate campaign expense depends on the facts of a specific situation, though the Member has fairly broad discretion as to what activities serve his political interests:

We sought to make no strict definition of political expenses. What is political is a matter of fact rather than definition \* \* \* .

However, what we have tried to do is to confine expenses from political accounts or volunteer committee accounts to expenses that are political. By and large, that definition will be left up to the Member and to his volunteer committee, and as it is broadly defined under election law.

Congressional Record, H1581 (daily ed., Mar. 2, 1977), remarks of Representative Frenzel.

Providing assistance to a Senate candidate from the same state and political party can clearly be considered in the political interests of a Member of the House. Accordingly, even if shown to be true, the allegations in the complaint do not state a violation of Rule XLIII, clause 6, or of clauses 1 or 2 thereof.

Of final concern is the anonymous nature of the allegation at issue here. The complaint is not based on information possessed by Representative Alexander but, rather, apparently on an unnamed witness who is said to be willing to come forward if subpoenaed. The basis for Representative Alexander's belief is, therefore, information conveyed to him by a third party who was not willing to be identified.

For all of the above reasons, Incident 1 is deemed not to provide a basis for Committee action.

**b. INCIDENT 2**

Representative Alexander's Allegations: The complaint includes as exhibits two letters purportedly mailed by Representative Gingrich on his official stationery and under the frank. The first, dated December 11, 1986, is addressed to an individual, whose name is obscured, in Lake City, Georgia. It reads, in part, as follows:

Marathon Travel Company in Marathon, Florida, has contacted me. The company is sponsoring a nationwide senior citizens cruise. The trip is being offered as all-expense paid for those on limited income.

If you or any other member of your organization are interested in such a cruise, please let me know. I'll then forward your names and addresses to the company.

The second letter, dated January 16, 1987, thanks the recipient for "letting me know of your interest in the Senior Citizens cruise," and states that "I've contacted Marathon Travel, the travel company organizing the trip, and have told them of your interest in this cruise." Also submitted is an information sheet from Marathon Travel regarding the "Non-Profit Senior Citizen Cruise-1988."

The complaint states that Marathon Travel is a for-profit corporation, and that the cruise was a promotional event. It is thus asserted that Representative Gingrich improperly used official funds for private purposes. Alleged violations include: use of the Capitol and Capitol Grounds for commercial purposes (40 U.S.C. §§193d and 193m-1); improper display of the great seal (18 U.S.C. §713); lending terms indicating official sponsorship to a private organization (House Rule XLIII, clause

11); misuse of the frank (18 U.S.C. §1719, 39 U.S.C. §§3210(a)(4) and (5), House Rule XLVI, clause 3); misapplication of appropriated funds (31 U.S.C. §1301(a)); and improper use of staff (House Rule XLIII, clause 8). The action is also said to have not reflected creditably on the House and not to have adhered to the spirit and letter of the House rules (Rule XLIII, clauses 1 and 2).

The Gingrich Response: Representative Gingrich states that in 1986 Marathon Travel contacted a "large number" of congressional offices offering "three day all expense paid cruise vacations for limited income seniors." He acknowledges the authenticity of the two letters included with the complaint, stating that a member of his district office staff, Tom Robinson, passed along the Marathon offer in the form of a letter to a list of senior citizens. He says he had "no personal knowledge of the letters or any other activity on the Marathon Travel matter" until the October 25, 1989, complaint was released to the public by Representative Alexander.

While Representative Gingrich indicates he has no record of any initial contact from Marathon Travel, he has obtained such a letter addressed to another Member which is included as part of his response. Also included is a letter from a former congressman to Marathon Travel, indicating that Representative Chappell had passed on their cruise offer to certain organizations. Representative Gingrich also reports that Marathon Travel was unable to raise sufficient funding for the cruise from corporate sponsors and that the entire project failed.

Committee Analysis and Disposition: The sending of the letters in question from Representative Gingrich's congressional office appears to be inconsistent with applicable standards. As is noted at page 187 of the Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives, "an outside entity should never be permitted to use congressional stationery to promote a commercial or other unofficial endeavor." It is sometimes difficult to define comprehensively what is and is not an official activity. Members often inform constituents, including senior citizens, of programs which may be of assistance to them. In this instance, however, Representative Gingrich's office was informing them of a private cruise, and requesting that follow-up contacts go to the congressional office. Several standards thus apply.

House Rule XLIII, clause 11, provides:

A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "official business," or any combination thereof, on any letterhead or envelope.

The primary purpose of this provision is to prevent private organizations from using a facsimile of congressional stationery to solicit any contribution or support. See, Advisory Opinion No. 5, issued by this Committee on April 4, 1979, at the Ethics Manual, supra, page 189-191.

Misdemeanor penalties are provided at 18 U.S.C. §713 for the knowing display of a likeness or facsimile of the Great Seal of the United States on, among other things, stationery, in a manner



reasonably calculated to convey a false impression of sponsorship or approval by the Government of the United States. The Department of Justice has consistently advised that the display of the Great Seal on solicitations is improper.

Clause 3 of House Rule XLVI, cited in the complaint, requires Members of the House to submit certain mailings to the House Commission on Congressional Mailing Standards for approval. While that provision does not appear to apply to this situation, Federal law regarding the use of the frank may. As stated in several portions of 39 U.S.C. §3910, it is the policy of Congress that the franking privilege should be used only for official government business. See, also, 18 U.S.C. §1719. Use of other congressional resources would similarly be improper. See, 31 U.S.C. §1301(a).

What other Members may have done regarding the Marathon Travel Cruise is irrelevant to the conduct of Representative Gingrich. Furthermore, the assertion by Representative Gingrich that he had no personal knowledge of the mailing does not excuse him for overall responsibility for the activities of his staff. As noted by the Committee in its report In the Matter of Representative Austin J. Murphy:

[A] Member must be held responsible to the House for assuring that resources provided in support of his official duties are applied to the proper purposes.

House Report No. 100-485, 100th Cong., 1st Sess., p. 4.

In deciding whether to initiate a Preliminary Inquiry, the Committee considered not only the allegation and Representative Gingrich's response but also an exchange of correspondence which

occurred last year. On August 4, 1989, the Committee expressed to Representative Gingrich concern about a private organization using Representative Gingrich's name and "United States Congress" on a fundraising letter. On August 11, 1989, Representative Gingrich responded that he had not approved use of the letterhead, and had instructed that the mailing be immediately stopped. He also said he had directed his staff to develop procedures to prevent recurrence of such an error.

This aspect of the complaint has been determined not to warrant initiation of a Preliminary Inquiry primarily on the ground that the Committee has no reasonable basis to conclude that so doing would result in obtaining any significant additional information relevant to the matter. Nevertheless, the Committee concludes that Representative Gingrich was remiss in his oversight and administration of his congressional office which gave rise to the initiation of the subject improper correspondence. Accordingly, the Committee has sent to Representative Gingrich a letter directing that he immediately take steps to preclude recurrence of the type of situation here-involved similar to that taken to prevent the mailing of improper fundraising correspondence. The Committee has also placed Representative Gingrich on notice that a future recurrence of improper use of mail and resources may result in more severe Committee action. A copy of the letter is included as Attachment D to this Committee Statement.

c. INCIDENT 3

Allegations: The complaint includes as an exhibit a Rudy

Maxa column which appears to have been carried in The Washington Post Magazine on October 31, 1982. It reports that Representative Gingrich wrote a letter on his official stationery to some 40 newspapers urging that they publish a column on military affairs by Mike Bressler. He apparently enclosed samples of other Bressler columns. Maxa says that Bressler, an assistant to the president of Southwire Company of Carrolton, Georgia, as well as a West Point graduate and major in the U.S. Army, had written about Soviet-American relations and women in combat for the Daily Times-Georgian and El Paso Herald-Post. Representative Gingrich is quoted in 1982 as saying that the letter was a "solicitation," but that it was done for "public policy reasons." He continued:

From my standpoint, it's not a commercial venture, it comes under the rubric of trying to increase the public dialogue, and I think that's a legitimate job of a congressman. I think it's official business, and I think it's part of my job to help Jefferson's Fourth Estate to be more sophisticated.

Thus, he asserts he was "soliciting" support for the views expressed in the columns.

The complaint states that Southwire Corporation is a company employing about 3,000 people in Representative Gingrich's district. Two of the company's "highest officials" were, according to the complaint, "substantial contributors to Mr. Gingrich's campaigns and financiers of Mr. Gingrich's alleged book efforts." Each of the 40 letters assertedly violates eleven standards of conduct, resulting in 440 separate counts.

The Gingrich Response: Representative Gingrich includes a sample of the letter he sent to newspapers, as well as another

letter to Mike Bressler. He says that he has known Bressler since 1979 and has been impressed with his writing. He says he gave Bressler a copy of his "press contacts," and sent the letters in conjunction with legislative efforts to improve national defense and promote economy in the military. His purpose, he asserts, was not to promote a business nor obtain compensation for Bressler, but to "increase the public dialogue."

Committee Analysis and Disposition: If this is, in fact, an improper mailing, then the same standards apply to Representative Gingrich's conduct as apply in Incident 2. As noted in the earlier discussion, it is sometimes difficult to define comprehensively what is and is not an official activity. The U.S. Supreme Court discussed the concept in United States v. Brewster, 408 U.S. 501, 1972, a case dealing with the protection afforded a Member's legislative acts under the Speech or Debate Clause, U.S. Constitution, Article I, section 6:

A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts.

It is well known, of course, that Members of the Congress engage in many activities other than the purely legislative activities protected by the Speech or Debate Clause. These include a wide range of legitimate "errands" performed for constituents in the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called "news letters" to constituents, news releases, and speeches delivered outside the

Congress. The range of these related activities has grown over the years. Brewster, supra, at 512.

Under this analysis, a Member's official duties encompass both representational and legislative activities.

The Committee is particularly sensitive when its actions might be viewed as limiting a Member's ability to speak publicly on issues. In sending out the columns to newspapers, it appears that Representative Gingrich was promoting a point of view, not a private undertaking. These letters are clearly more closely associated with matters pending before Congress than a private cruise. Accordingly, Incident 3 is not deemed to warrant Committee action.

d. INCIDENT 4

Representative Alexander's Allegations: Included with the complaint is an October 23, 1989, article from the Atlanta Business Chronicle headlined "Newt's patron reaps harvest: Congressman lobbies HUD, FmHA for book partner." The article relates to Charles Roush, Jr., a businessman from Representative Gingrich's -district who participated in the 1977 effort to promote a book to be written by the congressman. Mr. Roush and his family are also said to have contributed to Representative Gingrich's campaigns and to have helped him politically in other ways.

Since 1980 Mr. Roush reportedly has received over \$12 million in low income loans from the Farmers Home Administration (FmHA). Representative Gingrich is said to have intervened with FmHA officials in 1986 to seek relief for Mr. Roush from some

regulations. He also wrote to the Secretary of the Department of Housing and Urban Development (HUD) that same year, seeking support for a housing project Mr. Roush was trying to build with HUD money. The article indicates that earlier in 1986 Representative Gingrich had refused the request of another low-income housing administrator to oppose deferral of housing funds. In 1988, reportedly at the urging of Mr. Roush's daughter, Representative Gingrich is said to have sponsored legislation to extend a low income housing tax credit, which would have benefited Roush.

The complaint asserts that Representative Gingrich helped Roush, but "specifically refused to help another constituent in a similar situation," in violation of Committee standards for dealing with government agencies. It is also suggested that Mr. Roush received favors from Representative Gingrich because he was a business partner and campaign contributor.

The Gingrich Response: Representative Gingrich states that Chester Roush is a bank director and real estate businessman in his district who has been involved in federally financed housing projects since before Representative Gingrich was elected to Congress. The congressman asserts that his congressional staff has made a number of inquiries with Federal government housing agencies at Mr. Roush's request, but on none of such occasions did Mr. Roush speak personally to him about the matters. The assistance given to Mr. Roush is said to have been the same as the assistance given to any other constituent seeking help with the government.

Representative Gingrich states Mr. Roush's daughter approached him in 1988 in her capacity as a board member of a low-income housing coalition, seeking his support for an extension of the low income housing tax credit. He states that he co-sponsored and voted for the legislation in 1988 and 1989. Regarding the affect of her request, he states: "Information from a knowledgable constituent will always cause me to more carefully consider supporting a bill."

The request from the "other constituent" is differentiated by Representative Gingrich. He says he was asked to override deferral of low income housing funds, but declined as a "matter of sound budget policy."

Committee Analysis and Disposition: As noted in the Committee's Ethics Manual, supra, at page 167, an important aspect of a Member's representational function is to act as an ombudsman or conduit between his constituents and administrative agencies. However, when dealing with agencies, care must be taken to avoid placing undue influence on officials. The Committee has admonished Members "to avoid situations in which even an inference might be drawn suggesting improper action." See, Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain, House Report No. 100-46, 100th Cong., 1st Sess., pages 3, 9, and 43.

In providing general guidance to Members, the Committee has stated that the overall public interest should be placed above private interests. A Member owes a responsibility "to all his

constituents equally," and assistance should be "pursued with diligence irrespective of political or other considerations." Advisory Opinion No. 1, January 26, 1970, Ethics Manual, supra, page 176. Similarly, Paragraph 5 of the Code of Ethics for Government Service calls on all government officials to neither dispense nor accept favors or benefits "under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." Id., at 195.

The above-described standards do not mean that a Member must grant every request received for assistance or support. Particularly when determining whether to support legislation, a Member must necessarily establish criteria for evaluating the merits of different proposals. What the standards are intended to prevent are invidious distinctions in constituent service based on such considerations as a requestor's status as a donor or political supporter.

The fact that a constituent is a campaign donor does not mean that a Member is precluded from providing any official assistance. As long as there is no quid pro quo, a Member is free to assist all persons equally.

The complaint does not demonstrate that Representative Gingrich dispensed special favors to Chester Roush that were withheld from others. With respect to sponsoring or voting for legislation, the issue is not whether he did or did not do so, but whether he gave the request for his support fair consideration on the merits. With respect to providing assistance with Federal agencies, no evidence is presented which



suggests that Representative Gingrich refused to intervene on behalf of others. Accordingly, the facts presented by the complaint do not warrant Committee action.

e. INCIDENT 5

Representative Alexander's Allegations: The complaint alleges that Representative Gingrich and his daughter, Linda K. Gingrich, purchased real estate in Fulton County, Georgia in 1986 from the wife of a "long time political supporter." They then reportedly contracted for a mortgage on the property in the amount of \$77,800 with Southern Commercial Corporation. Included with the complaint as exhibits are copies of a Power of Attorney, a Security Deed, and an Acknowledgment of Borrower's Rights, each executed by Representative Gingrich, who signed the latter two documents after Linda K. Gingrich.

The complaint asserts that on his Financial Disclosure Statements, Representative Gingrich never reported acquisition of the property, its status as a holding, or his liability on the mortgage. Representative Gingrich's Financial Disclosure Statements for calendar years 1986 through 1988 are submitted in support of this assertion. It is alleged that no recognized exceptions to reporting apply, and that Representative Gingrich, therefore, violated various provisions of title I of the Ethics in Government Act of 1978, as amended (EIGA).

The Gingrich Response: Representative Gingrich says that his older daughter was buying her first home and the lender asked for a guarantor on the mortgage note. Because he viewed it as a contingent liability, he did not report it on his Financial

Disclosure Statements. While the mortgage documents may not have made clear his status as guarantor, "it was clearly understood by the lender, my daughter, and me." He says he was not called on to make any payments on the note, and will not receive any proceeds from sale of the property.

Committee Analysis and Disposition: EIGA requires that Members of Congress file annual Financial Disclosure Statements providing the details of certain financial activities. Among the items required are a brief description, the date, and category of value of any purchase of real property. However, property used solely as a personal residence of the reporting individual need not be reported, nor does any transaction solely by and between the reporting individual, his spouse, or dependent children need to be disclosed. 2 U.S.C. §702(a)(5).

Also required to be reported are the identity and category of value of the total liabilities owed to any creditor which exceeds \$10,000 at any time in a calendar year, excluding any mortgage secured by real property which is a personal residence of the reporting individual, and excluding any liability owed to a relative. 2 U.S.C. §702(a)(4). This Committee's Instructions for Completing Financial Disclosure Statement Required By The Ethics in Government Act, April 1987, at pages 10-11, explicitly states: "Any contingent liability, such as that of a guarantor, endorser, or surety \* \* \* need not be listed." (Emphasis added.) In addition to liabilities to a relative, amounts owed by a relative also need not be shown. Id., at pages 8 and 11.

Also pertinent to the complaint is the statutory requirement

that Financial Disclosure Statements list the identity and category of value of any interest in property held during the preceding year and worth more than \$1,000 at the end of the year "in a trade or business, or for investment or the production of income." 2 U.S.C. §703(a)(3).

The purpose of EIGA financial disclosure is to "monitor possible conflicts of interest due to outside financial holdings \* \* \* ." Financial Ethics, Communication from the Chairman, Commission on Administrative Review, H. Doc. No. 95-73, 95th Cong., 1st Sess., pages 9-10. The complaint does not assert that the underlying transaction was in any way improper, so the fact that it may have been purchased from the wife of a supporter is irrelevant. In addition, it is not alleged that the property was held for investment or production of income.

The questions, therefore, remain as to whether Representative Gingrich was required to report the purchase of the property and whether the underlying liability he assumed was contingent.

Because of considerations of privacy and the likelihood that such matters would not pose a conflict of interest, EIGA generally does not require reporting of financial matters involving relatives. It is not unusual for a parent to serve as co-signer of a loan to assist a child. On the other hand, while the understanding between the parties may have been that the parent (Representative Gingrich) was signing as an accommodation at a time when the child (his daughter) did not have an adequate credit history to qualify alone, the underlying legal documents

suggest that there was, legally, joint liability.

Despite the bias in EIGA against disclosure of activity involving relatives, the Committee believes that the true nature of the transaction, as reflected in the pertinent legal documents, should control reporting. To hold otherwise would open the door to abuse, such as where a Member or other reporting individual seeks to avoid public disclosure by having family members purchase property with them.

Accordingly, pursuant to its authority under section 105(a) of the Ethics in Government Act, the Committee, in its letter included as Attachment D to this Statement, has directed Representative Gingrich to amend his Financial Disclosure Statements to reflect the transactions in question. In deciding to take no further action regarding Incident 5, the Committee notes that the underlying transactions were a matter of record in public documents in Fulton County Georgia.

f. INCIDENT 6

Representative Alexander's Allegations: Several documents related to Conservatives for Hope and Opportunity PAC (CHOPAC) are included with the complaint. In an April 14, 1986, fundraising letter, Representative Gingrich, apparently as "Honorary Chairman," solicited funds on behalf of CHOPAC to help "conservatives running for the House of Representatives in this year's election." In a January 31, 1988, letter to the Federal Election Commission, the treasurer of CHOPAC indicates that the organization "cannot get out of debt." Finally, eleven newspaper articles and editorials are included relating to the fact that of

some \$217,000 raised by CHOPAC, only \$90 in contributions were made to political candidates and only \$2,100 spent for travel on behalf of candidates. The rest of the sums collected went for fundraising overhead costs.

The complaint asserts that through CHOPAC, Representative Gingrich engaged in a scheme to improperly use the mail to raise funds. Such a scheme is alleged to be a violation of 39 U.S.C. §3005, prohibiting use of false representations to obtain money through the mail. As such, it is asserted that Representative Gingrich's conduct did not reflect creditably on the House, and that he did not adhere to the letter and spirit of the rules, placing him in violation of clauses 1 and 2 of House Rule XLIII.

Among the articles included with the complaint are several indicating that the Democratic Congressional Campaign Committee asked the U.S. Postal Service in January 1988 to investigate Representative Gingrich and CHOPAC for possible mail fraud.

The Gingrich Response: Representative Gingrich states that the allegations are a reiteration of charges filed with the Federal Election Commission (FEC) in March 1988. He submitted a letter indicating that the FEC dismissed the complaint in May 1988. He also stated that, "[a]s far as I know, Postal authorities decided that the allegations did not warrant an investigation." Representative Gingrich also noted that he was "Honorary Chairman" of CHOPAC, and had no operational responsibility for the organization.

Committee Analysis and Disposition: As discussed in the analysis relating to Incident 1, while the Committee may

investigate the alleged violation of any law relating to the conduct of a Member, it has historically declined to do so based solely upon alleged violations of campaign finance law. Similarly, alleged violations of mail fraud statutes have never been the basis for the Committee initiating a Preliminary Inquiry. Not only is the U.S. Postal Service granted statutory jurisdiction, but the transactions underlying the complaint appear already to have been brought to the attention of, and dismissed by, the Federal Election Commission. Accordingly, Incident 6 does not allege facts which warrant Committee action.

g. INCIDENT 7

Representative Alexander's Allegations: Included as part of the complaint are two news articles about House of Ill Repute, a book written in 1987 by ten Members of the House of Representatives. Representative Gingrich was one of the authors. A Roll Call article, the date of which is illegible, indicates that a press conference was held in "the Capitol," introducing the book. The article states that the book was published in an attempt to focus attention on what the authors claimed was "institutionalized unethical behavior." It indicates that the book was available for sale. Also referred to was a June, 1987 attempt by some of the authors to establish an outside ethics panel in the House of Representatives.

An Associated Press news item dated October 13, 1987, indicates that the authors, "[l]ed by Georgia Rep. Newt Gingrich," each put up \$500 in campaign funds to print 6,500 copies of the book. A Legislative Reference Service printout

indicates the book was available from Room 325 of the Cannon House Office Building, apparently the office of then-Representative Joseph DioGuardi.

Also included with the complaint is a copy of the "Acknowledgments" page from the book, which lists among people who worked on the book certain individuals on Representative Gingrich's staff.

The complaint alleges that Representative Gingrich was a party to the use of a public building for private financial gain. The distribution of a purely political book by the "Conservative Opportunity Society," of which Representative Gingrich is a member, also was assertedly a use of governmental resources for nonofficial purposes.

The Gingrich Response: Representative Gingrich states that House of Ill Repute was written by the ten Members "describing problems associated with the operations of the House of Representatives." He asserts that the project was organized by Representative Joseph DioGuardi, and that the net proceeds were to be contributed to a tax-exempt foundation. "[T]he co-authors took great care not to use official resources, even though the book deals with policy matters affecting the House," he stated.

Committee Analysis and Disposition: Many of the same considerations discussed previously regarding Incidents 2 and 3 also apply to this particular incident. Official House resources and allowances are available to pay expenses incurred by Members in the conduct of official business. "The allowances may not be used to defray any personal, political, or campaign-related

expenses." Ethics Manual, supra, page 93. Pursuant to authority granted at 40 U.S.C. §175, the House Office Building Commission has issued regulations governing use of official premises. Paragraph 5 of the regulations, as printed at page 2.25 of the Committee on House Administration's Congressional Handbook, is as follows:

Soliciting, commercial ventures, and other nongovernmental activities; The soliciting of alms and contributions, commercial soliciting, and vending of all kinds, the display or distribution of commercial advertising, the collecting of private debts, or the distribution of material such as pamphlets, handbills, and flyers, in any of the areas covered by these regulations is prohibited.

If in fact true, use of official premises by Representative Gingrich to promote a commercial venture would be a violation of the above-cited regulation. However, the facts alleged, even if assumed to be true, do not establish that occurred. The various items which have been submitted reference a press conference in the office of Representative DioGuardi, not Representative Gingrich. It is not even clear if Representative Gingrich attended. Furthermore, the complaint does not state that Representative Gingrich either sold or promoted the book out of his office. The complaint appears to attempt to make him culpable solely on account of his reported status as an initiator of the project and co-author of the book.

An argument might also be made that holding the book distribution function in a congressional office did, in fact, relate to official activities of the Congress. Many of the book's authors had made comments on the House floor regarding



some of the very issues addressed in the book. Applicable rules do not prohibit Members from being privately active regarding issues in which they are also officially involved, as long as there is no cross-infusion of public and private resources. The complaint, by submitting a copy of the Acknowledgments section of the book, apparently implies that named congressional staff assisted in preparation of the book, but no evidence whatsoever was proffered that such efforts were engaged in on other than personal time. The Committee concludes that no action on this Incident is warranted.

h. INCIDENT 8

Representative Alexander's Allegations: The complaint includes as an exhibit a news article regarding a proposed amendment to the Constitution of the State of Georgia which, if adopted, would have provided for four-year terms for state legislators. It is asserted that Representative Gingrich used his own campaign advertisements in 1988 to advocate the defeat of the amendment, which was also on the ballot. Georgia state law requires advocates or opponents of constitutional referenda to register with the state if money is spent to influence the election. The complaint asserts that Representative Gingrich's action was an improper use of campaign funds, in violation of House Rule XLIII, clause 6. It is also alleged that his conduct did not reflect creditably on the House, and that he did not adhere to the letter and spirit of the rules, placing him in violation of clauses 1 and 2 of House Rule XLIII.

The Gingrich Response: Representative Gingrich acknowledges

that he was opposed to the constitutional amendment in question and "decided to add a tag line" on his campaign literature, saying "Vote Against Amendment 2." He says that a separate committee was established which registered with the Georgia Secretary of State and disclosed its activities, including an in-kind contribution from his campaign committee.

Committee Analysis and Disposition: House Rule XLIII, clause 6, prohibits Members from expending campaign funds on anything not attributable to bona fide campaign (i.e., political) purposes. As noted in the prior discussion of Incident 1, a Member has fairly broad discretion as to what activities serve his political interests, and therefore, on what can legitimately be expended from his campaign committee accounts.

A Member could reasonably determine that asserting a policy position on a ballot question was in his political interests and thus expend campaign funds for that purpose. Accordingly, even if shown to be true, the facts underlying Incident 8 in the complaint do not state a violation of Rule XLIII, clause 6, or of clauses 1 or 2 thereof. The Committee concludes no action is warranted.

## 2. OVERVIEW AND CONCLUSION

Two of the eight Incidents presented in Representative Alexander's October 25, 1989, complaint possibly state violations of standards of conduct applicable to Representative Gingrich over which the Committee historically has assumed primary jurisdiction. With respect to these two items, the Committee has determined that the appropriate course of action is to write to

Representative Gingrich directing that he take necessary corrective action.

One of the other Incidents cited in the complaint relates primarily to an alleged violation of the campaign finance requirements of the Federal Election Campaign Act. Another Incident relates primarily to alleged violation of Federal mail fraud statutes. While the Committee may investigate the alleged violation of any law relating to the conduct of a Member, it, again, has historically declined to initiate investigations based solely on violations of campaign law. Such matters have only been considered as an adjunct to other issues. Similarly, alleged violations of mail fraud statutes have never been the basis for the Committee initiating a Preliminary Inquiry. Not only is the U.S. Postal Service granted statutory jurisdiction, but the transactions underlying the complaint appear to have already been brought to the attention of the U.S. Postal Service and the Federal Election Commission, the latter of which dismissed the complaint in the matter.

With respect to the four remaining Incidents, the complaint does not assert facts which, even if assumed to be true, would constitute violations of standards applicable to Representative Gingrich's conduct as a Member of the House.

In light of the facts alleged and the Committee's analysis of all available information, initiation of a Preliminary Inquiry is not warranted. Accordingly, the Committee has determined that the complaint does not merit further inquiry. Pursuant to Rule 10 of the Committee's Rules of Procedure, the October 25, 1989, complaint has been dismissed.

#### IV. CONCLUSION AND COMMITTEE DECISIONS

Representative Alexander filed his first complaint against Representative Gingrich approximately eleven months ago. A large volume of material has been received and analyzed by the Committee's staff, the law firm of Phelan, Pope & John, Ltd., and the Committee. Considerable time and resources have been devoted in an effort to assure that all documents submitted by both Representative Alexander and Representative Gingrich received careful, thorough and objective consideration.

With respect to the first complaint and Amendment, the outside counsel concurred with the preliminary assessment of Committee staff that an adequate basis for opening a Preliminary Inquiry had not been demonstrated. The staff then again reviewed the materials examined by the outside counsel, as well as a significant amount of additional information received from Representative Gingrich that was requested by the Committee.

In sum, the Committee is of the firm view that no adequate basis exists for initiating a Preliminary Inquiry concerning any matters raised by the first or second complaint. The facts alleged in the complaints, even if true, have been generally deemed not to state violations of applicable standards of conduct. In the one instance involving apparent misapplication of resources, Representative Gingrich has been informed of the inadequacy of his oversight and administration of his congressional office, and to take corrective action. Similarly, Representative Gingrich also has been directed to amend his Financial Disclosure Statements to reflect participation in the

purchase of his daughter's personal residence. In light of all available information, the Committee believes the action taken in the matters here involved represent appropriate disposition of the issues raised.

\* \* \* \*

On March 7, 1990, the Committee took the following action:

- By a vote of 11 ayes to 0 nays, the Committee determined that the April 11, 1989, complaint against Representative Gingrich, and the July 14, 1989, amendment, do not merit further inquiry. Accordingly, the complaint and Amendment have been dismissed.
- By a vote of 11 ayes to 0 nays, the Committee determined that the October 25, 1989, complaint against Representative Gingrich does not merit further inquiry. Accordingly, the complaint has been dismissed.
- By a vote of 11 ayes to 0 nays, the Committee agreed to send the letter, included as Attachment D to this Statement, to Representative Gingrich.
- By a vote of 11 ayes to 0 nays, the Committee adopted this Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Representative Newt Gingrich, and agreed to its public release.



Attachment A

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October 17, 1989

Rep. Julian C. Dixon, Chairman  
Rep. John Myers, Ranking Minority Member  
Committee on Standards of Official Conduct  
Suite HT-2  
U.S. Capitol  
Washington, D.C. 20515

Re: In the Matter of the Complaint Against  
Representative Newt Gingrich

Dear Mr. Chairman and Mr. Myers:

Enclosed is our report to the Committee in the above-referenced matter. Please don't hesitate to call me should you have any questions.

Sincerely,

  
William J. Kunkle, Jr.

WJK:kb  
Enclosures

**MEMORANDUM**

**TO:** Representative Julian C. Dixon, Chairman  
Representative John Myers, Ranking Minority Member  
House Committee on Standards of Official Conduct

**FROM:** William J. Kunkle, Jr.  
Linda J. Chase

**RE:** Analysis of Allegations Against  
Representative Newt Gingrich

**DATE:** October 17, 1989

The factual background set forth below is based upon information contained in the following documents we received from the Committee:

1. The Complaint and the following attachments to the Complaint filed on April 11, 1989 by Representative Bill Alexander: March 20, 1989 letter to Newt Gingrich from Representatives Barney Frank, Martin Sabo and Lawrence Smith; Washington Post article by Charles Babcock dated March 20, 1989; Wall Street Journal Article by Jeffrey Birnbaum dated March 24, 1989; New York Times article by Jeff Gerth dated June 10, 1988; text of June 8, 1988 New York Times article with AP byline; April 7, 1989 "Dear Colleague" letter from Representative Alexander; Representative Alexander's remarks in the Congressional Record for March 22, 1989.

2. Representative Newt Gingrich's April 24, 1989 response including: his comments on Window of Opportunity; his responses to written questions from press; Wall Street Journal retraction dated March 27, 1989 of portions of Jeffrey Birnbaum's March 24, 1989 article; list of promotional expenses reimbursed to



✓ Newt Gingrich by COS Limited Partnership; partial list of books written by or contributed to by Newt Gingrich; Stephanie Gingrich's responses to written questions from press; list of the 22 limited partners in COS Limited Partnership; form cover letter for COS Limited Partnership Offering Memorandum; unexecuted COS Limited Partnership Agreement (several pages missing); COS Limited Partnership Purchaser Questionnaire; unexecuted Publishing/Royalty Agreement and amendment; correspondence and various documents relating to securities registration and filing requirements for COS Limited Partnership; list of royalty payments received by the Gingriches; portions of the COS Limited Partnership accounting file (including tax returns).

3. The "Amendment to Complaint and Bill of Particulars" and the following attachments filed on July 14, 1989 by Representative Alexander: Highlights and Documents article by Lee A. Sheppard dated June 16, 1989; Atlanta Business Chronicle article by Michael Henkelman dated June 26, 1989; Atlanta Journal and Constitution article by Michael Christensen dated March 25, 1989; Atlanta Journal and Constitution article by Peter Mantins dated May 28, 1989; Atlanta Journal and Constitution list of "Gingrich Book Backers" dated April 25, 1989.

4. Representative Gingrich's Financial Disclosure Statements for 1978-1988.

5. Representative Gingrich's Press Release dated March 20, 1989.

6. Various news articles re: Newt Gingrich.

7. Window of Opportunity - paperback edition.

The analysis of the Complaint, however, is based solely on the facts alleged in the Complaint, the Amendment to Complaint, and the newspaper articles and other documents specifically incorporated into the Complaint by Representative Alexander. All facts alleged to be true are assumed to be true solely for the purpose of this analysis. Merely speculative and conclusory statements are not considered as "facts."

#### FACTUAL BACKGROUND

##### The publication and sale of the book

At a conference on space and technology, apparently sometime during 1983, Newt Gingrich's friend, Jerry Pournelle, introduced him to Jim Baen of Baen Enterprises. [Window, p. v.; Wash. Post 3/20/89.] Baen Enterprises is a small publishing firm which distributes approximately 120 mass market and trade publications a year, principally science fiction works. [COS Limited Partnership Agreement - Confidential Memorandum, May 31, 1984, p. 3.] Mr. Pournelle and Representative Gingrich believed that writing a book would be an effective way to publicize the ideas of the "Conservative

Opportunity Society"<sup>1</sup> and its politically conservative concept of the future developed by Newt and Marianne Gingrich, among others. (Window, pp. v, 268-272.) Mr. Baen, who has been in the publishing business since 1974, agreed to publish that book in paperback. He apparently did not believe the book would be sufficiently marketable to warrant a hard-cover edition and thus the promotional budget was scaled back. (Atlanta Bus. Chron., 6/26/89.) However, at some point, Representative Gingrich apparently persuaded him to publish a hardcover edition as well, with the support of a special advertising fund (discussed below) to promote sales. (Atlanta Const., 4/12/89; Atlanta Bus. Chron., 6/26/89.)

Representative Gingrich wrote Window of Opportunity in late 1983 and early 1984 "as a building block of the Conservative Opportunity Society movement" together with his wife Marianne and two professional writers selected by Mr. Baen: David Drake co-authored the book and Janet Morris edited the final draft. (Window, p. v; Gingrich Comments, 4/25/89, pp. 1-2.) Apparently, the original manuscript of the book was considered to be such a "disaster" at Baen Enterprises that Drake and Morris were called in for the "rescue." (Washington Post, 6/12/89.)

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<sup>1</sup> Representative Gingrich has described the "Conservative Opportunity Society" as a "movement" involving the younger House Republican activists who are credited with influencing the 1984 Republican Party Platform, including the controversial "no tax increase" plank, and inserting the "opportunity society" theme into the Reagan-Bush television commercials 22 times. (Gingrich Comments, 4/25/89, pp. 1-2.)

Frank Gregorsky, an administrative assistant on Representative Gingrich's Congressional Staff, and several other staff members helped develop the ideas, reviewed a draft of the book, made comments and may have typed and collated the original manuscript. [Gingrich Comments, 4/25/89, p. 2; Washington Post, 3/20/89; New York Times, 6/8/88; New York Times, 9/6/89.] They were among 103 people thanked in the postscript to the book for their assistance. [Gingrich Comments, 4/25/89, p. 2; Window, pp. 268-272.]

Baen Enterprises published the book in association with TOR Publications/Tom Doherty Associates, Inc. of New York. [COS Limited Partnership Agreement - Confidential Memo, 5/31/84, p. 4; Window, p. iv.] St. Martin's Press of New York was the distributor. [Window, p. iv.]

The manuscript was delivered to the publisher in March 1984. The publishing contract dated March 13, 1984 gave Baen Enterprises the right to print, publish, license and sell the book<sup>2</sup> in hardcover and paperback editions. Under the contract, the book was to be published within eighteen months of acceptance of the manuscript, i.e., by September 1985. [Baen Contract, p. 7.]

Baen Enterprises was also required to obtain a copyright in Newt Gingrich's name and provide Newt and Marianne Gingrich

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<sup>2</sup> The contract shows the title of the book to be The American Future: The Conscience of a High-Tech Conservative.

each with a cash advance of \$5,000. David Drake received an advance of \$3,000 from Baen. [Baen Contract, p. 3.]

The contract also required the publisher to pay royalties of 10% on the retail cover price of the first 5,000 copies sold in a hardcover trade edition (less returns), 12 and 1/2% on the next 5,000 copies sold (less returns), and 15% on all hardcover copies sold in excess of 10,000 and not returned. The paperback royalties were to be 8% for the first 150,000 copies and 10% after that, less returns. No royalties were to be paid for copies provided to the authors for no charge or for copies sold for a discount greater than 60% of the retail cover price. Forty percent of the royalties were to be paid to each of the Gingriches. David Drake was to receive 20%. [Baen Contract, p. 3.]

Thus, under the contract, since the hardcover edition of the book was listed for \$14.95, the Gingriches would each receive \$.60 for each of the first 5,000 sold; \$.75 for each of the next 5,000 sold; and \$.90 for each sold in excess of 10,000. Representative Gingrich has stated that "on the trade version, Marianne and I each received 24 cents per copy . . ." [Gingrich Comments, 4/25/89, p. 3.] It is not known why he received less than the royalty provided in the contract.

The paperback edition sold for \$7.95. Thus, under the contract, the Gingriches would each receive \$.25 for each of the first 150,000 copies sold. Representative Gingrich has

stated that "Marianne and I each received 15 cents per paperback sold in the mass market edition." [Gingrich Comments, 4/25/89, p. 3.] Again, it is not known why they received less than the royalty provided in the contract.

The contract also contained a provision requiring the "Second Assisting Author," Marianne Gingrich, to create an entity, the "Promoter," in order to establish a "special advertising fund" of from \$10,000 to \$70,000 to be used by the publisher for media advertising to supplement the publisher's regular advertising and promotion budget. In return for creating the fund, the Promoter was to receive a portion of the publisher's profits which varied on a sliding scale from 1/7 of 50% of the profits to 7/7 of 50% depending upon the amount of the "special advertising fund." [Baen Contract, pp. 5-6.] The fund was required to be established by June 1, 1984 and could be supplemented through the last day of August, 1984. [Baen Contract, p. 5.]<sup>3</sup>

Newt Gingrich said that this fund was his idea. He believed that a large publicity budget could "force a best seller." [Wash. Post, 3/20/89.] Jim Baen said he had never entered into such a contract before and had never heard of a similar one in the industry. In the usual publishing venture, the publisher pays all the promotional costs. [Id.; Highlights,

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<sup>3</sup> The Gingriches guaranteed the timely establishment of the fund by lending their \$10,000 advance to the Fund prior to the deadline. [M. Gingrich Written Responses to Press Questions: A. 27.] They were presumably repaid when money was obtained from the investors.

6/16/89.] This venture was thus somewhat like a "vanity press" publication.<sup>4</sup> [Amended Complaint, p. 6.] Representative Gingrich has stated that the "arrangement with the publisher . . . reflected the movement quality of the book." [Gingrich Comments, 4/25/89, p. 3.]

Representative Gingrich was apparently represented by counsel in negotiating the publishing contract. Although he denied doing any substantive work, James Tilton, a partner in the Richmond, Virginia law firm, Hunton & Williams, did discuss the terms of the contract with the publisher for approximately four hours over three to six telephone calls. [Atlanta Bus. Chron., 6/24/87.] The four hours did not include his preparation time. [Atlanta Bus. Chron., 6/24/87.]<sup>5</sup> It does not appear that Mr. Tilton was paid for his services. [Atlanta Bus. Chron., 6/24/87.]

Pursuant to the contract, between March and May 1984 Marianne Gingrich established the COS Limited Partnership ("COS") which, in turn, created the special advertising

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<sup>4</sup> A "vanity press" is one which publishes an author's book at the author's expense. Royalty payments for such "vanity press" publications are thus usually higher than the standard 10% - 15% hardcover and 8% - 10% paperback royalties. In this case, the contract called for only the standard royalty. Mr. Gingrich has stated that he and his wife received less than the royalty provided in the contract.

<sup>5</sup> Mr. Tilton is a friend of Representative Gingrich and allegedly the person who advised him to file charges against Speaker Wright. He is also apparently advising Representative Gingrich re the charges now pending against him, although it has been reported that Daniel J. Swillinger is Mr. Gingrich's lawyer. [New York Times, 8/17/88; 6/4/89.]

fund. COS was a Virginia Limited Partnership formed under the laws of Virginia. [COS Confidential Memorandum 5/31/84; M. Gingrich Written Responses to Press Questions: A. 1.] COS partnership shares are "securities" exempt from the registration requirements of Virginia law and federal securities laws. The COS shares were registered under the laws of Massachusetts and Maryland. It is not clear whether they were registered in any other state. Mrs. Gingrich hired Hunton & Williams to handle the securities registration and exemption transactions. The legal work for COS was done by Janice Moore, an associate in the firm. [M. Gingrich Written Responses to Press Questions: A. 10; Legal Times, 5/1/89, p. 3.] Attorney Moore apparently also prepared for Mrs. Gingrich, all the documents relating to the partnership unit sales, e.g., the offering letter; Confidential Memorandum;<sup>6</sup> Limited Partnership Agreement; and Purchaser Questionnaire.

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<sup>6</sup> The Confidential Memorandum given to each investor describes the nature of the partnership, the underlying publishing contract and the "Promotional Fund." It discloses the royalty arrangements, the payments to Mrs. Gingrich and others, and the expected tax treatment of the partnership. However, the Memorandum also contains an express statement that no representations or warranties are made as to any tax consequences and that the investor should consult his or her own attorney. Mrs. Gingrich denies discussing the possible tax benefits with the investors and stated that her lawyer and the partnership's lawyer cautioned her to refer potential investors to the Confidential Memorandum. [M. Gingrich Written Responses to Press Questions: A. 11.] The Memorandum also briefly discusses the expected market for the book, e.g., conservatives, Republicans, high-tech and science-fiction oriented adults, and intellectuals and other students of government interested in overhauling the welfare state.



Mrs. Gingrich also hired the accounting firm Burnstein, Cohen & Landis to handle the COS accounts and its tax returns. [Tax returns.] It is not known specifically what fees were paid for legal and accounting services, although it appears that less than \$10,500 was spent on such fees from 1984 through early 1989. [See, footnote 12, *infra*.]

COS was 21 individuals and companies who each paid \$5,000 for one limited partnership share (called a "unit") making the assets of the partnership \$105,000.<sup>7</sup> [COS Contract; Washington Post, 3/20/89.] A 22nd limited partner, the book's editor Janet Morris, received her unit for \$1 as partial compensation for her work.<sup>8</sup> [M. Gingrich Written Responses to Press Questions: A. 8.]

Marianne Gingrich was the General Partner. She did not make a monetary contribution and was not a "unit owner." Under the contract, she was to be paid a guaranteed lump sum of \$10,000<sup>9</sup> plus \$20 per hour for her services as General

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<sup>7</sup> It appears that the number of units for sale at \$5,000 was fixed at a maximum of 21 prior to the time investors were solicited and was, therefore, not dictated by the number of interested investors. [Confidential Memorandum, 5/31/84.]

<sup>8</sup> It isn't clear whether Ms. Morris "preferred" to receive the unit as compensation (as Mrs. Gingrich has stated), or whether Representative Gingrich "persuaded" her to accept a partnership unit as partial payment for her services, as she has stated. [Washington Post, 3/20/89.]

<sup>9</sup> Under the partnership contract, Mrs. Gingrich could have elected to receive her \$10,000 in the form of two partnership units. [COS Contract, Article 3, pp. 1-2; Confidential Memorandum, 5/31/84, p. 6.] She did not so elect.

Partner and was also given a 2% interest in the net profits (and losses) of the partnership.<sup>10</sup> [COS Contract; Washington Post, 3/20/89; M. Gingrich Written Responses to Press Questions: A. 14, A. 21.] Although the \$10,000 guaranteed payment could be paid to her as soon as all organization fees for the partnership had been paid and transfers to the fund equalled \$70,000, no other compensation could be paid to her unless the Partnership had a "positive cash flow." [Confidential Memorandum, 5/31/84, p. 1; COS Contract, Article 2, p. 10(33).] To date, although the partnership has lost money, Mrs. Gingrich has been paid not only the \$10,000, but also an additional \$1,500 for the work she did in forming the partnership. She has stated that additional payments are due to her. [M. Gingrich Written Responses to Press Questions: A. 21, A. 25.]

As General Partner, Mrs. Gingrich has exclusive management control of COS business and is authorized under the partnership contract to take actions as she considers appropriate in the best interests of COS, including the hiring of consultants, accountants and attorneys, and making all tax elections on behalf of COS. [Confidential Memorandum, 5/31/84, p. 7.] The General Partner also has the authority to acquire or sell property for the partnership, enter into leases, borrow or lend money, maintain bank accounts, and execute contracts.

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<sup>10</sup> Each unit owner received the right to 4.45% (98% + 22) of the partnership's profits for a \$5,000 payment. (Janet Morris' payment was made by her work on the book.) Therefore, the right to 2% of the profits was worth \$2,247 in cash. (See, COS Tax Returns.)

[COS Contract, Article 2, pp. 3-6.] The General Partner is obligated to file all tax returns, pay any taxes owed and otherwise control the allocation and disbursement of assets.

[COS Contract, Article 2, pp. 7-8.] The General Partner is liable to the partnership or any partner for damages for her willful misconduct, gross negligence or any breach of fiduciary duty. [Confidential Memorandum, 5/31/84, p. 8.] These liabilities, responsibilities and obligations are typical of those contained in other standard limited partnership contracts.

COS established the required advertising fund with \$70,000 of its \$105,001 in assets.<sup>11</sup> Having met the maximum funding requirement of the publishing contract, COS was entitled under that contract to receive a full 50% of the publisher's profits. Of the \$35,001 of remaining COS assets, \$11,500 was paid to Marianne Gingrich for her services, \$5,000 was paid to Janet Morris as partial payment for her work as editor, \$2,000 was paid to David Drake as a supplement to the \$3,000 advance he received from the publisher, and \$16,501 was left for the costs of organizing the partnership and paying attorneys' and accountants' fees.<sup>12</sup>

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<sup>11</sup> It is not clear when the fund was established. The Baen contract required that the fund be completed at a maximum of \$70,000 by August 31, 1984.

<sup>12</sup> Mrs. Gingrich stated that as of March 1989, \$6,000 remains in the COS account. [Washington Post, 3/20/89.] Thus, it appears that \$10,500 had been spent on legal and accounting fees and the organization of the partnership.

The book was rushed to come out prior to the Republican National Convention in Dallas in August 1984 where Representative Gingrich was promoting his "Conservative Opportunity Society." (Washington Post, 3/20/89.) The national promotional campaign for the book began with a reception held in the United States Capitol on May 25, 1984 under the direction of Ron Patrick, a public relations consultant hired by the publisher and paid for by the publisher and the COS promotional fund.<sup>13</sup> The reception, a "champagne-and-salmon soiree," was reportedly held "at the United States Capitol" in "a Senate caucus room" and was attended by booksellers and sales representatives of St. Martin's Press. [Amendment to the Complaint, p. 8; Atlantic Bus. Chron., 6/26/89.] Mr. Baen has stated that "publishers" paid approximately \$5,000 for the reception. (Atlantic Bus. Chron., 6/26/89.)<sup>14</sup> Lyn Nofziger, President Reagan's director of political affairs, spoke at the reception. (Atlanta Bus. Chron., 6/26/89.)

Under the terms of the publishing contract, Marianne Gingrich and the publisher had to co-sign all checks drawn on the fund. Mrs. Gingrich had the authority to direct the placement of up to \$20,000 in print media advertising, so

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<sup>13</sup> Presumably, the book had been published by the time of the reception, just two months after delivery of the manuscript and over a year earlier than anticipated in the contract.

<sup>14</sup> Although it is ambiguously stated in the Atlanta Business Chronicle of 6/26/89, we assume that "publishers" refers to Baen Publishing and TOR Publications.

long as those placements were reasonably competitive with other sources of advertising. Otherwise, allocation of all monies from the fund was controlled by the publisher in consultation with Mrs. Gingrich. The publisher controlled the allocation of all monies from its own in-house advertising budget for bookstore displays, etc. Mr. Baen has stated that the entire \$70,000 promotion budget from the fund had been spent primarily on advertising in the New York Times, Publisher's Weekly, and in publications in cities where the distributor was selling the book. [Washington Post, 3/20/89.]

Ads for the book were placed in various publications such as: National Review, The Washington Monthly, The American Spectator, Public Opinion Quarterly, Foreign Affairs, New York Times Book Review, Dallas Times Herald, Chicago Times, Los Angeles Times, and Human Events. [List of Advertising Samples.] Representative Gingrich made appearances to discuss his book on radio and television shows across the country, such as: "The Public Affair" KXOA-FM Radio Sacramento; "Sun Up San Diego" KFMB-TV (CBS); "Newsmakers" KGTV-TV San Diego (ABC); "Good Morning America" (ABC); "Sherrye Henry Show" WOR-AM Radio; "Kup's Show" (PBS) Chicago; "New England Today" WLVI-TV Boston; "Show of Faith" WBZ-TV (NBC); "Jerry Williams Show" WRKO-AM Radio Boston; "Firing Line" with William F. Buckley. [List of Promotional Expenses Reimbursed.] Representative Gingrich claims to have made a total of 44 speeches and given a total c. 94 scheduled media interviews during 1984.

[Gingrich Comments, 4/25/89, p. 3.] Although he promoted the book "wherever he was," the travel expenses were only reimbursed by the promotional fund when he traveled at the request of the publisher and the General Partner. [M. Gingrich Written Responses to Press Questions: A. 36.] He was reimbursed by the promotional fund for a total of \$1,320.81 for out-of-pocket travel expenses relating to the above-listed appearances. [List of Promotional Expenses Reimbursed.]

By September 1984, the book had reached number 15 on the Walden Bookstore best seller list and number 6 on the Baker and Taylor (a major book wholesale distributor) best seller list. [Gingrich Comments, 4/25/89, p. 6.] The "heavy" promotion of the book and the relatively large promotional budget "should have put the book on the New York Times Best-Seller List" according to co-author, David Drake. [Washington Post, 3/20/89.] The average promotion budget is \$1 per book. [Amended Complaint, p. 7.] Thus, at least 70,000 were expected to be sold.

However, later sales slowed considerably and were plagued by a high number of returns. [7/18/88 letter from Doherty to Gingrich.] By early 1989, the book had sold approximately 12,000 copies in hardcover and 17,000 in paperback.<sup>15</sup>

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<sup>15</sup> Five thousand books were apparently purchased for \$2 each in "special sales" to a "Conservative Book Club." [Washington Post, 3/20/89.] Under the publishing contract, no royalties would be paid on those sales since \$2 is substantially less than 60% of the retail cover price of both the hardcover (\$14.95) and softcover (\$7.95) editions. [See, publishing contract.] It is not known whether these

[Washington Post, 3/20/89.]<sup>16</sup> Neither the publisher nor COS has made a profit and, in fact, they have to date lost money on the venture. [Washington Post, 3/20/89.] The book will have to sell 50,000 copies<sup>17</sup> in order for the investors to recoup their initial investment.

On the other hand, in addition to the advances received in 1984, the Gingriches each received royalties of \$6,080.72 in January 1987, \$302.88 in July 1987, and \$634.45 in December 1987.<sup>18</sup> [List of Royalties received.] In all, they have made \$24,036.10 not including Marianne Gingrich's \$11,500 income from COS. The book continues to sell and, in fact, sales have picked up with all the recent publicity. [M. Gingrich Written Responses to Press Questions: A. 29.]

Representative Gingrich's Financial Disclosure Statement for 1984 discloses Baen Enterprises' payment of advances on book royalties to him and his wife. The statement also

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5,000 books are included in the 29,000 sold.

<sup>16</sup> Representative Gingrich stated that as of 4/25/89, over 17,000 hardcover copies and over 9,000 paperback copies had been sold. [Gingrich Comments, 4/25/89, p. 6.] It is not known whether Mr. Gingrich or the Washington Post article of 3/20/89 is correct.]

<sup>17</sup> It is not clear whether an additional 50,000 copies or a total of 50,000 copies must be sold to recoup expenses. See, Atlanta Bus. Chron., 6/24/89 and Washington Post, 3/20/89 and 6/12/89 for conflicting reports. According to Publisher's Weekly, barely 3% of the non-fiction books published annually reach that level of sales. [Amended Complaint; Atlanta Bus. Chron., 6/24/89.]

<sup>18</sup> It is not known why royalties were not received until 1987 when the book was on the best seller list in September 1984.

discloses interest received from "COS Partnership Ltd." in an amount under \$1,000. Presumably that represents interest on the Gingriches' loan to COS of their advances from the book publisher. The 1984 statement also discloses spousal income from COS. Although no amount is disclosed, this likely represents the \$10,000 lump sum payment provided to Mrs. Gingrich as General Partner. The 1986 statement discloses spousal income from COS, but does not disclose the amount. Presumably, that entry reflects the \$1,500 payment for Mrs. Gingrich's seventy-five hours of service. The 1987 statement discloses royalties to each of the Gingriches in the range of \$5,001-15,000. No other income from COS or the book has been disclosed. Apparently, no other income was received through December 31, 1988.

The 1977 book venture

Just after his unsuccessful campaign for Congress in 1976 and prior to his successful campaign, Representative Gingrich entered into a partnership, known as Nomonham Ltd., with a group of a dozen or so friends and supporters who advanced him \$12,000 - \$13,000 allegedly to write a novel about a Soviet attack on Western Europe. [Wall Street Journal, 3/24/89; Washington Post, 3/20/89; M. Gingrich Written Responses to Press Questions: A. 1.] The Gingriches traveled to Europe during the summer of 1977 where Mr. Gingrich said he did research for the novel at American military bases and



- apparently wrote a draft of several chapters. (Wall Street Journal, 3/24/89; New York Times, 3/24/89, 6/4/89.) The book was never completed or published apparently because a publisher who reviewed the drafts advised him not to pursue writing novels as a career. (Washington Times, 6/2/88, 6/4/89.) It has also been alleged that he did not complete the novel because he was more interested in running for Congress (Wall Street Journal, 3/24/89), and that the partnership was formed only to permit the Gingrichs to take the European trip between election campaigns.

The partners were able to deduct their investments as losses on their individual income tax returns. (Washington Post, 3/20/89.) Representative Gingrich reported his partnership in Nomonham, Ltd. on his FD for 1978-1988 and reported \$6,000 in income on his 1978 FD. There was apparently no income from that partnership during the years 1979-1988. [FD Statements 1978-88.] It is not known why the partnership continues to date.

One of the partners, Chester Roush, Jr. (the General Partner), received a federal grant of nearly \$90,000 to help his family business complete a low-income housing project. Also, at the suggestion of Mr. Roush's daughter, Representative Gingrich co-sponsored a bill to extend the tax credit that helps finance low-income housing. Mr. Roush, who has contributed to each of Representative Gingrich's campaigns, has stated

that Representative Gingrich had not been informed of the grant to his business. [Wall Street Journal, 3/24/89.]

Two other investors in Momonham Ltd., Marguerite Williams and Pete McClain, also invested in the COS partnership. [M. Gingrich Written Responses to Press Questions: A. 1.]

#### The COS investors

Representative Gingrich and his wife sought potential investors in the COS Limited Partnership from among Republican activists and business people whom they believed sought to promote the ideas contained in the book and hoped to make a profit. [Gingrich Comments, 3/25/89, p. 1.] It isn't clear precisely how the investors were approached, but at least one (Roger Milliken) was recruited by Representative Gingrich at the Republican National Convention in August 1984, months after the promotional campaign had begun and the book was apparently already published and selling. [Atlanta Bus. Chron., 6/24/89.] Other investors were recruited at meetings where Representative Gingrich had been a speaker. [Washington Post, 3/20/89.] E.g., Joel Cowan was invited to invest after inviting Representative Gingrich to speak to a group of real estate developers, in the "Aspen Group." [Atlanta J. and Const., 3/25/89.]<sup>19</sup>

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<sup>19</sup> Representative Gingrich's FD for 1984 does not disclose a reimbursement for travel from the "Aspen Group."

Mrs. Gingrich, as General Partner, provided each potential investor with a copy of a Confidential Memorandum dated May 31, 1984 and its attachments, including the COS Limited Partnership Agreement, a COS Limited Partnership Purchaser Questionnaire, and the publishing contract. [M. Gingrich Written Responses to Press Questions: A. 12.] On advice of counsel, Mrs. Gingrich screened all prospective investors on the basis of their responses to the Purchaser Questionnaire, to determine whether they had the net worth, financial understanding and/or investment experience to make a "high-risk investment." [M. Gingrich Written Responses to Press Questions: A. 12.] It is not known whether anyone who was offered an opportunity to invest declined to do so or whether any interested investor was turned down.

Of the twenty-one investors, fourteen were also contributors to "Friends of Newt Gingrich," Representative Gingrich's political campaign fund,<sup>20</sup> three investors are corporate

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<sup>20</sup> Joseph Coors of Adolph Coors Brewery, Jeanne R. Ferst; John M. Barrell; former Georgia Representative, Howard H. ("Bo") Calloway; Richard A. Guthman, Jr. of First American Bank in Georgia; Jean Hails of Hails Construction; Robert H. Kriebel; William P. McClain of McClain International, Inc. (now deceased); Roger Milliken of Milliken & Co., a major textile company; Diane Parker; James C. Richards; Thomas E. Tidwell of Tidwell Construction; Marguerite and Thomas L. Williams. These investors contributed a total of at least \$60,000 to Gingrich campaigns since 1978. [Atlanta Bus. Chron., 6/24/89.] One investor was the Republican National Committeewoman from Georgia for eight years and worked with Representative Gingrich on Georgia Republican patronage issues with the Reagan Administration. [M. Gingrich Written Responses to Press Questions: A. 5.]

entities,<sup>21</sup> and four are individuals who had apparently never contributed to Representative Gingrich's campaigns.<sup>22</sup> Fifteen investors, including two corporate entities, were residents of Georgia. The six remaining investors were from Colorado, Illinois, Nevada, Connecticut and South Carolina.

In three instances, investors were reported to have received federal benefits several years after the time of their investments. Joel Cowan's Cowan & Associates, a real estate development firm in Representative Gingrich's district, received preliminary approval in 1988 for a \$200,000 low-income housing project grant from the Department of Housing and Urban Development, but dropped out of the project prior to disbursement of the funds. [Atlanta J and Const., 3/25/89; Wall Street Journal, 3/27/89.] Mr. Cowan reportedly also purchased a "troubled thrift" in 1984: Habersham Federal Savings & Loan in Cornelia, Georgia. [Atlanta Bus. Chron., 6/24/89.]<sup>23</sup> James Richards' Southwire Co., a cable manufacturer

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<sup>21</sup> Bigard Oil & Manufacturing (Illinois); O. D. Resources, Inc. (Georgia); and Flowers Industries (Georgia). Flowers Industries' PAC contributed at least \$10,500 to Gingrich's campaigns. A Flowers top executive is Chairman of the American Bakers Association which, through its PAC, has also contributed to Gingrich campaigns. The American Bakers Association opposed a plant closing bill and the Family Medical Leave Act (both post-1984) which Representative Gingrich voted against. [Atlanta Bus. Chron., 6/24/89.]

<sup>22</sup> Richmond N. Aggrey (a citizen of Ghana living in Georgia); Gregor Peterson; Roger Schoerner; and Joel H. Cowan.

<sup>23</sup> Mr. Cowan reportedly also paid the Gingriches' expenses for a weekend trip in 1988 involving a speech to a group about planned communities, a special interest of Mr. Cowan's.

in Representative Gingrich's district, received a \$1.5 million contract in 1988 from the Tennessee Valley Authority after competitive bidding. [Wall Street Journal, 3/27/89; Atlanta J. and Const., 3/25/89.] William McClain's McClain International, Inc. has received \$1.14 million in federal defense contracts since 1986. [Atlanta Bus. Chron., 6/24/89.]

Representative Gingrich has denied intervening on behalf of Mr. Cowan or Mr. Richards to obtain those benefits, but admitted that he broke ranks with the Reagan Administration and voted against the Reagan plan to increase funding for FSLIC, a vote which benefitted Cowan and other thrift owners. [Atlanta Bus. Chron., 6/24/89.] He also admitted that he once was instrumental in getting a \$7.6 million grant to help expand the Peachtree City, Georgia airport in Mr. Cowan's community and once stepped into a customs dispute to win the release of some materials Southwire Co. was seeking. He said he did so to expand and preserve job opportunities in his district. [Wall Street Journal, 3/24/87.] Representative Gingrich has not commented on the federal contracts to McClain.

Another investor was former Representative Howard "Bo" Calloway (Republican, Georgia) who is now chairman of GOPAC, a political action committee that raises money for Republican candidates in state and local races. Mr. Calloway reportedly

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Although no reimbursement from Mr. Cowan is listed on Representative Gingrich's 1988 FD, the reimbursement may in fact have been in the name of a group with which Mr. Cowan is affiliated. One possibility listed on the 1988 FD is the Building Industry Association of Georgia.

stated that he invested because he believed in the book's message and thought it might make some money. He likened the investment to backing a Broadway play that you like even though it may not be a hit. [Washington Post, 3/20/89.]

Other investors, such as Roger Milliken, apparently did not expect to profit from the venture, but invested because they wanted to promote the ideas contained in the book. [Atlanta Bus. Chron., 6/24/89; Atlanta J. and Const., 3/25/89; Washington Post, 4/26/89.] Joseph Bigard of Bigard Oil in Newton, Illinois, said, "I looked on it as a political contribution and spent money to enlighten the American people on a different approach." [Washington Post, 4/26/89.]

The partners were collectively entitled to deduct losses of \$97,256 during 1984 the first year of the partnership, and \$6,929 over the period 1985 - 1988 -- nearly the entire investment.<sup>24</sup> [Highlights, 6/16/89; Atlanta J. and Const., 3/25/89; see tax returns.]

#### The Complaint

Representative Alexander's April 11, 1989 Complaint was filed under oath on information and belief pursuant to House Rule X(4)(e) and Committee Rule 9(a). It alleges in ten counts, violations of House Rules XLIII (clauses 2, 4, 6 and

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<sup>24</sup> Of the \$104,185 in losses, Mrs. Gingrich's 2% share amounted to \$2,083.70 during the 1984-88 period. All but \$143 is attributable to 1984.

7), XLIV, and XLVII, and the Federal Election Campaign Act. Specifically, the complaint alleges:

**Count I - Rule XLVII**

Mr. Gingrich, through the COS Limited Partnership, paid for the promotion and marketing of the book. Therefore, the book deal was a departure from the normal industry practice wherein the publisher pays for promotion and marketing. As such, the payments Mr. Gingrich received are not "royalties" but "outside earned income," and he apparently exceeded the applicable limit on outside earned income for 1987.

**Count II - Rule XLIII, clause 4**

Because the purpose of COS was to promote sales of the book, and sales of the book earn money for the Gingriches, the \$105,000 invested in COS was a gift to Mr. Gingrich. News reports indicate that the investors had an interest in legislation. Thus, the gift violates the Rule's \$100 limit on gifts.

**Count III - Rule XLIII, clause 7; FECA**

Mr. Gingrich solicited \$105,000 in funds to pay for his travel, a media campaign and a stipend for Mrs. Gingrich. Funds raised for a Member must be treated as campaign contributions. Thus, these funds are contributions in excess

of the campaign contribution limit and have not been properly reported.

Count IV - Rule XLIII, clause 4

Mrs. Gingrich received an ownership interest in the partnership without having contributed money. Thus, it appears to be a gift of over \$100 from the other partners who appear to have a direct interest in legislation.

Count V - Rule XLIII, clause 4

Mrs. Gingrich received \$10,000 in fees from COS. Her employment could be a means to transfer funds from the partners to Mr. Gingrich. If so, the \$10,000 is a gift of over \$100 from persons with apparent direct interests in legislation.

Count VI - Rule XLIII, clause 6

If Mr. Gingrich solicited investments in COS during trips paid for by campaign funds, it would appear to be an improper conversion of campaign funds to personal use.

Count VII - Rule XLIII, clause 2

If Mr. Gingrich solicited investments in COS during trips paid for by government funds, it would appear to be an improper use of government resources for personal benefit.



**Count VIII - Rule XLIII, clause 2**

Mr. Gingrich apparently used Congressional Staff assistants to help write the book. Such use is an improper use of government resources for personal benefit.

**Count IX - Rule XLIII, clause 4**

The book was apparently purchased in a bulk of 5,000 by one purchaser. Thus, it may not be a bona fide purchase, but a gift to Mr. Gingrich.

**Count X - Rule XLIV**

COS spent a portion of its promotional funds to reimburse Mr. Gingrich for travel expenses. The reimbursements were apparently not reported as required.

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Representative Alexander filed an "Amendment to Complaint and Bill of Particulars" on July 14, 1989. In it he sets forth reasons why the Committee should investigate Mr. Gingrich, based in part on comparisons to the investigation of Speaker Wright. In addition, the amendment sets forth a "Statement of Known and Admitted Facts" to support the Counts of the Complaint<sup>25</sup> and alleges the following violations of House

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<sup>25</sup> The facts alleged therein are included in the Factual Background part of this memorandum.

Rule XLIII (clauses 1-3 and 11), the FECA, and the Internal Revenue Code which were not alleged in the Complaint.<sup>26</sup>

1. Mr. Gingrich's 1977 book deal is part of a continuing course of improper campaign finance procedures. Although no specific rule or law is referred to for this alleged violation, we assume only a violation of the FECA was intended since Mr. Gingrich was not subject to House Rules in 1977 prior to his election to the House. [p. 10 (1).]

2. If the COS partners did not expect to make a profit on the book, but intended through a scheme promoted by Representative Gingrich to convert political contributions into deductible business losses, their deduction of losses is improper under I.R.C. §§ 212 and 262. [pp. 11, 12 (3); Highlights, 6/16/89; Atlanta Bus. Chron., 6/24/89.]

3. The payment of \$1,500 to Mrs. Gingrich for work allegedly performed as general partner may be a means of transferring funds from the partners to Mr. Gingrich, because the payment is in excess of \$20,000 already paid for legal, accounting and other costs. This may violate Rule XLIII, clause 3 and 4. [p. 13 (7).]

4. The bulk purchase of 5,000 copies of the book by a "conservative group" could constitute a nearly \$1,000 unreported contribution by a lobbying or political group in excess of

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<sup>26</sup> Only the newly alleged violations are set forth here.

the contribution limits of the FECA and the reporting requirements of the House Rules. [p. 13 (8).]

5. The use of congressional staff to write the book is a violation of Rule XLIII, clause 8.<sup>27</sup> [p. 14 (11).]

6. The use of the United States Capitol building or the use of the name of the United States Capitol for a promotional event may be an improper use of government property for personal use in violation of Rule XLIII, clauses 1-3 and 11. [p. 14 (12) (13); Atlanta Bus. Chron., 6-24-'89.]

#### The applicable rules

##### 1. Procedural Rules

- Pertinent Rules of the House

Rule X, clause 4(e)

(1) The Committee on Standards of Official Conduct is authorized; . . . (B) to investigate, subject to subparagraph (2) of this paragraph, any alleged violation by a Member, officer, or employee of the House, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member. . . .

(2)(B) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member . . . only --

(i) upon receipt of a complaint, in writing and under oath, made by or submitted to a Member of the House and transmitted to the committee by such Member, or

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<sup>27</sup> The amendment states that the violation may have been of "House Rule XLIV, clause 8." This is apparently a typographical error and should refer to Rule XLIII.

- (ii) upon receipt of a complaint, in writing and under oath, directly from an individual not a Member of the House if the committee finds that such complaint has been submitted by such individual to not less than three Members of the House who have refused, in writing, to transmit such complaint to the committee.

- Pertinent Rules of the Committee

Rule 9.

(a) A complaint submitted to the Committee under clause 4(e)(2)(B) of Rule X of the Rules of the House of Representatives shall be in writing and under oath, setting forth in simple, concise, and direct statements --

- (1) the name and legal address of the party filing the complaint (hereafter referred to as the "complainant");

- (2) the name and position or title of the Member, officer, or employee of the House of Representatives alleged to be in violation of the Code of Official Conduct or a law, rule, regulation, or other standard of conduct;

- (3) the nature of the alleged violation, including, if possible, the specific section of the Code of Official Conduct or law, rule, regulation, or other standard of conduct alleged to have been violated; and

- (4) the facts alleged to give rise to the violation. When facts are alleged upon the information and belief of the complainant, the complaint shall so state and set forth the basis for such information and belief.

- (b) All documents in the possession of the complainant that are relevant to and in support of the allegations shall be appended to the complaint.

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Rule 10.

(a)(1) The staff of the Committee shall examine each complaint submitted to the Committee for compliance with clause 4(e)(2)(B) of Rule X of the Rules of the House of Representatives and rule 9 of the Committee rules.

(2) if within thirty days of the date of the filing of a complaint the Chairman and ranking minority member of the Committee jointly --

(A) decide to place the complaint on the Committee agenda for consideration at the next regularly scheduled meeting of the Committee, it shall be so placed on such agenda, or

(B) determine that the complaint be dismissed because it fails to allege facts which constitute a violation of the Code of Official Conduct or applicable law, rule, regulation, or other standard of conduct, the complaint together with the determination that it should be dismissed shall be placed on the Committee agenda for consideration at the next regularly scheduled meeting of the Committee.

Unless the Committee determines under clause (b) that the complaint merits further inquiry, the complaint shall be dismissed and the complainant shall be notified of the dismissal. If upon the expiration of such thirty days, the Chairman and ranking minority member have not taken any joint action respecting the complaint, it shall be placed on the Committee agenda for consideration at the next regularly scheduled meeting of the Committee.

(b) At the meeting at which the Committee is to consider a complaint filed with the Committee, the Committee shall determine whether the violation alleged in the complaint is within the jurisdiction of the Committee and, if so, whether the allegations in the complaint merit further inquiry. The complainant and respondent shall be notified, in writing, of action taken by the Committee respecting the complaint.

## 2. Substantive Rules

### - House Rule XLIII - Code of Official Conduct

There is hereby established by and for the House of Representatives the following code of conduct, to be known as the "Code of Official Conduct":

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

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

4. A Member, officer or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of \$50 or less) in any calendar year aggregating \$100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

\* \* \*

6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.

7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events.

8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

\* \* \*

11. A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "Official Business," or any combination of words thereof, on any letterhead or envelope.

- House Rule XLIV - Financial Disclosure

1. A copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 shall be sent by the Clerk within the seven-day period beginning the date on which the report is filed to the Committee on Standards of Official Conduct. By July 1 of each year, the Clerk shall compile all such reports sent to him by Members within the period beginning on January 1 and ending on May 15 of each year and have them printed as a House document, which document shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the House as it pertains to Members, officers, and employees of the House of Representatives.

- House Rule XLVII - Limitations on Outside Earned Income

1. (a) Except as provided by paragraph (b), no Member may, in any calendar year beginning after December 31, 1978, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

\* \* \*

3. For the purposes of this rule --

\* \* \*

(d) The term "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered. . . .

The applicable law1. Federal Election Campaign Act ("FECA")

## - 28 U.S.C. § 431(8)(A)

The term "contribution" includes -- (1) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

## - 2 U.S.C. § 434(a)

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection.

## - 2 U.S.C. § 441(a)

## (a) Dollar limits on contributions

(1) No person shall make contributions --

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

## - 2 U.S.C. § 441(b)

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly



to accept or receive any contribution prohibited by this section. . . .

2. Internal Revenue Code ("IRC")

- 26 U.S.C. § 165

In the case of an individual, the deduction [for uncompensated losses] shall be limited to . . . losses incurred or any transaction entered into for profit. . . .

- 26 U.S.C. § 212

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year

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- (1) for the production or collection of income;
- (2) for the management, conservation, or maintenance of property held for the production of income; or
- (3) in connection with the determination, collection, or refund of any tax.

- 26 U.S.C. § 262

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

3. Public Buildings, Property and Works Act

- 40 U.S.C. § 193d

It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein.

## - 40 U.S.C. § 193a

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks and other areas as defined on a map . . . dated June 25, 1946, approved by the Architect of the Capitol. . . .

4. Policy for Use of Senate Rooms

The Senate Committee on Rules and Administration has jurisdiction over assignment and use of space in the Senate Office Buildings, the Senate Wing of the Capitol, and the Courtyard of the Russell Building. . . .

The following regulations have been established for use by all offices in the assignment of their rooms:

1. Rooms are available only for Senate-related business. . . .

\* \* \*

9. . . . No products may be sold on the premises or displayed for future sale. No campaigns, fund-raising, commercial, or profit-making purpose whatsoever may be served by the use of Senate space. The Senator sponsoring the function will be held accountable for the enforcement of this regulation.

**ANALYSIS**

As set forth below, in all but one count the allegations in the Complaint, the Amendment to the Complaint and their attachments, fail to state facts which, even if assumed to be true, constitute violations of the Code of Official Conduct or any law, rule, regulation or other standard of conduct

specified in the Complaint.<sup>28</sup> Count X of the Complaint may state a violation for the Committee to consider further. However, with respect to that count, Mr. Gingrich has taken steps to correct the matter alleged to violate House Rules.

#### **COMPLAINT**

##### **Count I**

This count purports to state a violation of House Rule XLVII which imposes a limit on Members' outside earned income. The count alleges that (1) Representative Gingrich established COS for the purpose of paying for the promotion of the book; (2) the use of such a limited partnership to pay for book promotion is not the usual industry practice; and (3) the Gingriches received from the publisher payments which they called "royalties" for the purpose of Rule XLVII reporting requirements. From these facts, Count I concludes that the Gingriches' contract with Baen Publishing is not a royalty contract and, therefore, that the payments they received from Baen are not properly characterized as "royalties," and are thus not excluded from the rule's definition of "outside earned income." The Complaint further alleges that if these "royalties" had been properly included as outside earned income, Mr. Gingrich would have improperly exceeded

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<sup>28</sup> Although we have assumed for the sole purpose of analyzing the Complaint that those facts properly alleged therein are true, we have not assumed mere speculative and conclusory statements to be properly alleged facts.

the rule's allowable limit on earned income in 1987, the year he received the "royalties."

Count I fails to state a violation of Rule XLVII because it fails to allege any fact from which the Committee could reasonably infer that the payments Mr. Gingrich received from the publisher were not properly characterized as unearned "royalties," or that the contract with Baen Publishing was not a bona fide royalty contract.

Mr. Gingrich's alleged payment of the book's promotion costs does not change unearned royalty income received from the sale of the book into earned income as the Complaint suggests. In its Advisory Opinion No. 13, the Select Committee on Ethics interpreted Rule XLVII and stated that "the real facts" control the characterization of income under this rule as "earned" or "unearned."

Thus, if amounts received or to be received by a Member are in fact attributable to any significant extent to services rendered by the Member, the characterization of such amounts . . . will not serve to prevent the application of Rule XLVII. . .

[Advisory Opinion 13, Ethics Manual - 100th Congress, p. 70. Emphasis added.]

For example, in the Statement of the Committee on Standards of Official Conduct In the Matter of Representative James C. Wright, Jr. (the "Wright Statement"), the Committee stated that it had reason to believe that income Mr. Wright received for giving a speech was earned income even though Mr. Wright may have formally refused payment for the speech and requested

that instead, the group "purchase" copies of his book. Since the "purchase" itself was apparently made as payment for the speech given, the "royalty" income from book sale would have been earned by the speech and would thus be subject to the limits of Rule XLVII. [Wright Statement, 4/17/89 pp. 19-42.]

In this case, there is no allegation that Mr. Gingrich performed any services for those who purchased his book. In addition, assuming arguendo that Mr. Gingrich himself paid for the costs of publishing, the mere payment by an author of part or all of the promotional costs of publishing the book does not change the basic nature of the author's royalty contract with the publisher.<sup>29</sup> In fact, the Amendment to the Complaint recognizes that such author-financed publishing arrangements are commonly referred to as "vanity press" publications. [Amendment to the Complaint, p. 6.] Thus, even if it were proved that Mr. Gingrich established an unusual limited partnership for the purpose of paying for the promotion of the book, and received "royalties" from book sales, those facts would still not constitute a violation of Rule XLVII.

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<sup>29</sup> There is no indication from any known facts or allegations that the publishing contract between Baen and the Gingriches is otherwise unusual in any respect.

**Count II**

This count purports to state a violation of House Rule XLIII, clause 4 which prohibits Members from receiving gifts valued in excess of \$50 or aggregating more than \$100 per year from any person having a direct interest in legislation. The count alleges that (1) the purpose of COS was to promote sales of the book and thus earn money for Mr. Gingrich; (2) the amounts contributed by each of 21 limited partners were in excess of \$100; and (3) each limited partner had a direct interest in legislation. The Amendment to the Complaint further alleges that many investors did not expect the book to make a profit. [Amendment to the Complaint, p. 7.] The count concludes from these facts that the contributions of the limited partners to the promotion of the book were unreported "gifts" to Mr. Gingrich.

Count II fails to state a violation of Rule XLIII, clause 4 because it fails to allege any fact from which the Committee may reasonably infer that the limited partnership contributions were "gifts" to Mr. Gingrich.

In the first place, the Complaint acknowledges that the fund established by the partnership contract was for promotional costs. The money was not given to Mr. Gingrich for his own personal use, but was given to the publisher to use for media advertising. Mr. Gingrich's receipt of royalties was pursuant to a totally separate contract with Baen Publishing. There are no allegations in the Complaint that Baen Publishing

has a direct interest in legislation before the Congress or that the royalties themselves are somehow gifts. [See Washington Post, 3/20/89 attached to Complaint.]

Furthermore, for purposes of Rule XLIII, "gift" has been defined as:

A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

[Advisory Opinion No. 7, Ethics Manual, 100th Congress, p. 28.] In this case, there is no allegation that the limited partners did not receive consideration of equal value from the publisher. In fact, the Washington Post article incorporated into the Complaint states that the limited partners "each put up \$5,000 and were to split half of the publisher's profits." [Washington Post, 3/20/89.] Although the publisher has to date made no profits and, therefore, the limited partners have not received a significant benefit, the book has sold over 29,000 copies and at least some of those involved in the book believed the size of the publicity budget gave the book a real chance to be a best seller. [Washington Post, 3/20/89.] There is no allegation in the Complaint that the chance to make a profit on a COS partnership investment was not worth \$5,000. Whether individual investors expected to make a profit has no bearing on the actual value of the opportunity. Nor is there an allegation that Mrs. Gingrich did not perform services to earn the money paid to her by

the limited partners. Thus, even assuming that the allegations in the Complaint are true, they do not state a violation of Rule XLIII, clause 4.

Count III

This count purports to state a violation of House Rule XLIII, clause 7, which requires Members to treat the proceeds of fundraising events as campaign contributions and related sections of the Federal Election Campaign Act ("FECA") which places dollar limits on campaign contributions and requires the reporting of all campaign contributions to the FEC.

The count appears to allege that the \$5,000 contributions to COS by the limited partners were, in fact, the proceeds of a "fundraising event" for Mr. Gingrich because some of the proceeds were used to pay for Mr. Gingrich's travel, to fund a media publicity campaign, and to provide a stipend for Mrs. Gingrich. Thus, the count concludes, the contributions were unreported campaign contributions in excess of the campaign contribution limit. The Amendment to the Complaint further alleges that the funds are campaign contributions because the purpose of COS was not to promote the book, but to promote Newt Gingrich. This allegation is said to be evidenced by the uniqueness of the partnership arrangement, the low sales of books despite high promotional spending, and the fact that the COS partners were Mr. Gingrich's political sympathizers and had no primary interest in profit.



Count III fails to state a violation of Rule XLIII, clause 7 or of the related sections of the FECA because it fails to allege any fact from which the Committee may reasonably infer that monies paid by COS limited partners for their partnership shares are the proceeds of a "fundraising event" for Mr. Gingrich personally. There is no allegation that the funds were either intended to be used by Mr. Gingrich or were, in fact, used by Mr. Gingrich as his personal or campaign funds. The funds were raised for and used by Baen Publishing for expenses relating to book promotion, and COS for a salary paid to Mrs. Gingrich for services rendered to COS. Thus, even assuming the truth of the facts alleged, they do not state a violation of Rule XLIII, clause 7 or the FECA.

In addition, the Amendment to the Complaint also fails to state a violation of Rule XLIII, clause 7 or the FECA because there is no allegation that the COS partners invested their money "for the purpose of influencing any election for Federal office." FECA, 2 U.S.C. § 431(8)(A)(i). Even assuming the purpose was to promote Mr. Gingrich, such purpose may just as easily be seen as intended to gain favorable publicity for the book through its principal author. To find otherwise would be to turn all promotional expenditures for books written by congressmen into campaign contributions simply because publicity for the book necessarily involves publicity for the author.

**Count IV**

This count purports to state a violation of the above-mentioned House Rule XLIII, clause 4 regarding the receipt of gifts by Members. The count alleges that (1) Mrs. Gingrich received an ownership interest in COS without having contributed any funds; (2) the interest was worth more than \$100; and (3) the persons from whom she received the interest are persons with direct interests in legislation. The count concludes from these facts that Mrs. Gingrich improperly accepted a gift of the ownership interest.

Count IV fails to state a violation of Rule XLIII, clause 4 because it fails to allege any fact from which the Committee may reasonably infer that Mrs. Gingrich received a gift or that her receipt of an ownership interest in COS was in any way improper. As discussed above, "gift" is defined as something of value received by a Member without giving the donor "consideration of equal or greater value." [Ethics Manual, 100th Congress, p. 28.] In this case, the Washington Post article incorporated in the Complaint alleges that Mrs. Gingrich received her interest in the partnership in return for the work she performed as General Partner. In the investigation of Speaker Wright, the Committee found that Mrs. Wright's salary may have been a gift only where there was no evidence that she did any identifiable work for the salary. In those years for which some evidence of work

existed, the Committee refused to determine the worth of that work and found that no gift existed.

Here, there is no allegation in the Complaint that Mrs. Gingrich did not perform any work for the partnership or even that the work she performed was not worth the amount she was paid. Thus, accepting the allegations made as true, the Complaint does not state a violation of Rule XLIII, clause 4.

Count V

This count purports to be another violation of Rule XLIII, clause 4, discussed above. The count alleges only that Mrs. Gingrich received \$10,000 in fees from COS. It further states without factual support that Mrs. Gingrich's employment by COS could be seen as a means of transferring funds from the COS partners to Mr. Gingrich and concludes that such a transfer would be an improper gift. The Amendment to the Complaint further alleges that Mrs. Gingrich's receipt of an additional \$1,500 for her work as general partner could be a means of transferring money from the COS partners to Mr. Gingrich in violation of Rule XLIII, clauses 3 and 4. Clause 3 prohibits a Member from receiving compensation by virtue of influence improperly exerted from his position in Congress.

Count V fails to state a violation of Rule XLIII, clause 4 because it fails to allege facts from which the Committee

may reasonably infer that Mrs. Gingrich's receipt of \$11,500 from COS was a gift. As stated above, the receipt of something of value is not a gift if "consideration of equal or greater value is received by the donor." The Complaint simply does not allege that Mrs. Gingrich did not return to COS consideration equal to the \$11,500 in fees paid to her. In fact, the Washington Post article alleges that Mrs. Gingrich earned her \$11,500 fee by rendering services to COS. The Complaint does not allege that those services were not performed or that they were worth less than the amount she was paid. Thus, even assuming the truth of the allegations made, these allegations fail to state a violation of Rule XLIII, clause 4.

Nor does the Amendment state a violation of Rule XLIII, clause 3 because it fails to allege facts from which the Committee may reasonably infer that any money received by Mrs. Gingrich was received by virtue of Mr. Gingrich's use of improper influence.

#### Count VI

This count purports to state a violation of Rule XLIII, clause 6 which prohibits a Member from converting his campaign funds to personal use. The Count alleges only that Mr. Gingrich sought partners in COS from among campaign contributors and business people he met during several speeches he made. The Count further states that if any of the solicitations for partnership in COS were financed by campaign funds, such

expenditures of funds would violate Rule XLIII, clause 6. Count VI does not allege that Mr. Gingrich did use campaign funds to finance his solicitation of COS partners. Rule XLIII, clause 6 does not prohibit Members from doing business with campaign contributors or business people met during speaking engagements. Therefore, without an allegation that Mr. Gingrich used campaign funds to solicit or finance the solicitation of COS investors, the facts alleged in this Complaint do not constitute a violation of Rule XLIII, clause 6.

#### Count VII

This Count purports to state a violation of Rule XLIII, clause 2 which admonishes Members to adhere to both the spirit and the letter of the House Rules and the rules of House Committees. The Count makes no allegations, aside from an apparent reference back to the one allegation made in Count VI -- that Mr. Gingrich solicited partners for COS from among campaign contributors and business people he met during speeches. Count VII further states that if those solicitations were financed by government resources, they would be in violation of Rule XLIII, clause 2. There is no allegation that government resources were so used. Thus, as discussed above, since House Rules do not prohibit Members from doing business with campaign contributors or business people met at speaking engagements, as alleged, the facts do not constitute a violation of Rule XLIII, clause 2.

**Count VIII**

This count purports to be a violation of Rule XLIII, clause 2 which, as discussed above, admonishes Members to adhere to the spirit and letter of House Rules and the rules of House Committees. The count alleges that Mr. Gingrich's congressional staff assistants helped him write the book and concludes that such use of staff is an improper use of government resources. The Amendment to the Complaint alleges the same fact and concludes that it also constitutes a violation of Rule XLIII, clause 8 which prohibits Members from paying a staff member from the clerk hire allowance "who does not perform duties commensurate with the compensation he receives."

Count VIII fails to state a violation of Rule XLIII, clauses 2 and 8 because it fails to allege any facts from which the Committee may reasonably infer that using a congressional staff member to help write a book is by itself a misuse of government resources.

While congressional staff are required to perform the work necessary to fulfill their official duties, "[a]s long as employees complete those 'official' duties required by the Member and for which the employees are compensated from public funds, they are generally free to engage in personal, campaign, or other nonofficial activities." [Ethics Manual, 100th Congress, p. 86.] Neither the Complaint nor the Amendment to the Complaint alleges that Mr. Gingrich's congressional

staff did not complete their official duties. In fact, neither the Complaint nor the Amendment even alleges that Mr. Gingrich's staff worked on the book during government office hours. However, even if such an allegation had been made, there is no prohibition of staff employees' performing personal work for a Member during the standard 9 to 5 work day.

[D]ue to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week -- at others, some less. Thus, employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods.

[Advisory Opinion No. 2, Ethics Manual, 100th Congress, p. 90.] See also, Wright Statement, pp. 43-46.

Thus, even assuming the allegation made is true, it does not state a violation of Rule XLIII, clause 2 or clause 8.

#### Count IX

This count purports to state a violation of Rule XLIII, clause 4 which, as discussed above, prohibits a Member's receipt of certain "gifts." The count alleges that Mr. Gingrich's book was purchased by a conservative book club in a quantity of 5,000 and concludes from that fact that the purchase might be a "gift" to Mr. Gingrich. The Amendment to the Complaint concludes further that the bulk purchase might be a "direct or indirect contribution . . .

by a lobbying or political action group" in violation of House Rules and the FECA.<sup>30</sup>

Count IX fails to state a violation of the FECA or of Rule XLIII, clauses 4 and 6 because it fails to allege any fact from which the Committee may reasonably infer that the purchase of a large number of books is either a gift or a political contribution.

To begin with, as discussed above, a "gift" is something of value for which the donor has not received "consideration of equal or greater value." In this case, there is no allegation that the book purchaser did not receive the 5,000 books paid for or that the books were not worth the purchased price. It must be assumed, therefore, that the purchaser received consideration of equal value for the purchase price. Thus, Count IX clearly does not state a violation of Rule XLIII, clause 4. See Wright Statement, pp. 36-42.

Furthermore, a "contribution" is "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." [FECA, 2 U.S.C. § 431(8)(A)(k). Emphasis added.] In this case, there has been no allegation that any book purchaser paid for any book for the purpose of influencing a Federal election. Thus even assuming the allegation contained

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<sup>30</sup> Although no specific Rule is stated, presumably Rule XLIII, clause 6 was intended. That Rule prohibits Members from converting campaign contributions to personal use. We also assume that the reference to the FECA refers to its reporting requirements and limitations on contributions.



in Count IX is true, it does not state a violation of Rule XLIII, clause 6 or the FECA.

In addition, as noted in footnote 15, under the publishing contract, no royalties were paid on book sales for less than 60% of the retail cover price. It has been alleged that these sales to the Conservative Book Club were for \$2 each, far below 60% of retail. [Washington Post, 3/20/89.] Thus, Mr. Gingrich may have received no benefit at all from these sales.

#### Count X

This count purports to state a violation of Rule XLIV which requires Members to file a Financial Disclosure Statement ("FD") disclosing among other things "[t]he source and a brief description of reimbursements aggregating \$250 or more in value received from any source." [See FD, § II.C.] The count alleges that COS reimbursed Mr. Gingrich for certain travel expenses which he did not disclose on his FD. While these facts do state a violation of Rule XLIV, we note that by letter of April 24, 1989 to the Committee on Standards of Official Conduct, Mr. Gingrich acknowledged his previous failure to disclose travel expenses reimbursed by COS and asked the Committee to amend his 1985 FD to reflect that reimbursement. He explained that he had mistakenly treated each reimbursement from COS separately for purposes of the \$250 aggregate limit and thus had not reported \$1,320.81 in

reimbursed travel expenses. Thus, while a reported oversight may initially have occurred, the FDs have been amended.

**AMENDMENT TO THE COMPLAINT**

In addition to repeating or elaborating on some of the allegations previously set forth in the Complaint, the Amendment to the Complaint makes several additional allegations.<sup>31</sup>

-- It is alleged that in 1977, the year before he was elected to Congress, Mr. Gingrich accepted \$1,000 from each of thirteen prominent Republican businessmen in a partnership ostensibly formed to finance his writing a novel. The novel was never written. Mr. Gingrich allegedly used the money to finance a family trip to Europe. He ran for Congress in 1978. His partners, some of whom allegedly had direct interests in legislation, received tax benefits for participating in the failed book venture. One investor is alleged to have received a federal grant following Mr. Gingrich's election to Congress. The Amendment to the Complaint concludes from these facts that the \$13,000 Mr. Gingrich received from the book investors in 1977 might be considered campaign contributions because Mr. Gingrich did not write the book and his 1978 campaign for Congress was "not unanticipated" in 1977. While no specific rule or law is referenced, it would appear that the Amendment purports to state a violation of the

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<sup>31</sup> We have not repeated allegations already covered in Counts I-X of the Complaint.

FECA, 2 U.S.C. § 434, which requires that all campaign contributions be reported to the FEC.<sup>32</sup>

These allegations fail to state a violation of the FECA because there is no allegation that the money was given to Mr. Gingrich in 1977 "for the purpose of influencing any election for Federal office" and, thus, that the money was a "contribution" under the FECA. In fact, the Amendment appears to intentionally stop short of making such an allegation, stating only that the money was used to finance a family trip to Europe. As such, while the money could be considered a "gift," since Mr. Gingrich was not a Member of Congress, no rule or law prohibited his acceptance of gifts.

Moreover, because Mr. Gingrich was not a Member of Congress at the time of the 1977 book partnership, the Committee has no jurisdiction over his acts even if deemed to be violations of the FECA.

-- The Amendment alleges that because the COS investors were not primarily motivated to become investors due to an expectation of profit, the losses deducted by the partners are not allowable under Sections 212 and 262 of the Internal

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<sup>32</sup> We assume that the Amendment did not intend to state a violation of FECA, 2 U.S.C. § 439(a), which prohibits the personal use of campaign contributions by Members who were not in office on January 8, 1980. Since Mr. Gingrich was elected to office in 1978, this FECA provision does not apply to him. Nor does House Rule XLIII, clause 6 apply because Mr. Gingrich was not a Member of the House at the time he allegedly used the funds described in the Amendment to the Complaint. Clause 6 prohibits all Members from converting campaign contributions to personal use.

Revenue Code, but were part of a tax avoidance scheme promoted by Mr. Gingrich to convert non-deductible contributions and gifts into deductible business expenses.

It is not clear from these allegations what rule or law Mr. Gingrich is alleged to have violated. IRC § 212 provides that "there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred . . . for the production or collection of income." Similarly, IRC § 262 provides that "no deduction shall be allowed for personal, living, or family expenses." Neither section has anything to do with deduction of business losses.

However, IRC § 165 provides that "[i]n the case of an individual, the deduction [for uncompensated losses] shall be limited to . . . losses incurred in any transaction entered into for profit . . ." As case law makes clear, a transaction for profit is one in which the taxpayer has a reasonable expectation of making a profit. Wehrly v. United States, 792 F.2d 878 (9th Cir. 1986). However, it is not necessary that profit be the primary or dominant motive. Id. Bona fide profit motive may exist even though prospects for profit were negligible or even absent, provided the taxpayer himself believed in good faith that the chance of profit existed. King v. United States, 545 F.2d 700 (10th Cir. 1976).

Mr. Gingrich himself was not a partner and, therefore, had no losses to deduct. Mrs. Gingrich presumably deducted her partnership losses on their joint tax return. However,

there is no allegation that Mrs. Gingrich had no good faith belief that a chance of profit existed. Thus no violation of the Internal Revenue Code has been stated.

-- Finally, the Amendment purports to state violations of Rule XLIII, clauses 1-3 and 11. Clauses 2 and 3 were discussed above. Clause 1 requires a Member to "conduct himself at all times in a manner which shall reflect creditably on the House." That clause has been found to apply in cases dealing with "flagrant" violations of a law or rule that reflect on "Congress as a whole" and that might otherwise go unpunished. [Ethics Manual, 100th Congress, p. 4.] Clause 11 prohibits Members from authorizing a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "Official Business" on any letterhead or envelope. The Amendment alleges that Mr. Gingrich used the United States Capitol building and the name of the United States Capitol to promote the book in violation of those House Rules.

With respect to clause 11, it is clear that:

[T]he primary purpose of the provision is to prevent private organizations from using a facsimile of congressional stationery to solicit any contributions or support, thus conveying an impression that the solicitation is endorsed by the Congress or is related to the official business of any Member whose name appears on the letter.

[Ethics Manual, 100th Congress, p. 183.] In this case, the Amendment to the Complaint does not allege that Mr. Gingrich allowed COS or anyone to use letterhead or envelopes bearing

the name of the United States Congress or House of Representatives or stating that it was conducting official congressional business. Nor is there any allegation that using the United States Capitol for a reception in any way conveyed the impression that the publicity for the book was endorsed by Congress or was related to official congressional business. Thus, the Amendment fails to state a violation of Rule XLIII, clause 11.

With respect to clause 3, the Amendment does not allege any fact to support a charge under clause 3 that Mr. Gingrich received a benefit from the promotional event at the Capitol building which may have occurred "by virtue of influence improperly exerted from his position in the Congress." Thus, the Amendment also fails to state a violation of Rule XLIII, clause 3.

With respect to clause 1, the Amendment to the Complaint does not specify any law which Mr. Gingrich has allegedly violated. It may have intended to refer to 40 U.S.C. § 193d which prohibits the advertising or sale of any article on the United States Capitol Grounds. However, 40 U.S.C. § 193a defines Capitol Grounds to exclude the Capitol buildings. Use of Senate rooms, including the Senate caucus room referred to in the Amendment to the Complaint, is under the exclusive jurisdiction of the Senate Committee on Rules and Administration, which has no jurisdiction over Members of the House. Thus, Senate rules cannot apply to Members of

the House and cannot have been violated by Mr. Gingrich. Since no law or rule has allegedly been violated, the Complaint fails to state a violation of Rule XLIII, clause 1.

Clause 2 of Rule XLIII requires a Member to adhere to the "spirit," not only the letter of the rule. In this case, however, there is no allegation that the spirit of any rule has been violated. Mr. Gingrich either improperly used the United States Capitol or he did not. There is no question of his appearing to follow a rule, but actually avoiding its intended effect. Thus, no violation of clause 2 has been stated.

#### STANDARD OF PLEADING FOR A PRELIMINARY INQUIRY

Committee Rule 10 provides that "[t]he staff of the Committee shall examine each complaint . . . for compliance with clauses 4(e)(2)(B) of Rule X of the Rules of the House of Representatives and rule 9 of the Committee rules." Rule 9 provides that "[w]hen facts are alleged upon the information and belief of the complainant, the complaint shall so state and set forth the basis for such information and belief."

In this case, we have determined, as described above, that in all but one instance the Complaint fails to set forth any basis for the allegations made on information and belief. Since rule 9 mandates that such a basis be stated, we believe that in its determination of whether to dismiss

the Complaint or go forward with a Preliminary Inquiry, the Committee must disregard any allegations made without the required basis.

Only one count in the Complaint even arguably states a violation of any rule, regulation, law or standard of conduct. In that count, it is alleged that Mr. Gingrich failed to report on his Financial Disclosure Statement that he received reimbursement from the COS promotional fund for travel expenses incurred to promote the book. While true, Mr. Gingrich later amended that Financial Disclosure Statement to account for \$1,320.81 received as reimbursement of expenses. [See discussion of Complaint, Count X above.] Thus, even in that count, the Committee may reasonably determine that the issue does not merit further inquiry.



ONE HUNDRED FIFTY CONGRESS  
JULIAN E. BISHOP, CALIFORNIA, CHAIRMAN  
VIC FLECK, CALIFORNIA  
BERNARD J. D'AMICO, NEW JERSEY  
BLAKE E. HALLINAN, WEST VIRGINIA  
JOSEPH H. BAIRD, PENNSYLVANIA  
CHESTER G. ATWOOD, MASSACHUSETTS  
800 336-7100

Attachment B

JOHN T. OVERTON, MISSOURI  
JAMES E. RYAN, IOWA  
CHARLES PATTON, JR., CALIFORNIA  
THOMAS E. PETT, MISSOURI  
LARRY E. GARD, OHIO  
FRANK BRADY, MISSOURI  
RALPH L. LUTWAL, OHIO

**U.S. House of Representatives**  
**Committee on Standards of Official Conduct**  
Suite DC-2, U.S. Capitol  
Washington, DC 20515

October 24, 1989

The Honorable Newt Gingrich  
United States House of Representatives  
2438 Rayburn House Office Building  
Washington, D.C. 20515

Dear Colleague:

The Committee on Standards of Official Conduct is continuing its evaluation of a complaint which has been filed against you. As part of this process, we have reviewed materials which you submitted to the Committee by letter of April 24, 1989. Based upon this review, the Committee has determined that there are some additional issues which warrant clarification. Accordingly, we request that you respond in writing to the following questions, providing relevant documentation where appropriate.

1. In the postscript to Window of Opportunity, you thank Mr. Frank Gregorsky and several other members of your congressional staff.

(a) What assistance did Mr. Gregorsky and these others provide to you in preparing the book?

(b) When and where was this work performed?

(c) Were any congressional resources - either staff or facilities - used in the preparation of Window of Opportunity?

2. You have previously provided the Committee with information on the royalties you and your wife received from sales of Window of Opportunity. Please update this information through 1989 to date.

3. The contract you submitted between you, your wife and Baen Publications required the publisher of your book to pay you and Mrs. Gingrich royalties of 10 percent on the retail cover price of the first 5,000 hardcover trade editions sold (less returns), 12½ percent on the next 5,000 copies, and 15 percent on all hardcover copies sold in excess of 10,000. The paperback royalties were to be 8 percent for the first 150,000 copies and 10 percent after that, less returns.

The Honorable Newt Gingrich  
October 24, 1989  
Page 2

Window of Opportunity was originally priced at \$14.95 for the hardcover edition and \$7.95 for the paperback. Thus, under the contract, you and your wife would each receive 60 cents for each of the first 5,000 hardcover copies sold, 75 cents for each of the next 5,000, and 90 cents for each sold in excess of 10,000. For the paperback, you would get 25 cents each for the first 150,000 sold.

You have been quoted in news stories as saying that you and your wife each received 24 cents for every hard cover volume sold, and 15 cents for every paperback sold. Is this statement correct? If so, explain the discrepancy between what you said you received and the amounts specified to be paid under the contract.

4. According to materials you submitted, the "special advertising fund" to be created by your wife (which became COS Limited Partnership) was intended to supplement the publisher's regular advertising and promotion budget for Window of Opportunity. How much was the publisher's advertising and promotion budget for Window of Opportunity? How, specifically, was it used?

5. Published reports indicate that Attorney James Tilton discussed the publishing contract with the publisher for approximately four hours over three to six phone calls. This did not include his preparation time.

(a) Are these reports correct?

(b) Was Mr. Tilton paid for his services?  
By whom?

(c) If he was not paid, to whom and on what basis were the legal services provided?

6. In written responses to press questions which you provided to the Committee, Mrs. Gingrich stated that additional payments were due her for work on behalf of COS Limited Partnership. How much, if anything, has been paid to her since those responses? How much additional money is due?

The Honorable Newt Gingrich  
October 24, 1989  
Page 3

7. The COS Limited Partnership Agreement gave your wife authority, as general partner, to do such things as acquire or sell property for the partnership, enter into leases, and borrow or lend money. If the purpose of the partnership was to promote your book, why did the agreement give her such extensive authority?

8. Press reports and materials which you submitted to the Committee indicate that the promotional campaign for Window of Opportunity began with an event that was held in the Capitol on May 25, 1984.

(a) Where exactly was the event held?

(b) Describe the event, including who attended. Were you in attendance?

(c) How much did the event cost, and who paid?

(d) Was the book displayed at the event, or offered for sale?

(e) Who made arrangements for the event?

(f) Was a request made by a Member of the House or Senate to have the room made available for the event? If so, who made the request?

(g) Was a waiver obtained from the appropriate House or Senate authority from rules prohibiting the use of official premises for a promotional event? If so, when and by whom?

(h) Provide copies of any correspondence relating to the event, as well as copies of any invitations, advertisements, and display material used for it.

9. Provide copies of canceled checks and invoices evidencing the expenditures made by COS Limited Partnership for advertising and promoting Window of Opportunity.

The Honorable Newt Gingrich  
October 24, 1989  
Page 4

10. Published reports indicate that 5,000 copies of Window of Opportunity were sold for \$2.00 each to a "conservative book club."

(a) Were these reports correct? If so, what was the organization?

(b) What were the circumstances of the sale?

(c) Were you affiliated with the organization in any way at the time of the sale?

11. Materials you submitted to the Committee indicate that Window of Opportunity was on certain best-seller lists in September, 1984. Aside from the advance you and your wife received, no royalties were paid to you until 1987. What was the reason for this delay?

12. Did Chester Roush do business with the Federal Government prior to his COS Limited Partnership investment?

When and under what circumstances have you made inquiries or intervened with Federal agencies or others on behalf of Mr. Roush or any business with which he was associated?

13. It has been reported that Chester Roush's daughter made a suggestion to you that you co-sponsor a bill to extend the tax credit that helps finance low income housing.

(a) Is this report correct?

(b) When did this occur?

(c) What were the circumstances under which she made the suggestion to you?

(e) Did you co-sponsor the legislation in question?

(f) What impact did the suggestion from Mr. Roush's daughter have on your decision?

The Honorable Newt Gingrich  
October 24, 1989  
Page 5

14. How many copies of the COS Limited Partnership offering memorandum were distributed?

Identify any individuals or organizations who were offered an opportunity to participate in COS Limited Partnership, but declined to do so.

15. Which investors in COS Limited Partnership did business with the Federal Government (whether personally or through a company with which they were associated) prior to their participation in the partnership?

16. Have you made inquiries or intervened with the Federal Government on behalf of any COS Limited Partners, or their businesses, who were not constituents of yours? If so, describe the circumstances.

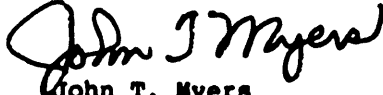
Your answers to these questions will facilitate the Committee's evaluation of the subject matters. We would, therefore, appreciate receiving your responses as promptly as possible.

If you have any questions, please do not hesitate to contact the Committee at 225-7103.

Sincerely,



Julian C. Dixon  
Chairman



John T. Myers  
Ranking Minority Member

JS:MJD



**NEWT GINGRICH**  
SOUTH DISTRICT, GEORGIA

**THE REPUBLICAN WHIP**

WASHINGTON OFFICE  
2438 RAYBURN HOUSE OFFICE BLDG.  
WASHINGTON, DC 20516  
(202) 226-4801



**Congress of the United States**  
**House of Representatives**

November 9, 1989

Attachment C

630 1 JAMESBOND ROAD  
SUITE 8  
MARIETTA, GA 30060  
(404) 948-3219

POST OFFICE BOX 648  
GROVE FEDERAL BUILDING  
GROVE, GA 30224  
(404) 228-0300

CARROLL COUNTY COURTHOUSE  
CARROLLTON, GA 30117  
(404) 834-6298

18 EAST WASHINGTON STREET  
NEWNAH, GA 30283  
(404) 383-8368

The Honorable Julian C. Dixon, Chairman  
The Honorable John C. Myers, Vice Chairman  
Committee on Standards of Official Conduct  
HT-2, The Capitol  
Washington, D.C. 20515

Dear Colleagues:

I have enclosed in a blue cover material which includes my responses to the questions you presented in your letter of October 24, 1989, along with supporting documentation.

Surely this material will put to rest Representative Alexander's original complaint and first amendment. This matter has been pending now for almost seven months and I would very much appreciate an expeditious dismissal of the charge.

I am also sending material in a green cover which should dispose of Representative Alexander's latest accusations which he filed October 25, 1989. Frankly, these charges are so frivolous I hesitated to respond. Nevertheless, I am confident you will agree, after reviewing my materials, that his most recent allegations should be thrown out with his original complaint.

It is plain that he filed the latest allegations at the eleventh hour in an attempt to bait the media and subvert the committee's regular process. It is natural, I suppose, that the contentions have come from the bottom of the barrel.

Representative Alexander presents eight alleged circumstances in his October 25th complaint. He denominates them with letters "A" through "H." In a nutshell, the green folder deals with the allegations as follows:

\*\* Allegations A and H are without foundation;  
Federal and state election laws were fully complied with.

\*\* Allegation D concerning Mr. Roush is an old allegation which has been before the committee for months, and has been fully answered in my responses to your Questions 12 and 13.

**\*\* Allegation F regarding CHOPAC is also without merit. The Federal Election Commission has already found no violation of Federal Law occurred, in considering a complaint filed by the Democratic Congressional Campaign Committee. It was also sent to the Postal authorities and they declined to take action.**

**\*\* Allegation G regarding the Conservative Opportunity Society book The House of Ill Repute is a joke. A group of Members wrote a book about Congress, printed by the Princeton University Press. Proceeds of the book were assigned to a foundation.**

**\*\* The remaining Allegations: B (concerning Marathon Travel) C (concerning Mike Bressler) and E (concerning my daughter) simply miss the mark.**

In reviewing the green folder you will have the opportunity to compare eight allegations with the facts. Such a comparison is quite revealing.

I would like to thank the Committee for the professional and sensitive way that my case has been handled. I do not mean to be presumptuous by answering the latest charges at this time. My sole purpose is to get the truth before the Committee, expeditiously.

It is my hope that you will find it appropriate to end this entire matter now so that my wife and I can go on with our life, and I can devote my full attention to serving my district and discharging my responsibilities as Republican Whip.

Sincerely,



Newt Gingrich

NG/kw



1. In the postscript to Window of Opportunity, you thank Mr. Frank Gregorsky and several other members of your congressional staff.

(a) What assistance did Mr. Gregorsky and these others provide to you in preparing the book?

(b) When and where was this work performed?

(c) Were any congressional resources - either staff or facilities - used in the preparation of Window of Opportunity?

Answer

Frank Gregorsky was a member of my staff from April, 1979 until September, 1983 (with some periods of leave without pay in this time frame). We discussed many of the ideas which found their way into "Window of Opportunity." I did not sign the book contract until after he left the staff.

I believe that after he left my staff and was working for the Republican Study Committee, he read a draft chapter or two and gave me his comments.

Many of the ideas in "Window of Opportunity" evolved from research done, papers written and speeches made by me as a Member of Congress. During the early phases of drafting some members of my staff were involved in retrieving materials from computer storage, updating statistics, and re-entering updated or revised material. Although much of the limited work the staff did, I believe, would be considered part of their regular duties, no activity related to the book detracted in any way from the performance of other staff responsibilities.

I wrote the book. My staff did not. I asked various staff members for comments on draft sections in their areas of expertise. The creative efforts were mine, sitting at a desk in my office with a word processor, using thoughts from many people and materials collected from a lifetime of reading and research.

My wife, Marianne, helped create the concept of an Opportunity Society, was a key partner in discussions with my co-author David Drake, and helped outline and think through the organization and content of the book. She also did a substantial amount of the typing and editing. She sent copies of the early drafts to many friends to solicit their thoughts and get feedback about our work.

2. You have previously provided the committee with information on the royalties you and your wife received from sales of Window of Opportunity. Please update this information through 1989 to date.

Answer

There is no additional information to report.

3. The contract you submitted between you, your wife and Baen Publications required the publisher of your book to pay you and Mrs. Gingrich royalties of 10 percent on the retail cover price of the first 5,000 hardcover trade editions sold (less returns), 12.5 percent on the next 5,000 copies, and 15 percent on all hardcover copies sold in excess of 10,000. The paperback royalties were to be 8 percent for the first 150,000 copies and 10 percent after that, less returns.

Window of Opportunity was originally priced at \$14.95 for the hardcover edition and \$7.95 for the paperback. Thus, under the contract, you and your wife would each receive 60 cents for each of the first 5,000 hardcover copies sold, 75 cents for each of the first 5,000, and 90 cents for each sold in excess of 10,000. For the paperback, you would get 25 cents each for the first 150,000 sold.

You have been quoted in news stories as saying that you and your wife each received 24 cents for every hard cover volume sold, and 15 cents for every paperback sold. Is this statement correct? If so, explain the discrepancy between what you said you received and the amounts specified to be paid under the contract.

**Answer**

I received a total of \$12,018.05 in royalties. My wife received a total of \$12,018.05 in royalties. All payments were in accordance with the contract between the parties. I have not seen the news stories referred to in the question but there are many possible explanations.

There has often been confusion in the media about pricing. There were three kinds of books printed: the hardcover, the trade paperback, and the mass market paperback. In my statement to the media dated April 25, 1989, I said: "Marianne and I each received 15 cents per paperback sold in the mass market edition. ... On the trade version, Marianne and I each receive 24 cents per copy ..." That statement was and is generally correct because the trade paperback sold for \$7.95 and the mass market paperback sold for \$4.95.

The error in your question apparently stems from an incorrect assumption that my use of the words "trade version" was a reference to the hardcover edition. That was not the case. The words "trade version" are universally understood to mean trade paperback. Thus, there is no discrepancy to explain.

4. According to materials you submitted, the "special advertising fund" to be created by your wife (which became COS Limited Partnership) was intended to supplement the publisher's regular advertising and promotion budget for Window of Opportunity. How much was the publisher's advertising and promotion budget for Window of Opportunity? How, specifically, was it used?

**Answer**

To the best of my knowledge, the Partnership provided virtually all of the promotional funds used for the book. In exchange for not having to spend his own funds on promotion, Jim Baen of Baen Books gave up 50% of the profit to the Partnership. However, Partnership records indicate that Baen Books and TOR Books jointly paid for \$575 in additional advertising, and may have paid for other small and incidental items. Baen Books and TOR Books also assumed the cost of the early promotional activity in excess of the \$10,000 which we loaned to the project. (See response to question 9).

In addition the publisher engaged in normal publishing support activities, such as encouraging salesmen to promote sales, setting up exhibits at book fairs, negotiating foreign rights, etc.

5. Published reports indicate that Attorney James Tilton discussed the publishing contract with the publisher for approximately four hours over three to six phone calls. This did not include his preparation time.

**Answer**

Jim Tilton has been my best and closest friend since high school days. We have talked about many things in the course of our 30 year friendship. Jim and I agreed a long time ago that while we would advise each other about many things, it would be as friends and he would not be hired as my lawyer. When I told Jim about my book, he felt the transaction should be carefully reviewed by lawyers. He recommended Janice Moore, who was not a member of his law firm, to prepare all of the initial contracts and to give continuing general counsel to the venture. She was paid \$4,650.00 for her services. Jim also recommended Jack Mollenkamp, a securities specialist in his firm, who gave counsel on "blue sky laws." He was paid \$3,155.14 for his services.

I don't know about the published reports you mention, but Jim has told me he spent some time talking to the publisher to determine the nature and extent of the legal work to be done. He did that as a friend, not as lawyer. He received no payment.

6. In written responses to press questions which you provided to the Committee, Mrs. Mangrich stated that additional payments were due her for work on behalf of the COS Limited Partnership. How much, if anything, has been paid to her since those responses? How much additional money is due?

**Answer**

No money has been paid since the written response. Marianne believes that at least \$2,000.00 is still due to her as general partner.

7. The COS Limited Partnership Agreement gave your wife authority, as general partner, to do such things as acquire or sell property for the partnership, enter into leases, and borrow or lend money. If the purpose of the partnership was to promote your book, why did the agreement give her such extensive authority.

**Answer**

Because the partnership was expected to make money, the partnership's lawyer, Janice Moore, advised that the partnership agreement should include provisions covering reinvestment and distribution of profits, as well as general language included in all well-drafted partnership agreements giving the partnership wide latitude in its activities.

8. Press reports and materials which you submitted to the Committee indicate that the promotional campaign for Window of Opportunity began with an event that was held in the Capitol on May 25, 1984.

- (a) Where exactly was the event held?
- (b) Describe the event, including who attended. Were you in attendance?
- (c) How much did the event cost, and who paid?
- (d) Was the book displayed at the event, or offered for sale?
- (e) Who made arrangements for the event?
- (f) Was a request made by a Member of the House or Senate to have the room made available for the event? If so, who made the request?
- (g) Was a waiver obtained from the appropriate House or Senate authority from rules prohibiting the use of official premises for a promotional event? If so, when and by whom?
- (h) Provide copies of any correspondence relating to the event, as well as copies of any invitations, advertisements, and display material used for it.

**Answer**

The reception for the book was held in S-207 of the Capitol on May 25, 1984, concurrently with the annual convention of the American Book Association in Washington. The reception was the idea of Jim Baen and/or Tom Dougherty of TOR Books.

My wife and I attended, as did the publishers, and my co-author. Some of my staff attended. The attendees were mostly people in the book business attending the ABA meeting. The event cost \$3,448.44, and was paid for by TOR Books. TOR Books was subsequently reimbursed by the COS Partnership promotional fund. Baen Books also paid \$397.32 for the invitations, for which it was reimbursed. Another \$175 was spent on addressing the envelopes.

The book had not yet been published, and therefore it was not offered for sale. The event was arranged by the publishers, with the assistance of Laurie James on my staff. Sen. Mack Mattingly secured the use of the room through the Senate Rules Committee, which approved the use.



Attached as Appendix A are documents regarding the Capitol reception.

9. Provide copies of cancelled checks and invoices evidencing the expenditures made by COS Limited Partnership for advertising and promoting Window of Opportunity.

**Answer**

Attached as Appendix B are financial records maintained by Marianne for expenditures to promote Window of Opportunity, which she is providing to the Committee.

The first section shows receipts for expenditures by Baen Books through its affiliate, Richard Gallen & Co. prior to the existence of the partnership, totalling \$11,187.05. Marianne and I turned over our advance checks, totalling \$10,000, to Baen Books as a loan, which was used to defray these expenses. The loan was repaid by the Partnership on October 1, 1984.

The second section shows invoices, receipts and cancelled checks for expenditures by the Promotional Fund, totalling \$56,982.56.

10. Published reports indicate that 5,000 copies of Window of Opportunity were sold for \$2.00 each to a "conservative book club."

(a) Were these reports correct? If so, what was the organization?

(b) What were the circumstances of the sale?

(c) Were you affiliated with the organization in any way at the time of the sale?

**Answer**

The publisher negotiated a sale of 5,000 books to the Conservative Book Club for \$10,250. The Conservative Book Club is a commercial venture, like the Book of the Month Club. I had nothing to do with the sale to the Conservative Book Club, nor do I have any relationship with the Conservative Book Club. This transaction is listed in the "TOR Books Profit Sharing Accounting" document made available to the Committee in April, under the listing "Hardcover Special."

11. Materials you submitted to the Committee indicate that Window of Opportunity was on certain best-seller lists in September, 1984. Aside from the advance you and your wife received, no royalties were paid to you until 1987. What was the reason for this delay?

Answer

The delay was occasioned by the intricacies of the royalty payment process. The publisher, by the terms of the contract and in accordance with practice in the industry, had the right to set off amounts paid to authors as an advance against royalties generated. He must also account for book returns, and that can be a slow and difficult task. By the time all that was done, and royalties exceeded the advances, it was early in January, 1987 before we actually received our first royalty check from the publisher.

12. Did Chester Roush do business with the Federal Government prior to his COS Limited Partnership investment?

When and under what circumstances have you made inquiries or intervened with Federal agencies or others on behalf of Mr. Roush or any business with which he was associated?

Answer

The material previously provided to the Committee made it clear that Mr. Roush was not an investor in the COS Limited Partnership and I am not sure how this question is relevant to the Book issue.

However, in the interest of full disclosure, his company was a general partner -- I was the other general partner -- in a partnership set up before I was a Member of Congress called Nomonhan, which was formed to underwrite the research for a proposed book. The project ceased when I was elected to Congress.

Mr. Roush is a prominent businessman in my District. He is a director of a local bank and his real estate companies have been involved in a number of projects in my District, including federally-financed housing projects long before I was elected to Congress in 1978.

A review of office records indicates that my staff has made a number of inquiries with Federal government housing agencies at Mr. Roush's request. Mr. Roush did not personally speak to me about any of these matters, and each of the inquiries was handled by my staff with the same procedure my staff uses to respond to any legitimate request from a constituent for help with the bureaucratic maze.

13. It has been reported that Chester Roush's daughter made a suggestion to you that you co-sponsor a bill to extend the tax credit that helps finance low income housing.

- (a) Is this report correct?
- (b) When did this occur?
- (c) What were the circumstances under which she made the suggestion to you?
- (d) Did you co-sponsor the legislation in question?
- (f) What impact did the suggestion from Mr. Roush's daughter have on your decision?

Answer

Jan Roush Pyles was not a COS Partnership investor either.

A review of my records indicates that Jan Roush Pyles met with me on June 7, 1988 in her capacity as a board member of a low-income housing coalition, along with the Coalition's lawyer, urging that I support the extension of the low income housing tax credit. She told me the coalition included such groups as the AARP and the Homebuilders Association, as well as builders and developers. I received about 35 letters in support of the tax credit. I co-sponsored and voted for the legislation, which passed 358-1.

Ms. Pyles wrote to me and other members of the Georgia delegation on May 8, 1989, asking me to again co-sponsor a further extension of the low income housing tax credit. I co-sponsored the bill along with 163 of my colleagues. It passed as part of the Budget Reconciliation bill on October 5, 1989 by a vote of 333-91.

Information from a knowledgeable constituent will always cause me to more carefully consider supporting a bill.

14. How many copies of the COS Limited Partnership offering memorandum were distributed?

Identify any individuals or organizations who were offered an opportunity to participate in COS Limited Partnership, but declined to do so.

**Answer**

Marianne distributed 25 copies of the COS Limited Partnership offering memorandum.

Three people declined to participate:

Bill Marett  
131 Village Parkway  
Marietta, GA 30067

J. Frank Stovall  
P.O. Box 149  
Griffin, GA 30224

Edward S. Pollock  
7265 Chattahoochee Bluff Drive  
Atlanta, GA 30360

15. Which investors in COS Limited Partnership did business with the Federal Government (whether personally or through a company with which they were associated) prior to their participation in the partnership?

Answer

I have reviewed my office records, and can find no information regarding government contracts held by COS partnership investors. It is my personal recollection that:

Flowers Industries, a large commercial bakery, had won competitive contracts to supply baked goods to Federal facilities for many years prior to Flowers' investment in the partnership.

McClain International Inc. has had a number of contracts to perform aircraft maintenance on government-owned planes. I believe that many of these contracts pre-dated the COS partnership.

The Southwire Co., of which James Richards is, and Roger Schoerner was, an officer, has had competitively bid contracts to supply copper products to the TVA and perhaps other agencies. I believe some of this work pre-dated the COS partnership.

To the best of my recollection, I have never inquired or intervened on behalf of any COS investor with a government agency regarding a contract, grant or loan.



16. Have you made inquiries or intervened with the Federal Government on behalf of any GOS Limited Partners, or their businesses, who were not constituents of yours? If so, describe the circumstances.

**Answer**

In 1983, I wrote to the White House in support of Mrs. Jean Hails' appointment to the President's Advisory Committee on Women's Business Ownership.

In 1985, and again in 1989, I wrote to the Presidential personnel office in support of the candidacy of Mrs. Jeanne First for an appointment to a position in the Reagan and Bush administrations.

These women are active Republicans who live in Atlanta, but not in my District. I believe that both cases other Members similarly supported their efforts.

030DJS1.3D/lw/lr



ONE HUNDRED FIRST CONGRESS  
JULIAN C. BISHOP, CALIFORNIA, CHAIRMAN  
THE PASADENA, CALIFORNIA  
EDWARD J. BIVENS, NEW JERSEY  
ALAN S. BELLERMAN, WEST VIRGINIA  
JOSEPH M. BAYDOR, PENNSYLVANIA  
CHESTER G. BROWN, MASSACHUSETTS  
(800) 225-7100

ATTACHMENT D

JOHN T. BIVENS, SEBASTIA  
JAMES V. HANSEN, UTAH  
CHARLES FERGUSON, JR., CALIFORNIA  
THOMAS S. FITZ, WISCONSIN  
LARRY E. CLARK, IDAHO  
FRED BRADSHAW, IOWA  
RALPH L. LOTT, CHIEF COUNSEL

**U.S. House of Representatives**  
**Committee on Standards of Official Conduct**  
Suite 702-2, U.S. Capitol  
Washington, DC 20515

March 8, 1990

The Honorable Newt Gingrich  
United States House of Representatives  
2438 Rayburn House Office Building  
Washington, D.C. 20515

Dear Colleague:

At its meeting of March 7, 1990, the Committee took action on complaints filed against you by Representative Bill Alexander. Specifically considered were the complaint submitted April 11, 1989; an Amendment to that complaint submitted July 14, 1989; and a second complaint submitted October 25, 1989. In each instance, the Committee determined that the matters raised in the complaints did not warrant initiation of a Preliminary Inquiry. Accordingly, the Committee dismissed the complaints.

Enclosed for your information is a "Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Representative Newt Gingrich," presenting the Committee's analysis of all matters raised in the complaints. While a Preliminary Inquiry was not undertaken, the Committee has determined, however, that two matters need to be brought to your attention. Each is discussed separately below.

Marathon Travel Mailing

Included as exhibits to the October 25, 1989, complaint were two letters sent out by your congressional office on official letterhead relating to a senior citizens' cruise sponsored by Marathon Travel Company. While you told the Committee that you had no personal knowledge of the letters until the complaint was publicly released by Representative Alexander, you have acknowledged that the letters were, in fact, sent out under your frank on your official congressional stationery.

We first note that the Committee holds each Member responsible for assuring that resources provided in support of official duties are applied to the proper purposes. We also remind you that clearly expressed House rules and other standards preclude Members from using official stationery or other resources for non-governmental purposes, including providing assistance to private organizations. These standards were

The Honorable Newt Gingrich  
March 8, 1990  
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addressed in detail in the Committee's letter of August 4, 1989, in connection with a fundraising mailing that was sent out over your signature by a private organization.

The Committee concludes that you were remiss in your oversight and administration of your congressional office, which gave rise to the improper correspondence cited in the complaint. Accordingly, you are directed to immediately take steps to preclude recurrence of the type of improper activity here involved. You are further placed on notice that a future recurrence of improper use of mail and resources may result in more severe Committee action.

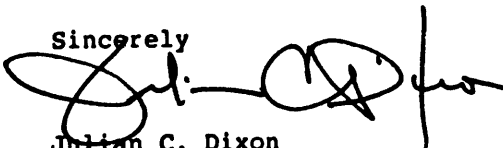
Financial Disclosure of Real Estate Transaction

The Committee also has determined that the acquisition of certain real estate with your daughter, as well as the underlying liability you incurred, should have been reported on your Financial Disclosure Statements for the appropriate calendar years. The Committee has considered your assertion that you acted as guarantor of the loan and signed relevant documents only as an accommodation to your daughter. Nonetheless, the Committee believes that the true nature of the transaction, as reflected in the pertinent legal documents, should control reporting.

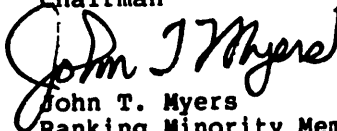
Accordingly, pursuant to authority granted to the Committee under section 105(a) of the Ethics in Government Act of 1978, the Committee directs that you promptly amend your Financial Disclosure Statements to reflect the transaction in question.

If you have further questions regarding these matters, please contact the Committee at extension 5-7103.

Sincerely



Julian C. Dixon  
Chairman



John T. Myers  
Ranking Minority Member

Enclosure