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HOUSE OF REPRESENTATIVES

REPORT
109–732

IN THE MATTER OF REPRESENTATIVE JAMES MCDERMOTT

REPORT

OF THE

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

DECEMBER 19, 2006.—Referred to the House Calendar and ordered to be printed

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ROBERT C. SCOTT, Virginia

KENNETH E. KELLNER, *Counsel to the Investigative Subcommittee*
STAN P. SIMPSON, *Counsel to the Investigative Subcommittee*

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC, December 19, 2006.

Hon. KAREN L. HAAS,
Clerk, House of Representatives,
Washington, DC.

DEAR MS. HAAS: On December 8, 2006, the Committee on Standards of Official Conduct voted to adopt the attached Report of the Investigative Subcommittee, "In the Matter of Representative James McDermott," dated December 6, 2006, as the Report of the full Committee in this matter. Pursuant to Rule 21(a) of the Rules of the Committee on Standards of Official Conduct, and Clauses 3(a)(2) and (b) of Rule 11 of the House of Representatives, and by direction of the Committee on Standards of Official Conduct, we herewith transmit the attached Report to the House of Representatives.

Sincerely,

DOC HASTINGS,
Chairman.
HOWARD L. BERMAN,
Ranking Minority Member.

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COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

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REPRESENTATIVE JAMES MCDERMOTT

DECEMBER 6, 2006

Mrs. BIGGERT, from the Investigative Subcommittee submitted the following

R E P O R T

[To the Committee on Standards of Official Conduct]

I. INTRODUCTION

On November 16, 2004, Representative David L. Hobson filed a complaint alleging that Representative James McDermott violated certain laws, rules and standards of conduct in disclosing to the news media the contents of an intercepted telephone conversation in January 1997. The intercepted telephone conversation related to proceedings of the Committee on Standards of Official Conduct (the "Committee") regarding Representative Newt Gingrich, who was a Member of the House at that time. Until mid-January 1997, Representative McDermott served as Ranking Minority Member of the House Select Committee on Ethics, which had been created at the beginning of the 105th Congress for the sole purpose of completing action on the aforementioned matter involving Representative Gingrich.

On December 28, 2004, the Chairman and Ranking Minority Member of the Committee jointly determined to establish an Investigative Subcommittee and to forward portions of Representative Hobson's complaint to that body. The Investigative Subcommittee was charged with conducting an inquiry on allegations that Representative McDermott's conduct violated the House Code of Official Conduct (clause 1 of which provides that Members and staff shall conduct themselves "at all times in a manner which shall reflect creditably on the House of Representatives"), provisions of the

Code of Ethics for Government Service, the Committee member non-disclosure agreement, or the Committee confidentiality rules.

On March 20, 2006, the Committee voted to carry over this matter regarding Representative McDermott to the 109th Congress.

A summary and explanation of the Investigative Subcommittee's findings are set forth in this Report.

II. SUMMARY OF EVENTS AND FACTUAL FINDINGS

A. COMMITTEE PROCEEDINGS INVOLVING FORMER REPRESENTATIVE NEWT GINGRICH

The relevant Committee proceedings involving former Representative Newt Gingrich are summarized in the Report of the Select Committee on Ethics to the House entitled "In the Matter of Representative Newt Gingrich," and an additional Committee publication entitled "Sanction Hearing and Related Materials."[1] As summarized in those materials, the matter involving Representative Gingrich was initiated during the 103rd Congress following a complaint filed with the Committee on September 7, 1994 by Ben Jones. Mr. Jones was Representative Gingrich's opponent in his 1994 campaign for re-election, and his complaint was filed in accordance with Committee and House rules at that time that permitted formal complaints to be filed by persons other than Members of the House.[2] The focus of Mr. Jones' complaint was a course taught by Representative Gingrich called "Renewing American Civilization."[3] The complaint alleged that Representative Gingrich used his congressional staff to work on the course, and that Representative Gingrich created the course under the sponsorship of Section 501(c)(3) organizations "to meet certain political, not educational, objectives," and by doing so caused a violation of Section 501(c)(3) of the Internal Revenue Code to occur.[4]

The matter was not resolved by the Committee before the end of the 103rd Congress, and on January 26, 1995, Representative David Bonior filed an amended version of the complaint previously filed by Mr. Jones.[5] On December 6, 1995, the Committee voted to initiate a "Preliminary Inquiry" into the allegations of misuse of tax-exempt organizations and appointed an investigative subcommittee (hereafter "Gingrich Subcommittee") to conduct the inquiry.[6] The Chairman of the Gingrich Subcommittee was Representative Porter J. Goss, and Representative Benjamin L. Cardin served as the Investigative Subcommittee's Ranking Minority Member. The other two Members of the subcommittee were Representative Steven Schiff and Representative Nancy Pelosi. The Committee also determined to appoint a Special Counsel to assist the Gingrich Subcommittee.

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[1] See In the Matter of Representative Newt Gingrich, H. Rep. 105–1, 105th Cong., 1st Sess. (Jan. 17, 1997) ("Rep. Gingrich Report"); Sanction and Related Materials, Hearing Before the Select Committee on Ethics, 105th Cong. 1st Sess. (Comm. Print Jan. 17, 1997) ("Rep. Gingrich Hearing Materials").

[2] Rep. Gingrich Report at 1; Committee on Standards of Official Conduct ("Committee") Rule 14 (103rd Congress). Mr. Jones was a former Member of the House at the time he filed his complaint. Mr. Jones served in the House during the 101st and 102nd Congresses (1989 to 1993).

[3] Rep. Gingrich Report at 1.

[4] Id.

[5] Id.

[6] Id. at 1–2.

On September 26, 1996, the Gingrich Subcommittee announced that the investigation of Representative Gingrich was being expanded into several additional areas.[7] The subcommittee concluded its investigative work on December 12, 1996.[8] On December 15, 1996, the Gingrich Subcommittee and Representative Gingrich, through their respective counsel, initiated discussions towards resolving the matter without proceeding to a formal adjudicatory hearing in accordance with the rules of the Committee at that time.[9] A negotiated resolution was reached by the parties, and on December 21, 1996, the Gingrich Subcommittee adopted a Statement of Alleged Violation describing conduct by Representative Gingrich which the subcommittee concluded violated then-House Rule 43, Clause 1 of the Rules of the House of Representatives (current House Rule 23, Clause 1).[10] On that same date, Representative Gingrich executed an Answer admitting to the Statement of Alleged Violation.[11] The Statement of Alleged Violation adopted by the Gingrich Subcommittee and Representative Gingrich's Answer were released publicly by the subcommittee on December 21, 1996.[12]

As part of the negotiated resolution of the matter, the subcommittee and Representative Gingrich agreed that "no public comment should be made about this matter while it is still pending. This includes having surrogates sent out to comment on the matter and attempt to mischaracterize it."[13] Further, beyond the press statements agreed to by the parties, "neither Mr. Gingrich nor any Member of the subcommittee may make any further public comment."[14] The agreement on this topic pertained to "press statements," and Members of the Gingrich Subcommittee and Representative Gingrich were free to engage in "private conversations with Members of Congress about these matters."[15]

Due to the timing of the Gingrich Subcommittee's actions regarding Representative Gingrich, that body and the Committee were not able to formally present the subcommittee's findings and recommendations to the House in accordance with Committee rules prior to the conclusion of the 104th Congress. At the start of the 105th Congress on January 7, 1997, the House established a Select Committee on Ethics, and appointed as Members of that Committee all of the Members who were on the standing Committee on Standards of Official Conduct at the expiration of the 104th Congress. The Select Committee on Ethics was given jurisdiction by the House "only to resolve the Statement issued by the Investigative Subcommittee of the standing Committee on Standards of Official Conduct in the One Hundred Fourth Congress relating to the official conduct of Representative Gingrich of Georgia and otherwise report to the House on the activities of that investigative sub-

[7] The specific areas of expansion are set forth in Rep. Gingrich Report at 2.
[8] Rep. Gingrich Report at 3.
[9] Id. at 94.
[10] Rep. Gingrich Hearing Materials at 92.
[11] Id. at 91.
[12] Id. at 90.
[13] Rep. Gingrich Report at 95.
[14] Id. at 95.
[15] Id. at 95–96.

committee."[16] The House further provided in the Rules of the House of Representatives for the 105th Congress that in the exercise of its jurisdiction, the Select Committee on Ethics "shall possess the same authority as, and shall conduct its proceedings under the same rules, terms, and conditions . . . as those applicable to the standing Committee on Standards of Official Conduct in the One Hundred Fourth Congress[.]"[17] The House Rules also provided that "the select committee shall cease to exist upon final disposition by the House of a report designated by the select committee of its final report on the matter, or at the expiration of January 21, 1997, whichever is earlier."[18]

On January 17, 1997, the Select Committee on Ethics held a sanction hearing in the matter pursuant to then-Committee Rule 20. Following the hearing, the Select Committee on Ethics issued its report to the House, which recommended that Representative Gingrich be reprimanded and ordered to reimburse the House for costs associated with the Committee's investigation. On January 21, 1997, the House adopted the report of the Select Committee on Ethics In the Matter of Representative Newt Gingrich.[19] In a section of the report entitled "Post-December 21, 1996 Activity," the report disclosed that "[i]n the opinion of the Subcommittee Members and the Special Counsel, a number of the press accounts [following release of the Statement of Alleged Violation] indicated that Mr. Gingrich had violated the agreement concerning statements about the matter." Further, the report stated that

> Mr. Gingrich's counsel was notified of the Subcommittee's concerns and the Subcommittee met to consider what action to take in light of this apparent violation. The Subcommittee determined that it would not nullify the agreement. While there was serious concern about whether Mr. Gingrich had complied with the agreement, the Subcommittee was of the opinion that the best interests of the House still lay in resolving the matter without a disciplinary hearing and with the recommended sanction that its Members had previously determined was appropriate. However, Mr. Gingrich's counsel was informed that the Subcommittee believed a violation of the agreement had occurred and retained the right to withdraw from the agreement with appropriate notice to Mr. Gingrich.[20]

The report did not specify the conduct engaged in by Representative Gingrich that raised concerns with the Gingrich Subcommittee.

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[16] House Rule 10, Clause 4(e)(3) (105th Congress) (as adopted in H. Res. 5 on January 7, 1997).

[17] Id.; see also Rep. Gingrich Report at 2. The House could have reestablished the Committee on Standards of Official Conduct as a standing committee at the start of the 105th Congress. However, it was determined during that time period that before reestablishing the Committee as a standing committee, the House needed to "reassess" its "standards process," and to empanel a bipartisan task force "to review the existing House standards process and recommend reforms of that process." Report of the Ethics Reform Task Force on H. Res. 168, 105th Cong., 1st Sess. (Comm. Print June 17, 1997) at 1. In brief, interest had developed in the House in "reexamining ways to better ensure that the standards process in the House functions in a manner that is nonpartisan, efficient and fair." Id. In substantial measure, the current Committee on Standards of Official Conduct functions in accordance with the rules of procedure adopted by the House following the report and recommendations of the aforementioned bipartisan task force.

[18] House Rule 10, Clause 4(e)(3) (105th Congress) (as adopted in H. Res. 5 on January 7, 1997).

[19] See H. Res. 31, 105th Cong., 1st Sess. (Jan. 21, 1997).

[20] Rep. Gingrich Report at 96.

B. CONDUCT OF REPRESENTATIVE JAMES MCDERMOTT

In the instant matter, the focus of the Investigative Subcommittee's inquiry involving Representative McDermott was on the disclosure by Representative McDermott to members of the news media of the contents of an illegally intercepted telephone conference. The conduct of Representative McDermott that is now under review occurred in January 1997 while he was the Ranking Minority Member of the House Select Committee on Ethics. As referenced below, in substantial measure, the factual conclusions made by the Investigative Subcommittee regarding Representative McDermott's conduct are based on admissions made by Representative McDermott during the course of ongoing federal court civil litigation with Representative John A. Boehner. Sources of the referenced admissions include transcribed sworn statements made during a civil deposition of Representative McDermott during the litigation.[21] Key events in the civil litigation proceedings between Representative McDermott and Representative Boehner are described in a separate section in this Report.

The Investigative Subcommittee also requested and obtained materials from the Department of Justice related to that agency's investigation of this matter, and additionally subpoenaed documents from Representative McDermott. By letter dated July 19, 2006, Representative McDermott was invited by the Investigative Subcommittee to present a statement to the Investigative Subcommittee in accordance with Committee Rule 19(a)(3). Representative McDermott declined to make a statement in accordance with that rule.

Representative McDermott has been a Member of the House representing the Seventh District of Washington since 1989. Representative McDermott was Ranking Minority Member of the Committee on Standards of Official Conduct during the 104th Congress.[22] As such, he became Ranking Minority Member of the House Select Committee on Ethics on January 7, 1997, in accordance with House Rule 10, Clause 4(e)(3) (105th Congress) (as adopted in H. Res. 5 on January 7, 1997).

On December 21, 1996, two individuals, John Martin and Alice Martin, while near Lake City in Columbia County, Florida, used a scanner to intentionally intercept a wire communication in the form of a cellular telephone call.[23] The intercepted telephone call was a conference call whose participants included Representative

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[21] Representative McDermott was deposed in the civil case on July 24, 2002 and December 12, 2002.

[22] Representative McDermott was Chairman of the Committee on Standards of Official Conduct during the 103rd Congress, and he also served as a Member of the Committee during the 102nd Congress.

[23] See Transcript of Sentencing Proceedings before the Honorable Harvey E. Schlesinger in *United States* v. *Alice Martin and John Martin*, (M.D. Fla. April 25, 1997) at 23. An investigation of the Martins' conduct was conducted by the Department of Justice, and, as reflected by the cited transcript of court proceedings, on April 25, 1997, John and Alice Martin pleaded guilty to violating 18 U.S.C. §§ 2511(1)(a) and 2511(4)(b)(ii), provisions of law which prohibit the intentional interception of the radio portion of a cellular telephone call. John and Alice Martin were each sentenced to pay a fine of $500. Id. at 52. A press statement of the Department of Justice dated April 23, 1997 regarding the investigation of the Martins states that "[b]ecause the interception involved the radio portion of a cellular telephone communication, and because there is no evidence that the interception was for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private financial gain, the U.S. Code classifies [the Martins'] offense as an infraction. The maximum penalty is a $5,000 fine." See Exhibit 1.

Gingrich, Representative Boehner and others.[24] The record indicates that Mr. and Mrs. Martin, while traveling, overheard a telephone conversation using a scanning device that was purchased at Radio Shack. They recognized some of the voices in the conversation. Mr. Martin, using a handheld tape recorder that was in his car, recorded the conversation.[25]

According to a New York Times article by Adam Clymer published on January 10, 1997 (discussed in more detail below), the participants in the telephone call recorded by the Martins included Representative Boehner, Representative Gingrich, Representative Richard Armey, Ed Bethune (a former Member of the House then serving as Representative Gingrich's lawyer), Ed Gillespie (reported in the New York Times article as communications director of the Republican National Committee), Representative Bill Paxon, and Representative Tom DeLay.[26] Representative Boehner participated in the conference call on a cellular phone inside his car while parked outside a restaurant in northern Florida.[27] The subject of the telephone conference call, as far as can be gleaned from the New York Times article, was the content of statements that may be made publicly related to the inquiry of the Investigative Subcommittee involving Representative Gingrich.[28]

On January 8, 1997, Mr. and Mrs. Martin personally delivered a copy of a tape in an envelope to Representative McDermott in one of the rooms of the Committee on Standards of Official Conduct, which is located in Suite HT–2 in the United States Capitol Building.[29]

The record supports a finding that the tape the Martins delivered to Representative McDermott was accompanied by a letter to Representative McDermott. Representative McDermott testified in his deposition that he has no recollection of seeing a letter from the Martins at the time they delivered the tape to him, or whether the tape was accompanied by a letter.[30] A copy of a letter from the Martins addressed to Representative McDermott was obtained by the Investigative Subcommittee from records filed in the United States District Court in connection with the *Boehner* v. *McDermott* civil litigation. The transcript of the deposition of Representative McDermott taken during the litigation indicates that Representative McDermott obtained a copy of the letter from the Department of Justice, and that Representative McDermott subsequently produced that copy of the letter to Representative Boehner during the discovery phase of the litigation.[31]

The letter, dated January 8, 1997, and addressed to "Jim McDermott, Ranking Member," contained the following text:

> Enclosed in the envelope you will find a tape of a conversation heard December 21, 1996 at about 9:45 a.m. The call was a conference call heard over a scanner. We felt the

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[24] Id. at 23.
[25] Id. at 38–39.
[26] "Gingrich Is Heard Urging Tactics in Ethics Case," N.Y. Times (Jan. 10, 1997) (Exhibit 2).
[27] Rep. Boehner Dep. at 9.
[28] See Exhibit 2. The Investigative Subcommittee does not have a copy of the tape at issue, nor a complete or verifiable transcript thereof. The last known location of the tape was the Department of Justice, which received it from Chairman Johnson of the House Select Committee on Ethics on or about January 13, 1997. See Exhibit 3.
[29] Rep. McDermott Dep. at 157–58.
[30] Id. at 150, 153.
[31] Id. at 151.

> information included were [sic] of importance to the committee. We live in the 5th. [sic] Congressional District and attempted to give the tape to Congresswoman Karen Thurman. We were advised by her to turn the tape directly over to you. We also understand that we will be granted immunity.
>
> My husband and I work for Columbia County Schools in Columbia County Florida. We pray that committee [sic] will consider our sincerity in placing it in your hands.
>
> We will return to our home today.
>
> Thank you for your consideration.
>
> John and Alice Martin [32]

At his deposition, Representative McDermott described the circumstances of his receiving the tape from the Martins as follows:

> During a break of the Ethics Committee, I was standing in the anteroom by the door to the hallway and someone asked if I was Congressman McDermott and I said yes. And this couple came up to me and said they had, they wanted to give me something that they thought I would be interested in.
>
> And I said, who are you? And they said John and whatever his wife's name Martin is. And I said where are you from? And they, I have, I mean there were eight or nine people standing around there and I don't remember exactly whether they told me they were from Karen Thurman's district or—I don't remember exactly. But they told me they were in North Florida and then he gave me a card, and I said thank you, I'll listen to it.[33]
>
> It couldn't have been more than 30 seconds. I mean, I was just trying to get rid of them. Take whatever they had, whoever they were, put it in my pocket and go on with my business. Because I had enough on my mind at that point.[34]

Representative McDermott also described his encounter with the Martins in a separate declaration he executed on December 11, 2002 in connection with the *Boehner* v. *McDermott* litigation. Representative McDermott stated in that document that:

> On or about January 8, 1997, I was approached by a man and woman in the anteroom of the House Ethics Committee. They asked me whether I was Congressman McDermott. After I acknowledged who I was, the man and woman identified themselves as Mr. and Mrs. Martin and handed me an envelope. The Martins said that the envelope contained a tape recording that they thought would be of interest to me and asked me to listen to it. I said that I would.
>
> Until that encounter, neither I, nor my staff, nor anyone acting on my behalf had any knowledge of the Martins or their tape. I had no idea what the tape contained when the Martins handed it to me, because they never discussed its contents with me. I did not learn of the contents of the

[32] See Exhibit 4.
[33] Rep. McDermott Dep. at 157–158.
[34] Id. at 176.

> tape until I returned to my office later and listened to the tape. No one else was present when I listened to the tape.
>
> I have never had any communications with the Martins other than during that single encounter on or about January 8, 1997. I have never asked anyone to communicate with the Martins, directly or indirectly, at any time or for any reason. Neither I, nor my staff, nor anyone on my behalf, has ever talked about the subject of immunity with the Martins.[35]

Representative McDermott estimated that he received the package containing the tape from the Martins at approximately 5:00 p.m.[36] He described the envelope as an "8½ by 11 envelope," and the tape as "one of those little tiny tapes like you have in a handheld recorder or a telephone answering machine."[37] He also testified that he was present at the offices of the Committee to participate in a Committee meeting related to the Committee's consideration of the matter involving Representative Gingrich.[38]

Representative McDermott returned to his personal office in the Rayburn House Office Building at approximately 7:00 p.m. and listened to the tape on a handheld tape recording device that he had in his office.[39] Representative McDermott recognized some of the voices on the tape, including those of Representative Gingrich and Representative Richard Armey.[40] Subsequent to listening to the tape, Representative McDermott contacted Jeanne Cummings of the Atlanta Journal-Constitution and left a voicemail for her.[41] Representative McDermott also contacted Adam Clymer of the New York Times and invited him to Representative McDermott's office that evening. Mr. Clymer accepted Representative McDermott's invitation.[42] During their meeting, Representative McDermott played the tape he received from the Martins for Mr. Clymer and he permitted Mr. Clymer to make a recording of the tape.[43]

Ms. Cummings of the Atlanta Journal-Constitution returned Representative McDermott's telephone call the next morning and subsequently came to his office in the Rayburn House Office Building. Ms. Cummings listened to the tape, doing so in the bathroom in Representative McDermott's office.[44]

As noted above, on January 10, 1997, the New York Times published an article by Mr. Clymer about the tape and its contents, and the article included a reported transcript of at least part of the tape.[45] The article references an anonymous Congressional source for the tape, but Representative McDermott subsequently acknowledged that he was the source for the newspaper.[46] On the morning of January 10, 1997, after he "read the newspaper," Representative

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[35] Declaration of James A. McDermott dated December 11, 2002 (filed in *Boehner* v. *McDermott* civil litigation as Exhibit F to Rep. McDermott's Opposition to Rep. Boehner's Motion for Summary Judgment).
[36] Rep. McDermott Dep. at 160.
[37] Id. at 159.
[38] Id. at 160.
[39] Id. at 162, 163.
[40] Response of Rep. McDermott to Rep. Boehner's Statement of Undisputed Facts in Support of His Motion For Summary Judgment (hereafter "Rep. McDermott Response to SUF") at ¶ 18.
[41] Id. at ¶ 21.
[42] Rep. McDermott Dep. at 183–84.
[43] Id. at 186–187.
[44] Id. at 92; Rep. McDermott Response to SUF at ¶¶ 28, 29.
[45] See Exhibit 2.
[46] Rep. McDermott Dep. at 220–221.

McDermott met, at Representative McDermott's request, with James Cole, the Special Counsel to the House Select Committee on Ethics. According to Representative McDermott, he "realized, from the way [the newspaper article] was written and from the placement in the paper, that it was going to be an issue of public controversy and I thought I ought to talk to a lawyer. And, as I saw it, the perfect person was Jim Cole, if he would talk to me, because he knew the case, he knew everything. And I wanted to talk to him and see what he would say. So I contacted him."[47] The record does not indicate that Mr. Cole actually rendered any legal advice to Representative McDermott when they met.[48]

On January 13, 1997, the Martins held a press conference stating that they had given a copy of the taped intercepted telephone conversation to Representative McDermott.[49] On that same day, Representative McDermott transmitted his copy of the tape in its original envelope to Chairman Nancy Johnson of the House Select Committee on Ethics.[50] In response to this action, the Chief Counsel of the House Select Committee on Ethics transmitted a letter to Representative McDermott, dated January 13, 1997, that stated:

> This is to notify you that the material you sent to the Committee at 4:33 p.m. this afternoon was not accepted. By direction of the Chair and after consultation with the Chief Counsel of the Criminal Division of the Department of Justice, the contents of the envelope including the audio cassette tape and the cover letter were hand delivered to the Department of Justice early this evening.[51]

Representative McDermott resigned from the House Select Committee on Ethics on January 13, 1997. Representative McDermott's answer to Representative Boehner's amended civil complaint states that "Congressman McDermott concluded that the political controversy over the Tape might impede the House Ethics Committee from completing its work if he continued to serve on it."[52] Representative McDermott further testified in his deposition that "I recognized that this was going to be a distraction and I wanted to get it out of the way."[53] Representative McDermott also testified that he does not remember if at the time he determined to resign from the House Select Committee on Ethics if he was aware that the Martins had publicly disclosed their giving of the tape to him.[54]

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[47] Id. at 307.
[48] See id. at 331.
[49] 2 Floridians Talk of How They Taped The Speaker, N.Y. Times (Jan. 14, 1997 (Exhibit 5). See also Rep. McDermott Response to SUF at ¶40. According to the New York Times article, the Martins stated that they were responsible for intercepting Rep. Boehner's conversation, and they identified Rep. McDermott as the person to whom they delivered the tape:

> The middle-aged couple—he is a maintenance man at a school and she is a teacher's aide—are active in both the National Education Association and the Democratic Party in their home county of Columbia in northern Florida, so they have a keen interest in politics. Mr. Martin said they had used a small tape recorder to record the conversation, planning to play back the voice of the famous politician someday for their grandson, who is expected to be born in three weeks. But as they listened, they changed their mind. They took the tape to their Representative, Karen L. Thurman, a Democrat, and later, on her advice, took the tape to the senior Democrat on the House ethics committee, Representative Jim McDermott. . . . Mrs. Martin said she and her husband had hand-delivered the tape to Mr. McDermott. "He took the envelope in his hand and said he would listen to it," she said.

[50] Rep. McDermott Dep. at 213.
[51] See Exhibit 3.
[52] Rep. McDermott's Answer to Rep. Boehner's Amended Complaint at ¶26.
[53] Rep. McDermott Dep. at 137.
[54] Id. at 133.

On or about January 14, 1997, Representative McDermott transmitted a letter to the Chairman of the House Select Committee on Ethics to communicate his objection to her forwarding of the copy of the taped intercepted telephone conversation to the Department of Justice. Representative McDermott's letter expressed his "considerable chagrin" at this course of action, and also his view that the Chairman's action violated House Rule X, cl. 4(e)(1)(C) of the Rules of the House for the 105th Congress.[55]

Representative McDermott testified during his deposition that based on the tape he received from the Martins, he understood that Representative Gingrich reached an agreement with the Gingrich Subcommittee that Representative Gingrich "was entitled to make a public statement, but [Representative Gingrich] apparently had agreed not to orchestrate any kind of response to undermine the statement or to undermine the work of the committee."[56] In Representative McDermott's view, based on the recorded telephone call, Representative Gingrich was "participating in orchestration and violating the agreement."[57] In his testimony, Representative McDermott indicated his view that the "public had a right to know" about the information contained on the tape.[58] He stated: "I came into politics during the Vietnam era. . . . And I knew about the Pentagon Papers. And there are some things the people are entitled to know, one of which is what the person who's third in line to be President of the United States, how he deals with issues."[59] He also indicated in his court filings that he believed that "the First Amendment entitled him to share the tape with the press as truthful information of public concern that he had lawfully obtained from another,"[60] and that "if a member of the House Ethics Committee received information from sources outside the Committee and outside the context of Committee proceedings, then he would have been free to disclose it under the House Ethics Committee Rules in effect in January, 1997."[61]

C. Representative Boehner's Lawsuit Against Representative McDermott

As referenced in the foregoing discussion, Representative McDermott's conduct in disclosing to the media the copy of the tape furnished to him by John and Alice Martin became the subject of a lawsuit filed in the United States District Court for the District of Columbia by Representative John A. Boehner. Representative Boehner, the plaintiff, initiated the lawsuit in a complaint he filed on March 9, 1998. Representative Boehner's complaint alleged that Representative McDermott, the defendant, knowingly disclosed an unlawfully intercepted communication in violation of the federal wiretapping statute, 18 U.S.C. § 2511(1)(c) and a Florida wiretapping statute, Fla. Stat. § 934.01(1)(c). 18 U.S.C. § 2511 provides, in pertinent part, that:

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[55] See Exhibit 6.
[56] Rep. McDermott Dep. at 33.
[57] Id. at 45; Rep. McDermott Response to SUF at ¶ 76.
[58] Rep. McDermott Dep. at 61.
[59] Id.; see also id. at 271–72 ("My disclosure was done because I felt the people had a right to know about the behavior of a public official.").
[60] Rep. McDermott Response to SUF at ¶ 78.
[61] Id. at ¶ 79.

> (1) Except as otherwise specifically provided in this chapter any person who—
>
> * * * * *
>
> (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
>
> shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

Section 2520 permits "any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of" 18 U.S.C. § 2511 to initiate a civil suit to recover equitable and declaratory relief and monetary damages. The cited Florida statute contains language substantially similar to that of 18 U.S.C. § 2511(1)(c).

The ongoing litigation is now proceeding on its second round of appellate level review, having once already been addressed by United States Supreme Court and remanded back to the lower courts. The presiding United States District Judge in this matter is Chief Judge Thomas F. Hogan. In the early stages of the litigation, Judge Hogan granted a motion to dismiss the litigation filed by Representative McDermott, holding that the First Amendment protected disclosure of lawfully obtained information.[62] The United States Court of Appeals for the District of Columbia Circuit reversed Judge Hogan's decision and held that the federal wiretapping statute was not unconstitutional as applied to Representative McDermott.[63] The Supreme Court granted certiorari, vacated the judgment of the Court of Appeals, and remanded the case in light of the Supreme Court's decision in *Bartnicki* v. *Vopper,* 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001).[64] On remand from the Supreme Court, the Court of Appeals remanded the matter back to the United States District Court, concluding that it "would benefit from having the district court pass upon the arguments that have taken on new-found importance after *Bartnicki.*"[65]

After the matter returned to the district court in 2001, the parties in the litigation engaged in discovery and filed cross-motions for summary judgment. On August 20, 2004, Judge Hogan held that Representative McDermott violated 18 U.S.C. § 2511(1)(c) when he disclosed the tape furnished to him by the Martins to members of the news media. *Boehner* v. *McDermott,* 332 F. Supp. 2d 149, 158 (D.D.C. 2004). In a subsequent order on October 22, 2004, Judge Hogan ordered that Representative McDermott pay Representative Boehner $10,000 in statutory damages, $50,000 in punitive damages, and reasonable attorneys fees and costs. In the same order, Judge Hogan held the matter of the amount of attorneys fees in abeyance pending resolution of appeals in the litigation.

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[62] See *Boehner* v. *McDermott,* No. 98–594, 1998 WL 436897, at *7 (D.D.C. July 28, 1998), rev'd, 191 F.3d 463 (D.C. Cir. 1999).
[63] *Boehner,* 191 F.3d at 478.
[64] See *McDermott* v. *Boehner,* 532 U.S. 1050, 121 S. Ct. 2190, 149 L. Ed. 2d 1022 (2001).
[65] *Boehner* v. *McDermott,* 22 Fed. Appx. 16, 2001 WL 1699420 (D.C. Cir. 2001).

On March 28, 2006, a 2–1 decision by a three judge panel of the United States Court of Appeals for the District of Columbia upheld Judge Hogan's ruling in favor of Representative Boehner. The essential disagreement between the majority and the dissenting judge was whether the First Amendment of the Constitution protected Representative McDermott from prosecution for his disclosure of the taped telephone conversation he received from the Martins. See *Boehner* v. *McDermott,* 441 F.3d 1010, 1017 (D.C. Cir. 2006).

On June 23, 2006, Representative McDermott's petition for a rehearing en banc was granted by the United States Court of Appeals for the District of Columbia Circuit. The Court vacated the judgment of the three judge panel that was filed on March 28, 2006.[66] The case was reheard by the court sitting en banc on October 31, 2006, and no decision has yet been rendered.

D. Representative Hobson's Complaint and the Jurisdiction of the Investigative Subcommittee

As noted previously, on December 28, 2004, the Chairman and Ranking Minority Member of the Committee determined to forward portions of Representative Hobson's complaint to the Investigative Subcommittee. In a public statement on that same date, the Chairman and Ranking Minority Member of the Committee announced that "the subcommittee will conduct an inquiry on allegations that Representative McDermott's conduct violated the House Code of Official Conduct (clause 1 of which provides that Members and staff shall conduct themselves "at all times in a manner which shall reflect creditably on the House of Representatives"), provisions of the Code of Ethics for Government Service, the committee member non-disclosure agreement, or the Committee confidentiality rules."[67] As noted below, the Investigative Subcommittee interpreted this announcement as limiting its inquiry to violations of House and Committee rules, and not requiring the Investigative Subcommittee to reach an independent judgment as to whether Representative McDermott violated a federal statute, i.e., 18 U.S.C. § 2511, a question pending before the United States Court of Appeals for the District of Columbia Circuit. In other words, the Investigative Subcommittee's charge was to determine whether Representative McDermott's conduct, which might or might not support a finding of a violation of federal law, was a violation of House and Committee rules applicable to him as a Member of the House and as Ranking Minority Member of the House Select Committee on Ethics. The Investigative Subcommittee also addressed specifically the question of the applicability of House Rule 23, Clause 10 to Representative McDermott, because that was one of the matters in Representative Hobson's complaint that was referred to the Subcommittee.

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[66] See *Boehner* v. *McDermott,* No. 04–7203 (D.C. Cir. Order filed June 23, 2006).

[67] See Exhibit 7 (Statement of Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan dated December 28, 2004).

E. Applicable Confidentiality Rules During the 104th Congress

During the 104th Congress (1995–1996) and during the temporary existence in January 1997 of the House Select Committee in the 105th Congress, two rules of the Committee on Standards of Official Conduct—Rule 9 and Rule 10(b)—addressed the topic of confidentiality by Members and staff of the Committee.[68]

Rule 9 of the Rules of the Committee on Standards of Official Conduct provided:

> *Communications by Committee Members and Staff*
>
> Committee members and staff shall not disclose any evidence relating to an investigation to any person or organization outside the Committee unless authorized by the Committee, nor shall any evidence in the possession of an investigative subcommittee be disclosed to Committee members who are not members of the subcommittee prior to the filing of a Statement of Alleged Violation with the Committee.

Rule 10(b) of the Rules of the Committee on Standards of Official Conduct provided:

> *Committee Records*
>
> Members and staff of the Committee shall not disclose to any person or organization outside the Committee, unless authorized by the Committee, any information regarding the Committee's or a subcommittee's investigative, adjudicatory or other proceedings, including, but not limited to: (i) the fact of or nature of any complaints; (ii) executive session proceedings; (iii) information pertaining to or copies of any Committee or subcommittee report, study, or other document which purports to express the views, findings, conclusions, or recommendations of the Committee or subcommittee in connection with any of its activities or proceedings; or (iv) any other information or allegation respecting the conduct of a Member, officer, or employee.

Neither Committee nor House rules during the 104th Congress mandated the execution of a formal confidentiality oath by Members of the Committee. However, during the 104th Congress, the Committee determined to implement a policy under which its Members would sign a "Nondisclosure Agreement" containing the following text:

> The purpose of this Nondisclosure Agreement is to ensure the confidentiality of all information received or proc-

[68] As explained earlier in this Report, the relevant rules in effect during the 104th Congress are implicated in this matter even though the conduct under review occurred during the 105th Congress. See House Rule 10, Clause 4(e)(3) (105th Congress) (as adopted in H. Res. 5 on January 7, 1997) (The Select Committee on Ethics "shall possess the same authority as, and shall conduct its proceedings under the same rules, terms, and conditions . . . as those applicable to the standing Committee on Standards of Official Conduct in the One Hundred Fourth Congress[.]"). We further note that Committee Rules 9 and 10(b) for the 104th Congress appear to implement House Rule X, Clause 4(e)(2)(F) (104th Congress), which provided with regard to the Committee that "[n]o information or testimony received, or the contents of a complaint or the fact of its filing, shall be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee."

essed by the Committee on Standards of Official Conduct (the Committee).

I do solemnly swear (or affirm) that I will not disclose any information received in the course of my service with the Committee in accordance with Committee Rule 10, except when authorized by the Committee or the House of Representatives.

Committee records do not contain a copy of any such agreement executed by Representative McDermott, although there are copies of the agreement signed by all other Members of the Committee during the 104th Congress. The record does not indicate that the House Select Committee on Ethics, established in January 1997, implemented a requirement that Members of that body sign nondisclosure agreements, although arguably formal action implementing such a policy was not necessary due to the instructions of the House that the House Select Committee on Ethics "shall possess the same authority as, and shall conduct its proceedings under the same rules, terms, and conditions . . . as those applicable to the standing Committee on Standards of Official Conduct in the One Hundred Fourth Congress[.]" [69]

For the purpose of completeness, the Investigative Subcommittee notes that it was not until the adoption of H. Res. 168 (September 18, 1997) during 105th Congress (1996–1997)—implementing the recommendations of the bipartisan House Ethics Reform Task Force—that a confidentiality oath requirement for Members of the Committee was added to House rules.

Specifically, the 1997 Report of the Ethics Reform Task Force stated that "[e]nsuring the confidentiality of Standards Committee deliberations and matters pending before the Committee is essential to protect the rights of individuals accused of misconduct, preserve the integrity of the investigative process, and cultivate collegiality among Committee members." [70] Towards this end, it was recommended that House rules require that Committee Members, "pool" Members, and Committee staff execute a confidentiality oath before they have access to information that is confidential under Committee rules.[71]

The text of the proposed oath was as follows: "I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the Committee or in accordance with its rules." In accordance with the recommendations of the Task Force, breaches of confidentiality would be investigated by the Committee and a proven violation of the confidentiality oath by a Member or employee of the Committee would be a violation of House rules.[72] A formal oath requirement was added to the Committee's rules on

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[69] See House Rule 10, Clause 4(e)(3) (105th Congress) (as adopted in H. Res. 5 on January 7, 1997).

[70] See Report of the Ethics Reform Task Force on H. Res. 168, 105th Cong., 1st Sess., at 10–11 (June 17, 1997).

[71] Id.

[72] Id. The floor debate on H. Res. 168 also addressed the importance of improving the confidentiality of the Committee's work as means to "maintain the integrity of the process." 143 Cong. Rec. H7546 (daily ed. Sept. 18, 1997) (statement of Rep. Cardin).

September 30, 1997, and is currently codified as Committee Rule 7(a).

III. CONCLUSIONS AND RECOMMENDATIONS

A. Federal Statute Prohibiting Disclosure of Illegally Intercepted Electronic Communications (18 U.S.C. § 2511)

The Investigative Subcommittee reached no conclusion as to whether Representative McDermott violated 18 U.S.C. § 2511 in connection with his disclosure to the news media of the contents of a taped intercepted telephone conversation furnished to him by the Martins, as it was not the mandate of the Investigative Subcommittee to resolve this question. Rather, the focus of the Investigative Subcommittee's inquiry was whether, by the same conduct which may or may not establish a violation of law in the federal court proceedings between Representative McDermott and Representative Boehner, Representative McDermott also violated "the House Code of Official Conduct (Clause 1 of which provides that Members and staff shall conduct themselves "at all times in a manner which shall reflect creditably on the House of Representatives"), provisions of the Code of Ethics for Government Service, the committee member non-disclosure agreement, or the Committee confidentiality rules."[73] In any event, given the important and novel issues of First Amendment law involved in the *Boehner* v. *McDermott* litigation—as evidenced by the appellate and Supreme Court interest in the case—the Investigative Subcommittee concluded that the question of law should be left to the judicial branch.

B. Refraining from Legislative Activity (House Rule 23, Clause 10)

The Investigative Subcommittee concluded that there was no violation by Representative McDermott of House Rule 23, Clause 10. The findings of Judge Hogan on August 20, 2004 in the *Boehner* v. *McDermott* civil litigation do not implicate House Rule 23, Clause 10, which only applies where a Member of the House is "convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed"; i.e., upon a plea of guilty by a Member in a criminal proceeding, or upon a court finding of guilty by judge or jury in a criminal proceeding. Regardless of the outcome of *Boehner* v. *McDermott* after all the appeal options are exhausted, that case is a civil matter between two private parties and does not implicate House Rule 23, Clause 10. The fact that the same statute may also establish a basis for criminal prosecution—using different procedures and a far more stringent burden of proof—does not alter this conclusion. Many statutes, including the Federal Election Campaign Act, contain options for both criminal and civil enforcement;[74] however, there was never any intention by the House to apply House Rule 23, clause 10 and thereby restrain "the maximum freedom of Members to represent their constituencies" in any circumstances other than those involving conviction in a criminal

[73] See Exhibit 7.
[74] See 2 U.S.C. § 437g.

proceeding.[75] Regarding a proposal that the House amend the Code of Official Conduct to include the prohibition now encompassed in House Rule 23, Clause 10, the Committee reported to the House that it "recognizes a very distinguishable link in the chain of due process—that is, the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon a plea of guilty or upon conviction by a jury or by a judge (or judges) if jury trial is waived. *It is to this condition, and only to this condition, that the proposed resolution is directed.*" [76]

C. COMMITTEE RULES RELATED TO CONFIDENTIALITY OF COMMITTEE PROCEEDINGS AND TO THE OBLIGATIONS OF A RANKING MINORITY MEMBER OF THE COMMITTEE

The Investigative Subcommittee reviewed the applicable Committee rules related to the confidentiality of Committee proceedings and concluded that Representative McDermott's conduct, i.e., his disclosure to the news media of the contents of the tape furnished to him by the Martins, was inconsistent with the spirit of the applicable rules and represented a failure on his part to meet his obligations as Ranking Minority Member of the House Select Committee on Ethics.

As noted, Rule 9 of the Rules of the Committee on Standards of Official Conduct for the 104th Congress prohibited disclosure by a Member of "any evidence relating to an investigation to any person or organization outside the Committee unless authorized by the Committee," and further prohibited "evidence in the possession of an investigative subcommittee [from] be[ing] disclosed to Committee members who are not members of the subcommittee prior to the filing of a Statement of Alleged Violation with the Committee. In addition, Rule 10(b) of the Rules of the Committee on Standards of Official Conduct for the 104th Congress prohibited disclosure by a Member, "unless authorized by the Committee" of "any information regarding the Committee's or a subcommittee's investigative, adjudicatory or other proceedings, including, but not limited to: (i) the fact of or nature of any complaints; (ii) executive session proceedings; (iii) information pertaining to or copies of any Committee or subcommittee report, study, or other document which purports to express the views, findings, conclusions, or recommendations of the Committee or subcommittee in connection with any of its activities or proceedings; or (iv) any other information or allegation respecting the conduct of a Member, officer, or employee."

The aforementioned rules support the House ethics processes by protecting the integrity and confidentiality of Committee and Investigative Subcommittee proceedings and deliberations, and protecting the rights of individuals accused of misconduct and subject to ethics proceedings.

Indeed, the purpose of the Committee's rules is emphasized in the foreword to the Rules of the Committee on Standards of Official

[75] House Committee on Standards of Official Conduct, Policy of the House of Representatives With Respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94–76, 94th Cong., 1st Sess. (1975) at 4.

[76] Id. at 2 (emphasis added).

Conduct for the 104th Congress, adopted by the Committee on February 9, 1995, which states:

> The Committee on Standards of Official Conduct is unique in the House of Representatives. Consistent with the duty to carry out its advisory and enforcement responsibilities in an impartial manner, the Committee is the only standing committee of the House of Representatives the membership of which is divided evenly by party. These rules are intended to provide a fair procedural framework for the conduct of the Committee's activities and to help insure that the Committee serves well the people of the United States, the House of Representatives, and the Members, officers, and employees of the House of Representatives.[77]

The foreword reflects the unique charter of the Committee to conduct its work in a non-partisan manner, and the threat posed to the integrity of the House of even the appearance of unfairness to Members under investigation or of bias or impartiality by Members of the Committee in fulfilling their responsibilities.

By his conduct in January 1997, Representative McDermott failed to meet this standard. Representative McDermott's secretive disclosures to the news media as to the alleged conduct of Representative Gingrich risked undermining the ethics process regarding that Member. Representative McDermott's actions were not consistent with the spirit of the Committee's rules.[78] In reaching this conclusion, the Investigative Subcommittee did not give weight to Representative McDermott's stated excuse for his conduct: the public's entitlement to be informed. This is not a justification for potentially undermining the House ethics process. In the normal course, Members entrusted to serve on the Committee have their first obligation to the integrity of the House ethics process, which itself supports public confidence in the institution of the House. A better course of action would have been for Representative McDermott to entrust the Committee at the outset with the information to which he alone on the Committee had access, and for that body, collectively, to make determinations, consistent with its rules, as it deemed appropriate.

The Investigative Subcommittee decided against further proceedings in this matter. The Investigative Subcommittee additionally recommends that the Report of the Investigative Subcommittee be released to the public with no further statement by the Committee beyond announcing release of this Report.

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[77] The identical foreword is contained in the Rules of the Committee for the current Congress.

[78] See House Rule 23, clause 2, providing that "[a] Member . . . shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof." House Rule 23, Clause 2, "has been interpreted to mean that *Members, officers, and employees may not do indirectly what they would be barred from doing directly,* House Ethics Manual at 15 (italics original), and that "a narrow technical reading of a House rule should not overcome its 'spirit' and the intent of the House in adopting that and other rules of conduct." Id. (citing Final Report of House Select Committee on Ethics, H. Rep. No. 95–1837, 95th Cong., 2d Sess. (1979) app. at 61).

EXHIBITS

EXHIBIT 1

Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 23, 1997

CRM
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TDD (202) 514-1888

MARTINS CHARGED IN CELL PHONE CASE

Charles R. Wilson, United States Attorney for the Middle District of Florida, and Scott Charney, Chief of the Computer Crime and Intellectual Property Section of the Justice Department's Criminal Division, jointly announced that identical one-count Informations have been filed today in Jacksonville, Florida, against John and Alice Martin of Columbia County, Florida. The Informations charge the Martins with using a radio scanner to intentionally intercept the radio portion of a cellular telephone call, in violation of Title 18, United States Code, Section 2511(1)(a) and 2511(4)(b)(ii).

The intercepted communication, a conference call among Speaker of the U.S. House of Representatives Newt Gingrich and other Members of Congress, took place on December 21, 1996. Also filed today were plea agreements, signed by the Martins.

Because the interception involved the radio portion of a cellular telephone communication, and because there is no evidence that the interception was for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private financial gain, the U.S. Code cl[illegible]s

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this offense as an infraction. The maximum penalty is a $5,000 fine.

"The Martins were charged with the most serious violation possible based on the applicable federal law and the circumstances surrounding the interception of the telephone call," said Wilson. "If the Martins are ever convicted of an illegal interception again, they would face a maximum penalty of five years imprisonment, a $250,000 fine, or both."

"All Americans are entitled to privacy in their telephone communications," said Charney. "Americans should know that intentionally intercepting other peoples' calls is illegal."

The case was handled by the United States Attorney's Office for the Middle District of Florida, in conjunction with the Computer Crime and Intellectual Property Section of the Justice Department's Criminal Division. The investigation is being handled by the Washington Metropolitan Field Office of the Federal Bureau of Investigation.

An information is merely a formal charge that a defendant has committed a violation of the federal criminal law, and every defendant is presumed innocent until, and unless, proven guilty.

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97-168

EXHIBIT 2

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NATIONAL DESK

Gingrich Is Heard Urging Tactics in Ethics Case

By ADAM CLYMER (NYT) 1537 words
Published: January 10, 1997

On the day in December when Newt Gingrich admitted bringing discredit on the House, his lawyer told Republican leaders that the Speaker had promised an ethics subcommittee not to use his office and his allies to orchestrate a Republican counterattack against the committee's charges.

That was part of the price for the subcommittee's agreement to accept his admission of guilt and spare him the potential humiliation of a full-scale public trial.

But that same day, even before the charges had been made public, Mr. Gingrich held a telephone conference call with other House leaders in which he made suggestions for a statement that the leaders would issue immediately after the subcommittee's charges were disclosed.

He also suggested the timing of various responses to Democratic attacks. The politicians agreed among themselves how they could use their opponents' comments to attack the subcommittee's findings indirectly without technically violating the agreement that Mr. Gingrich's lawyers made with the ethics subcommittee.

The call was taped by people in Florida who were unsympathetic to Mr. Gingrich and who said they heard it on a police scanner that happened to pick up the cellular telephone transmissions of one of the participants. It was given to a Democratic Congressman, who made the tape available to The New York Times. Mr. Gingrich's office today did not question the authenticity of the conversation, but insisted that it did not violate any agreement with the ethics subcommittee.

The Speaker and his allies acknowledged at the time that their conversation was a bit "premature," since the subcommittee had not yet even voted on the charges against Mr. Gingrich. Nevertheless, they talked about how to handle inevitable Democratic attacks, how to time the day's events with newspapers, news agencies and the evening television news in mind, and -- above all -- how to avoid making all that look as if Mr. Gingrich was pulling the strings.

In the Dec. 21 conversation, Mr. Gingrich's lawyer, Ed Bethune, said, "It is very important for me to be able to say to the special counsel and if necessary to the committee members that we -- and by that I mean the other attorney, Randy Evans, and I, and Newt -- have done everything in our power to try to stop all things that might be construed in any way as an orchestration attempt by Newt Gingrich."

Mr. Gingrich, Mr. Bethune and the others discussed their tactics in a conference telephone call, a transcript of which was made available by a Democratic Congressman hostile to Mr. Gingrich who insisted that he not be identified further.

The Congressman said the tape had been given to him on Wednesday by a couple who said they were from northern Florida. He quoted them as saying it had been recorded off a radio scanner, suggesting that one

participant was using a cellular telephone. They said it was recorded about 9:45 A.M. on Dec. 21.

The tape, in which the voices of Mr. Gingrich and other Republican leaders are clearly recognizable, was plainly a recording of a conversation that took place before the subcommittee released its charges and Mr. Gingrich's admissions.

The call capped a week of elaborate plea-bargaining over the framing of the charges -- and Mr. Gingrich's admission -- that the Speaker had brought discredit on the House by giving untrue information to the ethics committee and by failing to get proper legal advice about the way he used money from tax-exempt foundations for a college course and televised town meetings with political overtones.

Mr. Gingrich's admission of guilt avoided a full-scale trial in which the details would have been televised nationally. In return, the committee's special counsel, James M. Cole, insisted on a promise that the Speaker would not use his allies to mount a counterattack against the subcommittee's case, since its rules forbade Mr. Cole and members from answering such attacks.

The tone of the conversation was optimistic. The Speaker and the other leaders believed that a coordinated response could enable them to limit political fallout.

And the talk, one of many that day, ended on a light note. After the basic outlines of the statement the leaders would issue had been agreed on, Representative Dick Armey of Texas, the majority leader, had another suggestion for how Mr. Gingrich could handle the menacing accusation that he had deliberately lied to the committee: "I am not sure you are ready for this, but you could quote Larry Gatlin and the Gatlin Brothers."

Mr. Gingrich asked, "Which one is that?"

Mr. Armey warbled: "I did not mean to deceive you. I never intended to push or shove. I just wish that you was someone that I love."

Today, Lauren Maddox, a spokeswoman for Mr. Gingrich, defended the Speaker's role. She said: "Newt has always had the right to run for Speaker and campaign. Any statement he made was in no way undermining the work of the committee."

She added: "There was a specific agreement between Newt's lawyers and the special counsel that Newt could brief the leadership. And it was always understood that in turn, the leadership could respond in any way they thought was appropriate."

In the December conversation, Mr. Bethune said in a couple of hours, once the subcommittee announced its actions, "it would also be a time when we are authorized to have the conversation that we are having now, a little prematurely. But I don't think it would be troubling to anyone that we are a little ahead of the gun."

Mr. Cole would not comment today, but the conversation itself suggested that the situation at the time seemed more complicated than Ms. Maddox contended.

Mr. Bethune, who served with Mr. Gingrich in the House for six years and now practices law in Washington, made several efforts to outline the slippery path that all must follow. One ally asked him what the leaders should say about any agreement between Mr. Gingrich and the subcommittee.

The lawyer replied: "No. I didn't say there was an agreement. I said there was a delicate process under way and that this is what Newt is going to do, in response to the delicate process. There is no agreement, no deal. We are not authorized to say that.

"Now if I can be very delicate here. There is one other constraint," Mr. Bethune continued. "He can run for

Speaker, but he must maintain his confidentiality as far as public statements. And then, finally, Newt will not orchestrate, nor will he be -- he will not orchestrate any attempt to spin this in such a way that it belies what he is admitting today in the statement of alleged violations."

But having barred one door, Mr. Bethune opened a window. "Having served as a member," he said, "you know when documents become public, I as a member, am entitled to say whatever the hell I want to say about those public documents. I guess that applies to any of you all who may be listening."

The men also talked about how they could use Mr. Gingrich's main adversary, Representative David E. Bonior of Michigan, the House Democratic whip, as a springboard to make arguments that Mr. Gingrich's agreement with the subcommittee would otherwise preclude.

"We know that Bonior is going to be having a press conference shortly thereafter, alleging a bunch of things that go too far," said Ed Gillespie, communications director of the Republican National Committee. "Once he has kicked that off, that would give us an opportunity to then go back and refute what he has said, and we have not jumped the gun on opening and we have simply responded."

Mr. Gingrich praised the suggestion. "Ed's very clever." he said. "Bonior, he will undoubtedly say things that are not true, will exaggerate what the committee has done."

Representative Bill Paxon of upstate New York, a coordinator of moves by the Republican leadership in the House, said it was essential to have a quick response after the subcommittee released its material.

The Speaker suggested that a leadership response be put out by 2 or 3 P.M., within a couple of hours of his statement and the subcommittee's statement. "I'm not an expert," he said, but "at that point we're in by the evening news, catch the morning papers."

Then the group went over the statement, with various suggestions offered about how to say that the Speaker had never intentionally misled the ethics committee..

The Speaker sought to end the cross talk by saying, "Why don't we pick up Ed's language: 'Although there is no charge that Newt intentionally misled the committee, Newt was responsible for the mistakes that were made?' "

Ultimately, the statement as issued changed a little. It said, "It should be noted, and is clear, he did not seek nor intend to mislead the committee."

Photo: Newt Gingrich greeting House members yesterday before the final count of the Electoral College. (Amy Toensing for The New York Times)

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NATIONAL DESK

Excerpts From Republican Leaders' Conference Call

(NYT) 1769 words
Published: January 10, 1997

Following are excerpts from a telephone conference call that Speaker Newt Gingrich had with other Republican leaders in the House and his lawyer Ed Bethune. A tape of the call was given to The New York Times by a Congressman who insisted on anonymity and who is hostile to Mr. Gingrich. The Congressman said the tape was given to him on Tuesday by a couple from northern Florida. They told the Congressman that the call was picked up and recorded from a police scanner on Dec. 21 about 9:45 A.M.

The recording does not begin with the start of the telephone call, in which the men are discussing an agreement Mr. Gingrich had made in which he promised not to orchestrate a Republican counterattack against ethics charges that were about to be filed against him.

GINGRICH But Ed, is Cole $(James M. Cole, the ethics committee's special counsel$) aware of our talk today?

BETHUNE He is aware that you are going to talk to the leadership. That is correct.

GINGRICH He was going to brief the subcommittee. The message we got yesterday was they fully expect me to campaign for Speaker, and that that in no way violates the agreement. So that stirring up support for me as Speaker in their judgment, as long as it isn't done in a way that undermines the committee.

BETHUNE Newt can campaign for Speaker, no problem. Newt cannot himself say anything publicly about this because that is what he has agreed. He will make no public statements.

GINGRICH Beyond the statement, we are releasing ----.$(inaudible$)

UNIDENTIFIED VOICE Can we characterize that agreement? That's an agreement as part of our ----.

BETHUNE No. I didn't say there was an agreement. I said there was a delicate process under way and that this is what Newt is going to do, in response to the delicate process. There is no agreement, no deal. We are not authorized to say that. Now if I can be very delicate here. There is one other constraint. He can run for Speaker, but he must maintain his confidentiality as far as public statements. And then, finally, Newt will not orchestrate, nor will he be -- he will not orchestrate any attempt to spin this in such a way that it belies what he is admitting today in the statement of alleged violations.

And so, now having said that, having served as a member, you know when documents become public, I as a member, am entitled to say whatever the hell I want to say about those public documents. I guess that applies to any of you all who may be listening. But we want the record to be absolutely $(inaudible$) and clear here that Newt is not, nor does he desire for anybody in his $(inaudible$) to go out and try to help him. As you saw this week, we had a bad press day on Friday because on Thursday some of our dearest friends went out with an

intention to help but in fact caused more harm than good. And, you know, with friends like that.

DICK ARMEY Ed, I think that the statement that Bill read though is in compliance with all those points.

TOM DeLAY Sounds to me like you're just saying that it might sit better, and I think it wouldn't look like it was part of some cooked operation if it came maybe as part of a $(inaudible$).

UNIDENTIFIED VOICE I understand what you guys got to do in the Speaker's office. We cannot let a news cycle go by, not even let several hours go by.

ARMEY Right.

BILL PAXON So when the committee issues that report, before we have an immediate response. Because they will certainly have a war room set up on the other side, and if we have several hours or a day go by when our members are out there without response, it will be a disaster, that's right.

ARMEY And Bill, I think Bill's right on that. I think the statement as I recall hearing it is acceptable, and it probably could go a couple of hours.

PAXON When will we see your statement, Newt?

GINGRICH My guess is, and I think they are running about 15 minutes late, my guess is we will have our statement out before noon. And if there was a way, I'm not an expert, but if there was a way to have by two or three to have some kind of statement also on the wire.

ARMEY Oh, yeah.

MR. GINGRICH At that point we're in by the evening news, catch the morning papers.

BETHUNE Let me explain a technicality here which will help you all understand the time frame. Of course the subcommittee is bound to confidentiality by the rules of the committee until such time as an answer is filed. No answer has been filed. Because the subcommittee is meeting today, here, personally, because they are today voting the statement of alleged violations.

Obviously, you can't answer something until it has been voted. So they are meeting soon, as we speak, I guess. They will discuss and then vote the statement of alleged violations. That, the confidentiality rule is still in place until Newt files his answer. Newt is sending through me an answer that he is signing today, which essentially says I admit the statement of violations. I will hand carry that to the committee room and deliver it to the special counsel.

At that moment the committee is authorized to release its statement of alleged violations. But the committee does not wish to release its statement of violation at that point because it feels that it owes an obligation to the full committee members to give them a heads up about what they are about to do. And so they have asked for a two-hour embargo after we hand in our answer, during which time they contemplate a conference call to discuss with the full committee members all the ramifications of this, and that would be the first time the full committee members would hear whatever it is the subcommittee members intend to say to them.

And it would also be a time when we are authorized to have the conversation that we are having now, a little prematurely. But I don't think it would be troubling to anyone that we are a little ahead of the gun. We are also asked to embargo our response so that we don't get ahead of the committee.

ARMEY Ed, we all, guys, let me suggest this. I'd like to hear the statement one more time, and then perhaps what we could all, if we all think it is complete, agree to it, and let Ed then determine the appropriate time as

quickly as is appropriate that it be released. Does that work? Him being on the ground and having----.

PAXON I don't know. Ed can you, can you be involved in orchest----, you know, if we----.

BETHUNE No, I think all I can do, Bill, is, Ed, tell me who to call, and I will say that it is now perfectly acceptable -- for----.

GILLESPIE As soon as Ed gives us the word to put out the statement Mr. Paxon read, because we know that Bonior is going to be having a press conference shortly thereafter, alleging a bunch of things that go too far. Once he has kicked that off, that would give us an opportunity to then go back and refute what he has said, and we have not jumped the gun on anything and we have simply responded ----.

GINGRICH Ed's very clever $(inaudible$). Walker said why not have Bonior up for tomorrow, then, because he will undoubtedly say things that are not true, will exaggerate what the committee has done.

PAXON How do you expect to do it, at a press conference, or a statement, or, after Bonior?

GILLESPIE Yes, a press conference, right after ----.

DAN MEYER: Ed, tell me if this crosses the line. Is it possible to include in the statement that Bill read some language that says you know why he is taking responsibility although it is clear he never intended to mislead the committee? I'd fix it over to see if you could repeat that since, you know, it, it, members need to understand that, and it then will be fine.

BETHUNE Newt cannot be party to crafting any such or orchestrating, but as I said earlier, a member of Congress having received those documents is entitled to say whatever they want to about them.

PAXON We could say, we have every confidence that Newt did not intend to----.

BETHUNE If I could strongly make this one point. It is very important for me to be able to say to the special counsel and if necessary to the committee members that we -- and by that I mean the other attorney, Randy Evans, and I, and Newt -- have done everything in our power to try to stop all things that might be construed in any way as an orchestration attempt by Newt Gingrich . . .

UNIDENTIFIED VOICE In his statement today, the Speaker accepted full responsibility for the mistakes he has made. He also showed that he remains an idealistic and determined leader, that he can learn from those mistakes. One month ago, we issued a statement pledging our political support for Newt's election as Speaker in the 105th Congress. Today, with the work of the subcommittee completed, we reiterate our political support. Now what do you want to add?

GINGRICH Why don't we pick up Ed's language: "Although there is no charge that Newt intentionally misled the committee, Newt was responsible for the mistakes that were made?"

GILLESPIE And something like: "With this now behind us, it is clear that Newt will be re-elected Speaker on Jan. 7.

ARMEY. I am not sure you are ready for this, but you could quote Larry Gatlin and the Gatlin Brothers.

GINGRICH. Which one is that?

ARMEY. "I did not mean to deceive you. I never intended to push or shove. I just wish that you was someone that I love."

EXHIBIT 3

L. JOHNSON, CONNECTICUT
JOHN M. MCHUGH, NEW YORK
NANCY L. JOHNSON, CONNECTICUT
JIM MCCRERY, LOUISIANA
WILLIAM M. THOMAS, CALIFORNIA
STEVEN C. LATOURETTE, OHIO
ROBERT W. NEY, OHIO
WES WATKINS, OKLAHOMA
J. DENNIS HASTERT, ILLINOIS
ERNEST J. ISTOOK, JR., OKLAHOMA
DAN MILLER, FLORIDA
JIM RAMSTAD, MINNESOTA
JIM NUSSLE, IOWA
SAM JOHNSON, TEXAS
JENNIFER DUNN, WASHINGTON
MAC COLLINS, GEORGIA
ROB PORTMAN, OHIO
PHILIP S. ENGLISH, PENNSYLVANIA
JOHN ENSIGN, NEVADA
JON CHRISTENSEN, NEBRASKA
WALLY HERGER, CALIFORNIA
DAVE CAMP, MICHIGAN
JIM MCDERMOTT, WASHINGTON
RANKING DEMOCRATIC MEMBER
BENJAMIN L. CARDIN, MARYLAND
RICHARD E. NEAL, MASSACHUSETTS
MICHAEL R. MCNULTY, NEW YORK
WILLIAM J. COYNE, PENNSYLVANIA
SANDER M. LEVIN, MICHIGAN
JIM MCCRERY, LOUISIANA
JOHN LEWIS, GEORGIA
JOHN TANNER, TENNESSEE
XAVIER BECERRA, CALIFORNIA
KAREN L. THURMAN, FLORIDA
LLOYD DOGGETT, TEXAS
EARL POMEROY, NORTH DAKOTA
MAX SPARKS, STAFF DIRECTOR
JANICE MAYS, CHIEF COUNSEL
JOHN A. BUCHANAN, JR., MINORITY STAFF DIRECTOR
ALLISON GILES, MINORITY CHIEF COUNSEL
1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3625

ONE HUNDRED FOURTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515–6328

January 13, 1997

Mr. Jim McDermott
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. McDermott:

This is to notify you that the material you sent to the Committee at 4:23 p.m. this afternoon was not accepted. By direction of the Chair and after consultation with the Chief of the Criminal Division of the Department of Justice, the contents of the envelope including the audio cassette tape and the cover letter were hand delivered to the Department of Justice early this evening.

Sincerely,

Theodore J. Van Der Meid

Theodore J. Van Der Meid
Chief Counsel

EXHIBIT 4

January 8, 1997

Committee On Standards of Official Conduct
HT2 Capitol
20515-6328

Jim McDermott, Ranking Member

Enclosed in the envelope you will find a tape of a conversation heard December 21, 1996 at about 9:45 a.m. The call was a conference call heard over a scanner. We felt the information included were of importance to the committee. We live in the 5th. Congressional District and attempted to give the tape to Congresswoman Karen Thurman. We were advised by her to turn the tape directly over to you. We also understand that we will be granted immunity.

My husband and I work for Columbia County Schools in Columbia County Florida. We pray that committee will consider our sincerity in placing it in your hands.

We will return to our home today.

Thank you for your consideration.

John and Alice Martin
Rt. 3 Box 3257
Fort White, FL 32038
(904) 454-2594
(904) 454-5479 FAX

EXHIBIT 5

The New York Times

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NATIONAL DESK

2 Floridians Talk of How They Taped The Speaker

By RICK BRAGG (NYT) 851 words
Published: January 14, 1997

Correction Appended

John Martin said he and his wife, Alice, were on their way to Jacksonville, Fla., to do some Christmas shopping on Dec. 21 when they picked up a "part of history" on their hand-held police scanner.

What they heard was Speaker Newt Gingrich, discussing with other high-ranking House Republicans how to react to ethics committee charges against him, the same day that the Georgia Representative had promised not to use his office and allies to orchestrate a response.

When the Martins recognized who was speaking, "I was so excited to think I had actually heard a real politician's voice," said Mrs. Martin, at a news conference here on Monday about the tape. "We were thrilled."

The middle-aged couple -- he is a maintenance man at a school and she is a teacher's aide -- are active in both the National Education Association and the Democratic Party in their home county of Columbia in northern Florida, so they have a keen interest in politics. Mr. Martin said they had used a small tape recorder to record the conversation, planning to play back the voice of the famous politician someday for their grandson, who is expected to be born in three weeks.

But as they listened, they changed their mind. They took the tape to their Representative, Karen L. Thurman, a Democrat, and later, on her advice, took the tape to the senior Democrat on the House ethics committee, Representative Jim McDermott. They said that they had not given the tape to the press but that politicians had.

"They did what good citizens ought to do, which was contact their Congressperson," said the couple's lawyer, Larry Turner. He said partisan politics had not played a role in their decision to come forward.

The New York Times reported last Friday that a couple in Florida unsympathetic to Mr. Gingrich had provided a tape of the telephone call from a police scanner that had picked up a celluar transmission. The article also reported that a Democratic Congressman had made a copy of the tape available to the newspaper.

It may seem unlikely that an unassuming couple from northern Florida, who just happen to be politically active Democrats, would eavesdrop on a high-level, questionably appropriate Republican conversation, and tell about it. But, Mr. Turner said, that is exactly what happened.

"I feel we did the right thing," Mr. Martin said. Comparing the situation to a scenario in which he might overhear the President or some other high-ranking official discussing an issue of national security with a foreign enemy, he said it was his "civic duty" to tell.

The couple could face prosecution -- some Washington Republicans are insisting on it -- although Mr. Turner

said no charges have been filed so far. It is a violation of state and Federal law to eavesdrop on a cellular or hard-wired telephone conversation intentionally.

Mr. and Mrs. Martin said they never believed that it would lead to this, when they recognized that voice. (Their lawyer would not permit them to use the Speaker's name in the news conference.)

They first took the tape to Representative Thurman at her Florida office. She listened to it, said Mr. Turner, then referred the Martins to Mr. McDermott.

They were in Washington last week to attend a reception for incoming House freshmen, the kind of thing that people active in national politics at the local level are invited to.

Mrs. Martin said she and her husband had hand-delivered the tape to Mr. McDermott. "He took the envelope in his hand and said he would listen to it," she said.

Mr. and Mrs. Martin are both active in the education workers union in Florida, and through that, the Democratic Party. He once served as treasurer of the Columbia County Democratic Executive Committee. She was once its secretary.

Politics is almost a hobby with them. They eat meals with political programs playing on the television in the background. He said their two children used to kid them about it.

Another hobby is their scanner. They pick up all kinds of transmissions, and bought a newer, more powerful unit over Christmas. "To the horizon," he answered, when asked its range.

They had the scanner, which Mr. Martin said he uses "at the stock car races in Daytona," on the car seat between them on Dec. 21 when they picked up a cellular phone conversation about 9:45, reportedly from a phone owned by Representative John A. Boehner, a Republican, who was driving through northern Florida.

They recognized the most prominent voice in that conference call and recorded it on a recorder that Mr. Martin said he used "to record stupid jingles and stuff off the TV, and off the radio in the car." He said he also used the recorder for things he needs to do.

Correction: January 15, 1997, Wednesday

An article yesterday about the Florida couple who said they taped a cellular transmission of a conversation involving Speaker Newt Gingrich referred incorrectly to Representative Karen L. Thurman of Florida, to whom the couple first took the tape. Ms. Thurman's office said she did not listen to the tape.

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EXHIBIT 6

JIM MCDERMOTT
7TH DISTRICT, WASHINGTON

Congress of the United States
House of Representatives
Washington, DC 20515

January 14, 1997

Representative Nancy Johnson, Chair
Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, D.C. 20515

Dear Ms. Johnson:

I learned last evening, to my considerable chagrin, that the tape of Speaker Gingrich conferring with other House Republicans which I transmitted to you as Committee Chairman for inclusion in the Committee record, has been rejected by you without consideration by the Committee. Rather, you unilaterally elected to ignore its content, deprive the Committee of it, and transmit it to the Department of Justice.

This Committee has been charged with the august and Constitutional task of reviewing the conduct of not just a member, but that of the Speaker. The entire world is watching the way we conduct our affairs. We pursue this task after the Speaker—for years—has denied wrongdoing only recently to confess his culpability. We are now in the "sanction" phase and, with respect to it, the Speaker has made solemn commitments to this Committee and the House of Representatives. Concomitant with his commitments appears to be his breach. Rather than evaluate the evidence of the breach and give it such weight as it is fairly entitled to receive, you, without Committee or House approval, have jettisoned the evidence and willfully ignored its content. I regard that as a shameful act in conscious avoidance of the search for truth.

Moreover, and I do not make this charge lightly, by transmitting the evidence elsewhere without first having presented it to the House for its approval, you have violated House Rule X, cl. 4, (e)(1)(C). It provides:

> The Committee on Standards of Official Conduct is authorized: ...
> (C) to report to the appropriate Federal or State authorities, with the approval of the House, any substantial evidence of a violation, by a Member...of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation....(emphasis added)

It is manifestly clear that the tape was provided to the Committee for its inclusion in its records. Before disseminating the tape, you were required to present it to the full House for its approval. It is both apparent and ironic that you, as Chair of the Committee whose mission is to scrutinize the ethics of House members, by this unauthorized referral, have yourself violated House rules and brought disrespect to the House of Representatives. This conduct is emblematic of the kind of partisan wrongdoing that is taking place that inspires others to take measures to combat it.

I respectfully request that you endeavor to recall the tape so that the Committee and its counsel may consider it with all the other evidence that bears upon the matter under consideration. In this way relevant evidence of the bona fides of the Speaker's commitment and his integrity may be assessed.

Lastly, in my communication with you yesterday, I sought to conduct the Committee's business through you directly. I am now reluctantly constrained to share this letter and that which I sent you yesterday with the Clerk of the House and the Majority and Minority leaders so as to assure that these letters, the tape, and the business of the House be recorded in the records of the House.

Respectfully submitted,

Jim McDermott
Member of Congress

EXHIBIT 7

JOEL HEFLEY, COLORADO
CHAIRMAN
DOC HASTINGS, WASHINGTON
JUDY BIGGERT, ILLINOIS
KENNY C. HULSHOF, MISSOURI
STEVEN C. LATOURETTE, OHIO

JOHN E. VARGO,
CHIEF COUNSEL/STAFF DIRECTOR
PAUL M. LEWIS,
COUNSEL TO THE CHAIRMAN
COLLEEN McCARTY,
ASSISTANT TO THE RANKING
MINORITY MEMBER

ALAN B. MOLLOHAN, WEST VIRGINIA
RANKING MINORITY MEMBER
STEPHANIE TUBBS JONES, OHIO
GENE GREEN, TEXAS
LUCILLE ROYBAL-ALLARD, CALIFORNIA
MICHAEL F. DOYLE, PENNSYLVANIA

SUITE HT-2, THE CAPITOL
(202) 225-7103

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515–6328

December 28, 2004

Statement of Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan

On November 16, 2004 Representative David L. Hobson filed a complaint alleging that Representative Jim McDermott violated certain laws, rules and standards of conduct in disclosing to the news media the contents of an intercepted telephone conversation in January 1997. That conversation related to committee proceedings regarding then-Representative Newt Gingrich. Until mid-January 1997, Representative McDermott served as Ranking Minority Member of the House Select Committee on Ethics, which had been created at the beginning of the 105th Congress for sole purpose of completing action on a previously initiated case regarding Representative Gingrich.

On November 18, 2004, we made the procedural determination under Committee Rule 16(a) that the complaint filed by Representative Hobson meets the requirements of the Committee's rules for what constitutes a complaint, and further proceedings regarding the complaint have taken place under Committee Rules 16 and 17.

We have jointly determined, under Committee Rule 16(b)(2), to establish an investigative subcommittee and to forward portions of the complaint to that subcommittee. The subcommittee will conduct an inquiry on allegations that Representative McDermott's conduct violated the House Code of Official Conduct (clause 1 of which provides that Members and staff shall conduct themselves "at all times in a manner which shall reflect creditably on the House of Representatives"), provisions of the Code of Ethics for Government Service, the committee member non-disclosure agreement, or the Committee confidentiality rules.

Under Committee Rule 19(a), we have designated the following Members to serve on the investigative subcommittee. Representative Judy Biggert will serve as Chairman, and Representative Lucille Roybal-Allard will serve as the Ranking Minority Member of the investigative subcommittee. The other two members are Representative Phil English and Representative Robert C. "Bobby" Scott.

In accordance with Committee Rule 7 on confidentiality, there will be no further public comment on this matter from the Committee or its members except in the form of a joint statement by us or by the full Committee. The text of the Committee Rules is available on the Committee Web site, www.house.gov/ethics.