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DCMN HERZFELD

PUBLIC HEARING ON ETHICS PROCESS

Thursday, April 19, 2007

House of Representatives,

Special Task Force on

Ethics Enforcement,

Washington, D.C.

The task force met, pursuant to call, at 1:06 p.m. in Room 1310, Longworth House Office Building, Hon. Mike Capuano [chairman of the task force] presiding.

Present: Representatives Capuano, Scott, Smith and Camp.

The Chairman. First of all, thank you all for coming. This is the public hearing for the special task force created by the Speaker and the Minority Leader to discuss some ethics issues.

In January, this Congress passed a -- reform to restore accountability, honesty and openness to the House of Representatives. Most of us believe that this is a significant step towards restoring honest leadership. This task force has been charged with considering whether the House should create an independent entity relative to the ethics process, and if so, what form, makeup, authority, et cetera, that entity should be. It is our hope -- and we have been asked to have a May 1 deadline, but I think mostly because of the 2-week break we just came off, that deadline is very difficult to meet, but I believe we will all try to get this done as quickly as reasonably possible for the mental health of all of us.

This task force held 11 official meetings thus far, in discussion with our guests, and we had had numerous other unofficial meetings. I want to recognize and thank the people who helped us have those meetings, who came, educated us and enlightened us. I am going to read that list of people.

From the American Enterprise Institute, Norman

Ornstein; from the Brookings Institution, Tom Mann; Senator Ben Cardin; from the Citizens for Responsibility and Ethics in Washington, Melanie Sloan; Common Cause, Sarah Dufendach; Congressional Research Service, Jack Maskell and R. Eric Petersen; from the Ethics Resource Center, Patricia Harned; from the House Committee on Standards of Official Conduct, Kenneth Kellner, who I believe is here; from the Kentucky Legislative Ethics Commission, Judge Anthony Wilhoit; League of Women Voters, Lloyd Leonard; former Congressman Robert Livingston; Public Citizen, Craig Holman; Senate Select Committee on Ethics, Rob Walker; Brad Smith, former FEC Chairman; former Congressman Lou Stokes; and from the U.S. PIRG, Gary Kalman.

Today we have four witnesses who have also come in and spoken to us, but today we have been asked to do it more efficiently: Tom Fitton from the Judicial Watch; Meredith McGehee, the policy director from the Campaign Legal Center; Fred Wertheimer from Democracy 21; and Don Wolfensberger, director of the Congress Project.

I just want to make the statement that I obviously had many people who wanted to testify. We couldn't accommodate them all and get any work done, so we asked basically a representative group of people to talk to us. We are still trying to schedule at least one more hearing particularly with the former Members. There has been some difficulty

coordinating schedules thus far. We hope to be able to do that next week. We will see. And for anyone who wishes to submit testimony to this task force in an official capacity, you are more than welcome to do so. Send it to myself and to Mr. Smith. We will pass it out to everybody else.

With that, I would ask Mr. Smith -- and I am glad he was able to join us today because he does have some floor responsibilities at this very moment.

[The information follows:]

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Mr. Smith. Mr. Chairman, let me go on and proceed. Thank you for your comments, and also thank you for your commitment to have that second hearing, and I know we are trying to get those former Members.

Let me say at the outset that I have enjoyed my association with Chairman Capuano on this ethics task force, and, Mr. Chairman, this might make you wince, but I also want to say more than that and I can't think of a better person for the job than Mike Capuano, at least if they have a D after their name. But he is the right person at the right time at the right place. Throughout this process he has been fair and open-minded concerning the issue this task force was charged with. That charge is to consider whether the House needs to create an independent ethics committee to conduct investigations and perhaps reform other functions regarding ethics charges made against Members of the House of Representatives.

The charge of this task force is to recommend ways to improve the ethics process, but, of course, no matter what procedures are put in place governing ethics investigations of Members of Congress, there will always be a few bad apples in a much larger barrel. Our charge here is to determine how to help separate out the few bad apples without upsetting the whole apple cart.

The Founding Fathers knew that a few bad apples would always exist. They built our entire system of government around the notion that while nothing could prevent a few bad apples, a system of separated powers and checks and balances among the three branches could contain these bad apples at the bottom of the barrel and thereby limit the harm they could do.

It is this separation of powers and the duty of the House of Representatives under Article V, section 2 clause of the Constitution to, quote, determine the rules of its proceedings and punish its Members. That has kept the House's investigatory function into an alleged lapse of its Members under its own purview. That has always been and will continue to be subject, of course, to the alternate judgment of the voters at large. Such voters alone have the power every 2 years to judge not just the Members who are being judged, but also those Members who have the task of judging their own colleagues in the House of Representatives.

Under this separation of powers, the recent ethical problems encountered by Members of Congress have been met with prosecution by the executive branch and judgment in the judicial branch. The House of Representatives has also investigated such matters, respectful, of course, of the rules and duties of the other branches.

Today we examine proposals to create an independent ethics commission. I know there are some independent legislative ethics commissions operating in the space that would have been considered a success. But I also know there are unique items at work in Washington, D.C., and issues of Federal law that do not apply elsewhere. I know some see the need for a commission that operates independently of the duly elected membership of the House of Representatives. Yet I also know there are those who are concerned that the ethics enforcement entity not be so independent from duly elected Members that it upsets the checks and balances. That system must exist within our Constitution which requires separation of powers among the executive, judicial and legislative branches.

As there have always been bad apples, there have always been calls for an independent ethics commission. Such an independent office was most recently considered by the Senate in January, but rejected by a vote of 27-71. Such a commission was last considered in the House in the mid-1990s when another House of Representatives ethics reform task force, including Congresswoman Nancy Pelosi, ultimately rejected the creation of an independent ethics commission in favor of other reforms. Those reforms were, quote, enhanced nonpartisan operation of the committee, increase the confidentiality of the committee's workings, improve the

system of filing information offered as a complaint, ensure a more timely resolution of matters before the committee, end quote.

I believe those remain worthy goals and expect this task force will recommend changes that will make those goals more readily achievable.

Mr. Chairman, thank you again. And as you explained, unfortunately we have a bill on the House floor that is under the jurisdiction of the Judiciary Committee on which I sit, and I am expected to return and conclude the debate. So I had better do that pretty quickly, but I leave this task force in capable hands and thank you again.

[The information follows:]

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The Chairman. Other Members who might wish to make an opening statement, feel free.

Good. With that I would ask the panel to come on up. Thank you for joining us. I apologize for the technical difficulties. But just to invite you, we will try to adhere to the 5-minute rule if we can. And with that, I think I would like to start.

**STATEMENT OF FRED WERTHEIMER, PRESIDENT AND CEO,
DEMOCRACY 21, WASHINGTON, D.C.**

Mr. Wertheimer. Thank you Chairman Capuano, members of the task force. Democracy 21 appreciates this opportunity to testify, as we appreciated the opportunity to appear before you in informal sessions.

Last January the House took a major step forward by adopting landmark reforms to strengthen the House ethics rules. We, along with other reform organizations, applauded the adoption of these strong new ethics rules. All of this good work by the House will be seriously undermined, however, if the House fails to establish a new, effective and publicly credible means for enforcing the House ethics rules. In this regard our organization strongly supports the establishment of an Office of Public Integrity, and we have supported the legislation produced by Representative Meehan and Shays and others.

As the Boston Globe said in an editorial in December of last year endorsing the creation of an office, any reform without enforcement is no reform at all. The Washington Post said in an editorial early this year, ethics rules that are not vigorously overseen and enforced are not worth the Congressional Record they are printed in.

The current system for enforcing the ethics rules is a publicly recognized failure. This was clearly demonstrated in the last Congress. The failure of the committee to even operate for more than a year was unprecedented and represented a complete breakdown of the process for enforcing the House ethics rules. And despite the magnitude of the Abramoff scandals in Congress, the worst congressional corruption and ethics scandals in three decades, which involved current and former Members of Congress and staff, there is no indication that the House Ethics Committee conducted any investigation of the Abramoff scandals. Previous major congressional scandals, including the Koreagate and ABSCAM scandals in the House in the 1970s and the Keating Five affair in the Senate, all resulted in major congressional ethics investigations. It should be no surprise to anyone under these circumstances that the existing enforcement process is not publicly credible today.

The failure of this committee to function in 2005 followed actions the committee had unanimously taken in 2004 to admonish then-House Majority Leader Tom DeLay. I think it is important to keep in mind what happened after those admonishments. There were efforts to change the ethics rules of the committee, the procedures, in order to make it harder to bring complaints. There were -- three of the five Republican members of the Ethics Committee were purged from

the committee when it was reconstituted the next year. The top staff members of the committee were fired. The message could not have been clearer from the House Republican leadership to House Republicans, stop enforcing the ethics rules against our leaders.

It is now the responsibility of the new Democratic leadership to ensure that the House has an effective, publicly credible process for enforcing the ethics rules, and that cannot be done with piecemeal changes in this problem. At the core of the problem is a fundamental structural conflict. The Ethics Committee is responsible for investigating potential ethics violations, prosecuting cases of such violations, and deciding whether violations have occurred. Each of the functions is carried out under the control of the members of the committee. In order to fix the failed House ethics enforcement process, it is essential to separate these functions and create a new nonpartisan, professional enforcement entity to help enforce the ethics rules.

We have, I have concluded in our statement, the essential elements that a group of reform organizations believe are essential to a new enforcement process. I have also included the recommendations of the Committee for Economic Development, an organization of national business leaders and educators from around the country, which is

similar to the recommendations of the reform groups.

We appreciate the fact that a bipartisan effort is being made through the task force to address the issues of ethics enforcement in the House. However, the goal here must be to effectively and credibly solve this fundamental problem and not to produce a bipartisan report supported by a substantial minority -- majority of the task force that fails to make the fundamental changes that are needed.

The Democrats have responsibility in this Congress for leading the Congress, as the Republicans did in the last Congress. This process failed in the last Congress. It has got to be fixed, and in the end it is the responsibility of the House Democrats and the House Democratic leadership to ensure that this process is changed. If the task force is not prepared to recommend the comprehensive reforms that are essential to fixing the House ethics enforcement process, we would recommend that the task force not make any recommendations at all and leave it to House leaders to determine how to proceed in solving this critical problem. Thank you.

[The statement of Mr. Wertheimer follows:]

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The Chairman. Ms. McGehee.

**STATEMENT OF MEREDITH McGEHEE, POLICY DIRECTOR,
CAMPAIGN LEGAL CENTER, WASHINGTON, D.C.**

Ms. McGehee. Thank you again. I appreciate the opportunity to talk to you, Mr. Chairman, and the other members of the task force.

Rather than go through the written testimony which you all have, and since we have had an opportunity to talk about some of this, I would like to spend my time just highlighting a few thoughts. The first is that I hope to echo in a sense what Fred has said. I hope that this task force won't do what I believe many other task forces on this issue have done, and that is the proverbial rearranging of the deck chairs on the Titanic. There are a lot of things, a lot of moves that this task force can make, a lot of recommendations that can be put on the table, but the real question is, are you going to address the fundamental flaws that exist in the current ethics process?

I know we had some conversation about what the problems are. After thinking about some of those conversations, I realized there is probably nothing that I can say, nothing in the newspapers that can convince any of you who don't

believe that there is a problem. There is nothing that I can put on the table right now that is going to convince you that there is a problem if you don't already believe that there is one. It has no public credibility, and I believe it does the current process a great disservice to the Members and to the staff. I include the staff since I used to be one, and I think they are a very important part of this institution.

The current process has lost its public credibility and therefore does not serve to protect the integrity of the institution. The disservice is that it leaves Members and staff in a no-win situation at many times. You get cleared by wrongdoing by the Ethics Committee, and everyone on the outside rolls their eyes and just thinks this is the old boys' club doing the same old thing. That doesn't help you, that doesn't help the institution. But it looks like the process is more interested in protecting the Members than it does in actually ensuring that the House is living up to the higher ethical standards and not simply the standard of, you are a felon.

I would like to spend a few minutes talking about what I think are the red herrings, the cosmetic changes that you might be interested in or have heard that you should consider, and I would like to make the case about why those red herrings should not be pursued. What is that -- there

is a belief out there if you just change the members on the committee, if you just get those Members who appreciate comity, who have a little bit more moral fortitude, the process will work better. I believe that is a misdiagnosis of the problem.

I think that most Members who served on the committee have done so with the seriousness of purpose and their own sense of fairness. I also believe they are probably the last people to be able to judge their own motives. This is not a problem that has gone away task force after task force either on the House or the Senate side. It is the process itself that is fundamentally flawed, not just simply putting on new members.

The filing of outside complaints is something that you have heard a lot about, and I think obviously the change that was put in place in 1997 as part of that task force should be reversed. I don't think you are going to face an avalanche of complaints. That did not happen previously. It hasn't happened on the Senate side, where, in fact, they explicitly allow sources of material that are not limited like they are over here.

But that is not going to solve the problems that affect the system. Increasing transparency in the ethics process, good, another good idea. But again, it won't solve the underlying problems, particularly if it is pursued in terms

of redacted names.

Some believe that you should use former Members in a larger role on the process. The notion there goes to nobody really knows what it is like to be a Member of Congress, you know, to live that public life, to live under that scrutiny. The central error in that approach is that it fails to deal with one of the main problems I addressed earlier, and that is this well-deserved perception that there is an old boys' club mentality that exists here, and it is perceived to exist publicly.

I believe that same flaw is found in the idea of creating a jury system, of spreading the job around by Members of Congress. Those who believe that the justice system is the appropriate venue to take care of ethics issues I think misunderstand the purpose of the Constitution's judgment about Members being the judge of its own institution and the role of ethics versus criminal law. I think what former Congressman Ney said in going to his service, if you will, in a public institution that is different from this one, he said, I never intended my career in public service to end this way, and I am ashamed that it has. I never acted to enrich myself or get things I shouldn't. But over time -- and I want to emphasize this part -- I allowed myself to get too comfortable with the way things have been done in Washington for too long.

That, to me, encapsulates what the problem is. You should punish the people that believe that elections are sufficient. I don't believe that recognizes why the Founding Fathers put the provision in the Constitution.

Let's talk a little bit about solutions. That is always a good thing to do when you are talking about public policy. I think that the bill that task force member Mr. Marty Meehan, with others, introduced is really the best structure to try and answer these problems.

Now, I would note some people have raised the questions of an Office of Public Integrity, that it would have a single Administrator, and they were concerned that there would be a Ken Starr-like figure who might take that over. I would note that that has not happened in the executive branch with the Office of Government Ethics partly because that single Administrator is approved by the Senate.

Another alternative is to have a three-member panel and maybe have even one former Member as part of that panel, and they could serve part time, but they would then have an Office of Public integrity. In short, that office would serve to some degree like a DA would do the investigation, and then the Ethics Committee would do the part of the judge and jury, as opposed to the current system where it is all meshed together.

I would just like to note in closing that some former

colleagues of this body, Mr. Hansen, who is a former Chairman of the committee, wrote in 1997 he had actually come to support the idea of what he called an House Ethics Council. And the well-respected former Representative Lee Hamilton recently wrote on the Center for Congress site about his support of the Office of Public Integrity.

In closing, I just want to urge Members not to let fear, fear of outsiders, be the main factor in how you make your recommendations. I urge you to avoid the temptation to make cosmetic changes. I know that bipartisanship is the watchword in ethics, but if you come up with the lowest common denominator recommendations, we are going to have lowest common denominator ethics. So I urge you to try to be as strong as possible.

I appreciate again the fact that you have had this public hearing. I know they sometimes can be tedious, but I believe the process in this case is just as important as the recommendations. Thank you very much.

The Chairman. Thank you.

[The statement of Ms. McGehee follows:]

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The Chairman. Mr. Fitton.

**STATEMENT OF THOMAS FITTON, PRESIDENT, JUDICIAL
WATCH, WASHINGTON, D.C.**

Mr. Fitton. Yes. Thank you, Mr. Chairman and other members of the task force. I am Tom Fitton, president of Judicial Watch. Judicial Watch is a conservative, nonpartisan, educational foundation which advocates high standards of ethics and morality in our Nation's public life and seeks to ensure that political and judicial officials obey the law and do not abuse the powers entrusted to them by the American people. Hundreds of thousands of Americans support our cause.

I appreciate the opportunity to testify here today and thank you especially for allowing me to share ideas with the task force during the informal meetings last month.

The House ethics process is broken and in need of reform, as my associates have noted. Since the Committee on Standards of Official Conduct and the House Ethics Committee is not required to report to the public about its activities, it is difficult to fully ascertain the full scope of this dysfunction. Suffice it to say from what we know publicly, apparent wrongdoing by Members repeatedly

goes uninvestigated. And when violations of House rules are uncovered as a result of Ethics Committee investigations, any resulting punishments generally have been weak and ineffectual.

Contributing to this dysfunction is the so-called ethics truce, which I couldn't believe is still in operation between the leadership of both parties. Not every Member has abided by this truce, but the illicit agreement between Republicans and Democrats to not bring ethics charges against each other has resulted in an ethics gap in the House of Representatives.

That is why a few years ago Judicial Watch joined with other public interest groups in the Congressional Ethics Coalition, a group that spans ideologies in its concern that politicians obey the law and, as importantly, be accountable to it.

Some history here might be helpful. We have heard some already. The former Republican Majority, allegedly conservative, was elected over a dozen years ago by a public fed up by a Congress where corruption seemingly ruled. Think back. We had the check-kiting scandal and the stealing of funds from the House post office. The public was outraged, and the Republicans were swept into the Majority. Rather than change the regime and create a rigorous ethics system as promised, the Republicans

eviscerated the ethics process and actually curtailed some of the minor ethics reforms they did institute. As Republican leaders now acknowledge, the party's small government became in many ways the party of big corruption, or at least the party that countenances big corruption.

And Democrats also put politics ahead of principle, agreeing to an ethics process which protected Republicans and Democrats in the short term, and one that would protect Democrats in the long term if and when they regain the Majority.

Now that there has been a change in power based in no small measure on the perceived corruption of the opposing party, will Democrats repeat history and forget that corruption matters to the voting public?

Yes, corruption does matter to the public still. In fact, last month Judicial Watch commissioned a nationwide Zogby poll of likely voters. The poll results were striking, as 68.5 percent strongly agree that corruption is a significant problem in Washington. The concern is bipartisan: 71 percent of self-identified Democrats and 63 percent of Republicans strongly agree that corruption is a significant problem in Washington.

So as this task force considers ways for the House to honor its constitutional obligation to uphold its own rules of conduct, I respectfully suggest you strongly consider an

independent entity answerable to House Members which can undertake investigations and make independent findings and recommendations for action to the appropriate House body.

Any such reform should be guided by some fundamental principles. Accountability. In the end Members should be responsible for upholding the ethics rules of the House. Any inspector general or Office of Public Integrity must be answerable to an Ethics Committee of some sort. An unaccountable and unelected official, or a body conducting ethics investigations of House Members would lead to problems, I think. A strong Ethics Committee that supports independent investigations of ethical violations while ensuring the rights of Members are protected is essential.

Accountability also means being answerable to the public. Whether the Ethics Committee retains complete jurisdiction or works with a congressional watchdog agency, the process needs to be opened up so that complaints from individuals or groups can be formally considered.

Integrity. There needs to be a regular and fair process for handling ethics complaints and investigations. A process should be put in place to summarily dismiss frivolous complaints or complaints without any factual foundation.

There needs to be a regular and timely investigative process for any complaints that are pursued by the Ethics

Committee or any other entity that you recommend. It is not fair to Members or to the public to conduct investigations that may last years or even many election cycles. Certainly the vast majority of ethics investigations should last no longer than 6 months.

The leadership of both parties must repudiate the ethics rules and make it clear ethics enforcement is a top priority, and no Member or outside entity will be retaliated against for filing or pursuing nonfrivolous ethics charges. In the past, outside groups have been pressured and the Ethics Committee members punished for pursuing ethics charges.

A noninterference pledge by the House leadership is key to fixing the House ethics process. To help rebuild public confidence in the institution of Congress, it is imperative that any ethics body not only maintain the appearance of independence, but be independent in practice.

And, of course, transparency. The process has to be open. Not only should citizens be able to file complaints, but there must be mandatory reporting on the disposition of any complaints. This has to be true for the Ethics Committee or for any new office or inspector general or Office of Public Integrity. The Senate's Ethics Committee allows for the filing of outside complaints, but there is no requirement that it publicly inform anyone about the outcome

of the complaints. I have had some complaints answered by the Senate Ethics Committee, and some complaints I never hear back from them again. Both the House and the Senate should do better, frankly. It is only fair to Members that any ethics body alert the public if a complaint is summarily dismissed or dismissed after a thorough investigation. And, of course, the public must certainly know if an investigation concludes that there is misconduct.

For too long the ethics process in the House has been broken. The process can be fixed by following certain principles, I believe. I laid them out: accountability, integrity, transparency and independence. And I think that no matter one's party, no matter one's political ideology, there are principles here that we all can agree upon and I think we should follow as you consider what to do next. Thank you.

The Chairman. Thank you.

[The statement of Mr. Fitton follows:]

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The Chairman. Mr. Wolfensberger.

STATEMENT OF DON WOLFENSBERGER, DIRECTOR, THE
CONGRESS PROJECT, WOODROW WILSON INTERNATIONAL CENTER
FOR SCHOLARS, WASHINGTON, D.C.

Mr. Wolfensberger. Thank you, Mr. Chairman, members of the task force. I appreciate this opportunity to testify before you today on strengthening the House ethics enforcement process.

As many of you know, I previously served as staff director to the Rules Committee under Chairman Jerry Solomon. At one time in my checkered past, I was also cocounsel of the 1989 bipartisan ethics task force under DeFazio and Lynn Martin. I was Lynn Martin's cocounsel on that task force.

I will take exception with the comment that was made about previous task force efforts. I think a lot of good things were done both in the 1989 and 1997 task forces, and I think that the rule to uphold those traditions were met. And I commend your leadership on creating this task force because I think it is a very useful mechanism to work out some recommendations for the path.

Those of you who are familiar with some of my previous

writings and of my conversations with you privately know that I strongly oppose the creation of any independent entity that would take part in either part or all of the ethics process in the House of Representatives, and I do so because I think it would be a major abdication of your constitutional obligation to punish Members for disorderly behavior and also to protect the institution.

This is not a responsibility that you can partially delegate to someone else and still be faithful to your constitutional charge to discipline your colleagues and defend this House, and the reason for that goes way back to the British Parliamentary law. And I do have a paper that I would like to insert for the record on some of the background of our constitutional provisions and ask that that be inserted in the record.

[The information follows:]

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Mr. Wolfensberger. But that is rooted in the need to protect the legislative body from actions and behavior that would bring disrepute on the institution or disrupt its proceedings. It is closely tied to the institution's privileges and its contempt policies. I will not elaborate at this point, but I have more of my testimony in the paper.

It is not a power that can be properly exercised even in part by a non-Member for the very reason that only Members have the institutional sense, understanding and legitimacy to exercise effectively for the good of the whole House. Outside individuals, I think, tend to confine themselves to the question of justice for the accused Member and would not have a proper appreciation for institutional norms and prerogatives.

I fully understand and respect those at this table who support an outside enforcement entity because they think Congress is not capable or willing to police its own Members. Their complaints too often are right on the mark. In my experience over three decades in this town closely observing the process, I have noted that the pendulum swings from lax enforcement to sometimes overzealous, rigorous enforcement, interspersed by periods of moderate enforcement. These seasons of ethics attention and inattention are an almost natural phenomenon, which is not

to say that they are entirely excusable or desirable, but the pattern simply traps the ebb and flow of public pressures and demands for Congress to clean up its act and make itself worthy once again of the public's trust and confidence.

On balance I would say that in the long run the process works in achieving its principle objective of cleansing the institution periodically without keeping it in a state of constant turmoil, disruption and discord. After all, if you had an ethics enforcement process that was running full bore, full time, with full focus of the public and media, it would be defeating its original purpose, which is to allow the institution to do its work with minimal disruption. In other words, the ethics process is and should be a selective process that deals with major threats to institutional integrity and effectiveness rather than with every little misdeed that might be blown out of proportion.

My fear is that if you turn the investigative responsibilities for internal ethics violations over to an independent entity, it will feel it must justify its existence by waging a full-court press on every perceived minor transgression. By now you are all too familiar with the abuses of independent councils, special prosecutors in the executive branch, even some special counsel hired by ethics committees. It has practically become a gotcha

exercise in which people are being caught up in and charged with making contradictory statements about crimes they did not commit.

Let me conclude with five suggestions for strengthening the House ethics process. I elaborate these in my written testimony.

First, the Chairman and Ranking Minority Member should keep the full committee membership fully and currently apprised of the status of all complaints filed with the committee. That probably would include a necessity of a weekly meeting while the House is in session.

Second, the creation of an investigative subcommittee should always be made by determination of the full committee.

Third, an investigative subcommittee, after it adopts a statement of alleged violation, should not be able to enter into an agreement with the respondent, a plea agreement. Instead, I think the subcommittee should be able to recommend to the full committee a proposed settlement, but should not be able to reject it, or alter it, or modify it; should not be expected to bypass the full committee or intercept it.

Fourth, the report of an investigative subcommittee to the full committee that does not adopt a statement of alleged violation should automatically be made to the House

and not be subject, which it now is, to the discretion of a full committee vote.

Fifth and finally, the committee's authority to issue a letter of reproof or take other appropriate committee action instead of a recommendation for punishment by the House should still be available as a matter of privilege for possible House action.

In conclusion, I think the task force can produce a set of meaningful ethics enforcement provisions that will strengthen the process without having to go so far as to recommend that part of the process be turned over to an outside or independent entity. This means that each House must take full ownership of the process from start to finish if Members are to act in a responsible and conscientious manner. To delegate any part of that responsibility to someone else would break that chain of responsibility and prevent Members from fully and faithfully discharging their duties of office under the Constitution as they are sworn.

Thank you for your attention, and I will be happy to entertain any questions.

[The statement of Mr. Wolfensberger follows:]

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The Chairman. Thank you all for your testimonies. I appreciate your candor and openness. I agree with you, which will remain unstated at the moment.

What I would like to do is because -- obviously many of our colleagues that -- he is talking to me, I presume other members of the committee. I have found there is a lot of misunderstanding about some of the proposals that were made. I would just like to clarify for the record. I would like you to do it. Could you explain to me, of the three of you who support the concept of some sort of independent entity, do you see it as an inside entity or outside entity? By that, "inside" means some part of the House itself; or as an outside entity, something that is independent of the House itself. And could you state that?

Number two, brief commentary on how you would see that formation as you envisioned it as constitutional. And for Mr. Wolfensberger, when it gets to you, I think it would be appropriate for to you comment on whatever they answer.

Mr. Wertheimer. We see it as a creature of the institution created by the House and within the Congress. We see the leaders of it, if it is a panel appointed by the leadership, and we see no problem at all with constitutional questions. This is a creature of the House.

I very much disagree with Mr. Wolfensberger's comment

that any separation of function here would represent a failure by Members to carry out their constitutional responsibility. It is that integrated process with Members controlling every aspect of it which is at the heart of the problem with the current ethics enforcement process.

The panel, the Office of Public Integrity as a creature of the institution would be part of Congress. It would not be part of the executive branch. The fact that the same people who are conducting the investigations are not the same as the Members who are judging whether violations occur is a plus, not a minus. And under our views, only Members could make determinations about whether violations had occurred. That would be the sole responsibility of Members.

And from a constitutional standpoint, I just don't see that there is any constitutional problem here in the Congress deciding to create an institution within itself that would have certain responsibilities in carrying out the enforcement of ethics rules without having the responsibility to determine whether those rules have been violated.

Ms. McGehee. I would just like to add, and it is included in my written testimony, that Stanley Brand, who was the former general counsel to the House, wrote a memo last year looking at this very issue of the constitutionality, and he concluded that nothing in the

text -- and I am quoting here -- of the Constitution or the jurisprudence interpreting the separation of powers embodied therein offers any basis for asserting the Congress lacks the power to structure its self-discipline as it sees fit, including the creation of an outside body to investigate ethical breaches and recommend appropriate discipline to the House.

And so I believe that there is a separate question here when you establish the body inside the Congress, and the House Ethics Committee and the House as a whole has the final power to make the judgments about the final recommendations of action.

Mr. Fitton. And I agree with Meredith, I am afraid, on that. I don't think there would be any constitutional problems as long as any independent body is still answerable to Members and is a creature of the House. As long as that occurs, it is not like we are asking that the Justice Department appoint independent counsels that have a purview over House Members' ethics violations, alleged violations. This would be the House directing a staff member or former Member or whoever the person may be, and these individuals would, under the way I foresee it, the way I think it has been presented here at least by some of my colleagues, be answerable to a body in the House, whether it be a Leadership Ethics Committee or newly constituted committee.

Mr. Wolfensberger. Yes, I agree with them completely. There is nothing unconstitutional about this whatsoever. I did not say it was unconstitutional. This is an institutional problem.

I agree this entity would be created within the House. It would be somewhat independent, but the House would make the final judgment. And I said it in a column in Roll Call a few weeks ago that you could conceivably appoint an independent commission within the House to do the entire process for you, make the recommendation and put on the floor, and you would have a vote. That would still be constitutional. But it is the institutional problem that you have to be part of this process from the beginning and know what is best for the institution as a judge at every step along the way. That is my point.

The Chairman. My final question at the moment -- thank you for clarifying that. I hope that will help at least people frame the issues that have been presented. But the other question I have is, okay, if it is going to be within the House, and I think each of you advocate for it, stated some sort of leadership appointments to these. If that is the case, if the leadership of this House is going to appoint the Members that are likely to just comment on it if that is the case, how do they have that ability if they are simply creatures of us, number one?

And then number two, how do they keep that credibility over time other than the first time that this entity might stumble or might come up with a decision somebody doesn't like; how do they have the credibility, how do they keep the credibility if they are appointed by us, removed by us, paid by us and so on?

Mr. Wertheimer. Well, first of all, I think there has to be protections against removal except for cause. I think they maintain their credibility by their performance and by the fact that it is not the Members of the House keeping under tight total control the process of determining whether the ethics rules are being enforced or not. They keep their credibility by the people who are chosen and how they do their job, and the fact that you have a nonpartisan professional staff of employees who have normal protections and can carry out their responsibilities.

The problem here in the first instance is Members judging themselves in complete control of the enforcement process. Now, there is no guarantees of perfection here. There are no guarantees. But if you create a process that is once removed in which the leadership appoints the people, but they don't control what they do, they don't control their decisions, you have the capacity to have a credible entity that can do its job in a way that Members, in my view, cannot do it.

Mr. Fitton. In many ways the current process, I think, is unfair, especially to members on the Ethics Committee. They are charged with investigating their colleagues, and yet -- and I am sure they do it honorably as best they can, but it is a constraint on the way they operate as Members as a result, I think. They are unable, I think, to go out and lobby some of the Members that may be the subject of investigations as aggressively as they might otherwise and lobby them at all arguably under -- you know, if you want to avoid conflicts of interest. And then they face the punishment perhaps afterwards, either indirect or direct, after doing something aggressive.

So I think it doesn't work now for the Members, and I think, as has been detailed earlier, by taking a step back and by the leadership appointing or the Ethics Committee appointing good people and then pledging noninterference, you can really help fix the system. It is not going to be perfect in the end, but it is going to be better than what you have now.

And I think the goal of this task force, and I think the goal of the membership generally, ought to be to fix the perception of the institution of Congress, which I think is terribly terrible at a public -- I think it is terrible. And it is not to say individual Members don't have good approval ratings, but the institution of Congress does not

have a positive approval rating, and I don't think that is good, and how do you better that? By making things a little bit more clean in the ethics process and by having some independent folks involved, I think you clean it up a bit.

Mr. Wolfensberger. Yes. I would agree with a lot that has been said. I don't see a problem with the leadership appointing the members to this, because I think they would take care not to walk into any possible conflicts themselves with big contributors or something of that nature. If you are going to have an entity like this and want to remain as true to the institutional priority that I think should be laid on this, I would think former Members or former staff who are not lobbyists or have any major interest before the Congress would be your best bet for having a group that would be fairly sensitive to the institutional concerns, prerogatives and so on. This has been suggested by some. I think Mr. Castle has either former Members or retired judges. You could actually maybe, if you wanted, go back, throw in former assistant U.S. attorneys, since there seems to be an abundance of them looking for work now. However, I would keep it to former Members and former staff.

The Chairman. Mr. Camp?

Mr. Camp. Thank you. Thank you, Mr. Chairman. I guess that is not going to work.

Mr. Wolfensberger, you mentioned this letter of

reproval which has become common practice where it isn't really an official sanction of the Ethics Committee, has become more common. Can you describe how you are recommending a change there?

Mr. Wolfensberger. Yes. I would be glad to.

Right now in lieu of recommending the House punishment, the Ethics Committee issues a letter of reproval, and this is included in their report to the Houses as to how the matter was disposed of. Under House rules right now, the only thing that is privileged for consideration of the floor are recommendations of punishment from the Ethics Committee, so that would be a resolution of a censure and so on.

I am just suggesting that if you have a letter of reproval, and I am not all that comfortable with the Ethics Committee punishing in the first place, but if you do that, then let the House have a privilege to either accept, reject that report, or modify the amendment that would change it to a censure or some other form of punishment, give it privilege just as you would a resolution that is recommended to punish.

Mr. Camp. So have the full House involved in these -- add that to the list of items that come --

Mr. Wolfensberger. That option. I am not saying the House would have to act on it in accepting it, for instance, but it would be available. Granted, Members still have a

constitutional privilege to bring up a question of privilege going after that Member and having to punish within that resolution, but I think it is better if you have it connected with the work, the groundwork, that has already been laid by committees so Members can study that report and know it is related to something. That is all I am saying.

Mr. Camp. I have a question I would like each of you to answer briefly. Mr. Wertheimer, do you believe the Senate ethics process on balance is working, or is it not?

Mr. Wertheimer. No, I don't. We believe the same kind of office needs to be created in the Senate. The House has gotten more attention about this problem for reasons that we know, but we believe that there is the same kind of problem in the Senate, and the same kind of solution is needed.

Ms. McGehee. I would agree. They are very similar, not the same, problems. I think the differences are that over here on the House side, you had -- after the ethics truce you really had a partisan divide, and I think on the Senate side you have not seen that as much. Instead what you have seen there is kind of the epitome of the old boys' club and the black hole.

You go and talk to people on the Senate side, I know we did when we were looking at this on the Senate side, and the real answer is, people have no clue what is going on over there. Senators, staff, no one really knows. To me that

is, again, not serving the institution well. It just looks like they are all getting together to protect each other.

Mr. Fitton. We will file complaints in the Senate. As I said earlier, we sometimes get responses, but, you know, there have been years we have been waiting for some responses on complaints we have filed. It is a little bit better in the sense that outsiders can file complaints and sometimes get responses from the Senate. That is not -- it is not happening in the House, and the House, I think, prides itself with some good information formally presented or priding itself on not allowing outside complaints to be filed.

The positive thing is that the Senate does allow outside complaints, but the handling of the complaints, there is a lot to be desired there. So the Senate can't go claim itself as a paragon of virtue in this regard. You are not as good as the Senate, but the Senate ain't much better. It is not much of a comparison.

Mr. Camp. All right. I have another question for each of the three of you. Should this entity or commission within the House, should it have subpoena power?

We are getting some kind of power -- I just for the record would like to say that direct Member involvement took care of that problem.

But my question was this entity that may be within or

without -- I mean, it is good to be within the House. Should they have subpoena power? Should the staff of this entity, in your vision of how this -- I am trying to get a little more detail. If you could just comment. Do you envision them having subpoena power, or, as been the long-standing practice, should Members sign off on all --

Mr. Wertheimer. Well, there should be subpoena power to conduct investigations. How you structure that, whether the former Members or whoever are on a panel, whether you give them the power to authorize subpoenas, that is an open question. You need subpoena power to conduct investigations.

Ms. McGehee. I would agree. I think there are a number of ways you can structure this. You can do it in such a way where the panel or the office has subpoena power. You can do it in a way that they require them to notify committees any time they are going to pursue that. You can do it in a way where you require a majority of the committee to veto those subpoenas so that you would have -- you know, there would be a case, but, you know, there are a number of ways. But I think without subpoena power at all, then the office would not have the credibility that it would need.

RPTS SCOTT

DCMN ROSEN

[2:00 p.m.]

Mr. Fitton. And this may be an opportunity to address some of Don's concerns that the membership has more of an involvement in this process, that there are Members that sign off on subpoenas in the end. It is the equivalent of judges' signing off on subpoenas from the prosecution or from the executive branch or locally.

You know, my concern about the an independent counsel or an independent office of integrity is that it also be reined in at times. You need the ability to rein it in if they start punching above their weight or doing something that is inappropriate in terms of investigative functions.

So the subpoena power, I think, needs to be very parsimoniously divvied out, if at all, to this body, but subpoenas are going to be required for any investigation. The question is who approves it again.

Mr. Camp. Mr. Wolfensberger, any thoughts on that?

Mr. Wolfensberger. Well, I would agree that if you are going to create this entity, it should have the subpoena authority, but my preference would be that they go back through the committee, or at least the chairman in agreement with the ranking member to do so, and I cannot imagine them refusing that request.

Mr. Camp. Thank you.

Thank you, Mr. Chairman.

The Chairman. Mr. Meehan.

Mr. Meehan. Thank you, Mr. Chairman.

It sounds like, on the issue of subpoenas, that is something that you would be open to discussion about with the committee.

Mr. Wertheimer. Well, as long as there is subpoena power in the way in which it is structured, as it has been said, there are alternative ways of doing it.

Mr. Meehan. I have not seen any credible investigation done anywhere in this country that did not have subpoena power.

Mr. Wolfensberger, in your testimony, you mentioned that creating an independent or some form of an independent group even within the Congress would be an abdication of Congress' duty to, as you mentioned, to punish disorderly behavior, but if you look at the ethical laws in the Jack Abramoff scandal and in September of 2004 when the Ethics Committee admonished the Majority Leader Tom DeLay, in your view, since September of 2004 until now, do you think the ethics process has worked in the House?

Mr. Wolfensberger. It was dysfunctional for a long time. I do not disagree with that one bit, and I think there were a lot of inappropriate actions taken, that the

leadership interfered too much in that instance, just as I think it was inappropriate for the former Democratic majority leadership to be directly involved in pressing for action against Newt Gingrich. I think leadership should keep its hands totally off of any ethics process matters for a particular type of action or whatever, and I just think there has been an inappropriate action on the part of both parties, and it is very disappointing, but at the same time, I just do not go so far as to say you have got to throw up your hands and give up and say, "Well, let us delegate this."

Why not delegate your rulemaking powers to an independent commission and just come back for a vote on the recommendation? I mean, this is a very serious responsibility. You have got to keep track of that responsibility from the very beginning if you are going to have a full understanding of what is going on.

Mr. Meehan. If there were an office of public integrity that was part of the House, what makes you think that the members of the committee, of the Ethics Committee, would not be involved in the process if, in fact, they had to approve any kind of admonishment to a Member or perhaps even whether or not an investigation were to continue or not?

In other words, the Ethics Committee would still have

the ability to either stop an investigation or not to admonish a Member or to admonish a Member.

Mr. Wolfensberger. Under your bill, that is correct. I believe Mr. Blumenauer has one to just throw out the Ethics Committee altogether and have a commission of some kind to do the whole work and then let the House vote on its recommendations, but your bill would allow for that. I am just saying that it certainly puts the Ethics Committee in the position of, you know, we had better accept this or else because here is this icon, this independent counsel that has got better judgment than the rest of us put together, or if we think otherwise, we are going to look like we are covering something up.

Mr. Meehan. But isn't it really just an office to conduct an investigation based on the facts and the evidence and then let the Ethics Committee do their job? Isn't that basically what it would be?

Mr. Wolfensberger. Well, that is basically what the staff does now under preliminary inquiries, you are right, but the staff does not carry it to the prosecution level or to recommend the actual punishment, which I believe your bill would allow for that office, or the office of independent or whatever you call it -- public integrity -- to, in effect, prosecute it before the adjudicatory function of the full committee and also to make recommendations as to

the type of punishment, as I recall.

Mr. Meehan. You mentioned overzealous enforcement, and all of us certainly would agree there have been abuses in the judicial system; there are independent investigators who have been overzealous, but when you talk about overzealous enforcement, could you cite overzealous enforcement in the ethics process in the last decade?

In other words, what Member has been overzealous in --

Mr. Wolfensberger. I think Mr. Faylin was overzealous in what he did with Jim Wright. As a matter of fact, what they ended up doing had nothing to do with any of the complaints --

Mr. Meehan. In the last decade?

Mr. Wolfensberger. In the last decade?

I think, in the case of Newt Gingrich, you had the case where they did bring in outside counsel, and they ended up, again, getting in on something that had nothing to do with a violation of the rules. It was that there was a contradictory statement made between what had been filed by his counsel and what he later said. It had nothing to do with any of the complaints that were filed. So I think that was probably a little overzealous, too.

Mr. Meehan. But in that instance, isn't it a fact that he made those statements under oath in testimony that he provided?

Mr. Wolfensberger. There were two contradictory statements, you are right, and he was assessed the extra cost of the investigation that had to take place because of those contradictions.

Mr. Meehan. Can I ask one last question?

Fred, what are the essential elements of this ethics system that have to be dealt with? In other words, where was it broken at the core, from your perspective, that needs to be corrected?

Mr. Wertheimer. Well, our sense is and as I said earlier in our testimony, we list essential elements that have been submitted to the Congress by a number of reform groups, including the Campaign Legal Center, the Public Citizen, U.S. PIRG, League of Women Voters, and the Common Cause. We think it is essential that the office have the ability to receive complaints, to dismiss quickly frivolous complaints, to impose sanctions where they are appropriate for people who have filed frivolous complaints, to conduct investigations, and to present cases to the committee.

Now, in our view, we envision the office's having a number of responsibilities, kind of a central place where records can be filed and kept so that the kinds of records that are currently filed in the House would be centralized in one place, and we also envision an advisory role so that the office could provide advice and counsel and information

to members and staff in advance of problems, but the core issue in terms of enforcement has to do with separating out the ability to conduct investigations and to present cases from the Ethics Committee's responsibility to reach judgments about whether violations have occurred and to make recommendations about whether sanctions should be imposed.

Mr. Meehan. If I could ask a last question, Mr. Capuano.

Ms. McGehee, you mentioned in your statement the fact that, in your view, Republicans lost power, in part, due to a problem with ethics, and in fact, a CNN poll after the 2006 election found that 42 percent of voters said that corruption and ethics were an important factor in determining their vote, and I notice in today's Hill the words that more than 20 Democratic freshmen Members are writing this task force, looking for their own proposal. You mentioned Congress' approval ratings. We are at 20 percent for most of last year.

I would point out that, after Speaker Pelosi and the Democrats passed with a Republican pool the strongest ethics package passed in a generation on the first day of Congress, congressional approval ratings have jumped into the 40's.

What effect do you think there would be on the public perception of Congress if nothing substantial is done to fix this so-called "ethics problem"?

Mr. Fitton. Oh, it would be more of the same, and you know, individually, Members may do fine, but institutionally, you are not going to get over the 50-percent mark, which I think is terrible for the legislative branch at the Federal level, and you know, I thought the 20 number of Members was interesting, you know, because the number of the Members whose losses were attributed to corruption issues is about 15. So my guess is many of those Members are distinctly aware of the role corruption played in some of the races in which they were victorious, and I said, you know, that Republicans are very much aware of this.

You know, I am a conservative. I have been at many conservative meetings where I have heard many Republicans come and explain the election results, and the explanation is corruption, and I had warned Democrats during the Clinton years that Clinton corruption was bad for Democrats, and I had warned Republicans during the most egregious violations of Tom DeLay and company that it would be bad for Republicans, and everyone thinks I am crying crocodile tears, but believe it or not, we do believe in ethics in government here, and we are conservative about it, but the idea that Congress can still swim along and do nothing I do not think is going to be well-received by the American people. The poll results last week that we have released

state 68 percent think that corruption is a big issue in Washington still.

Mr. Meehan. Well, I did note with the conservative perspective that you agreed with Meredith. You did say, unfortunately, "I agree with Meredith," so --

Mr. Fitton. No, I did not. If I said it, I do not remember saying it, but I do agree with Meredith on a lot of -- you know, I have been involved with the Ethics Congressional Coalition since I think it was -- for 3 or 4 years now, and I was alone on the right for criticizing Tom DeLay, you know, and now everyone agrees with me on the right that corruption was a problem for conservatives on the Hill and Republicans, and there is nothing conservative about being corrupt; there is nothing conservative about wanting to police the ethics of public servants, and you know, I could go on, but you guys need to start spending less money and provide less opportunities for corruption, but that is where the ideology might come up.

The Chairman. We have to leave for a vote, so I would like to defer to Mr. Hobson.

Mr. Hobson. One question.

I was on the Ethics Committee when I first came here many years ago. I have not been on it recently, but one of the problems that I have perceived in the discussions we have all had is the openness and the transparency and the

ability to get things done. One of the things that causes a problem is, when the Ethics Committee may get someone on its own or get someone to come forth, the Justice Department comes in and says, "Do not do anything," and of course, we cannot talk to the Justice Department because, if we do, we intimidate them.

So they come in, and they tell us "you cannot go forward because you are going to jeopardize and give immunity to somebody who is under discussion." When that happens, we do not go out and tell anybody. It just happens. Part of the problem here is that we have rules that do not tell what goes on.

First of all, I like your opinion as to whether we should tell the Justice Department to go fly a kite and go ahead with our thing, with our investigations, or we must stop and wait years and maybe never hear back from them. I might add that Tom DeLay has never been indicted. Mark Foley has not been indicted, and these things go on, and there is never any resolution.

How do you handle that problem? Because that causes us a lot of problems. When I was on the Ethics Committee, you know, I wanted to say to people, "Look, we are doing something. We tried." How do you handle that?

Mr. Wertheimer. Well, you negotiate your way through it. I mean it is not necessarily the case that everything

that you may have had to look at in the Abramoff investigation would have been covered by the Justice Department, and if the Justice Department asked you to stop and you should stop, then you need to make it public.

As I said before, the ABSCAM scandals, the Koreagate scandals that resulted in criminal convictions managed to work their way through so that there were both Justice Department investigations and Ethics Committee investigations, major Ethics Committee investigations.

It was interesting that the Senate Ethics Committee used to take the position that they do not disclose when the Justice Department asks why them to withhold action, but I managed to get a letter back from the Senate Ethics Committee on the eve of a vote in the Senate last year on an Office of Public Integrity, for the first time ever, disclosing publicly that the reason they said that they were not investigating Abramoff was because the Justice Department had asked them. Those matters have been negotiated in the past as to what can and cannot go forward appropriately.

Ms. McGehee. I would just echo that there has actually been a record here over the number of years since the Ethics Committee has been in place where there have been successful ethics investigations at the same time as judicial prosecutions were being investigated, and it was the result.

If you look at the Keating 5, there were issues involved there with Mr. Keating that involved potential criminal behavior. Yet, the Senate continued ahead about its ethics rules, so this can be done. It is frustrating, obviously, for Members who cannot go out and tell exactly what is going on, but I think part of what seems to be missing is, at the end of that process, that there is any indication either of what happened or that there is an effort to, in fact, investigate those parts of it that do not implicate criminal law.

Mr. Fitton. And I agree. I think you should negotiate your way through it, but be more cognitive of your role as the Congress and of your institutional prerogatives, and you have the right to police your own matters. These are matters not subject to Justice Department investigation necessarily. Your investigations may actually aid outside criminal investigations, which I understand may cause people to take the 5th in some respects.

Mr. Hobson. I did that in the State Senate, and I got some convictions later on, but any Justice Department I have ever been in from the Clinton administration to here has not been very receptive to that, but the thing that troubles me is the ability to make them public when you do this. We have never been able to say things, and one of the things I think we ought to look at in whatever we come up with is the

ability to be fair to Members and to be fair to the public, too, that we can say what is going on because --

Ms. McGehee. And there may be times where -- you know, I would hope, for example, in the Abramoff scandal that the Justice Department was making it clear that it was investigating. I do not see why that would be a problem to say, "we have asked the Ethics Committee at this point to suspend actions while they are investigating this," because they have already announced that they are having an investigation.

Mr. Hobson. Don.

Mr. Wolfensberger. Well, I am not a lawyer, but to me, it is comparable to the grand jury secrecy rule, and you are sensitive to that, but I would agree that there are other things that you can proceed on that are not directly related to criminal charges, and one of the original reasons that I point out in the paper that I appended to my testimony is that the whole process was begun to allow each House to deal in an expeditious way with things that are blighting the institution, and that should be kept in mind, but I am sensitive to these other things, and I am not sure how far you can go in terms of exposing, you know, an investigation that has already been underway, because that is considered somehow prejudicing, you know, then the rights of the person who is being investigated, so --

Mr. Hobson. Thank you. It has been a problem.

Mr. Wolfensberger. Yes.

Mr. Scott. Mr. Chairman, I have a short question, but it will require a long answer, so let me just pose the question, and we will deal with it. Some of it has been dealt with in testimony.

What I am looking for is where exactly an outside group would intervene in the process. You have guidance set in policy, trying to establish the culture of high integrity, the pre-approval possibly of certain actions; then you have got the received complaints, who can make a complaint; as to the investigation, who can conduct an investigation, who would make the findings after the investigation, who would decide the guilt, and who would set the punishment.

Exactly where would the outside rule intervene? Why is it important to intervene on that point? Has anybody done it, and what happened when they did it?

The Chairman. With that, I think we will take a vote. We will go vote. We can come back. In the meantime, if you have to leave, I appreciate that you have to do what you have to do. So I appreciate it.

[Recess.]

The Chairman. First of all, thank you and welcome back.

I believe Mr. Scott has posed a question.

Mr. Scott. Yes. Exactly where along in the process would it be appropriate to have outside intervention, and why is it important?

Mr. Wertheimer. In our view and in the proposal we support, the process starts with the Office of Public Integrity.

Mr. Scott. Okay.

Mr. Wertheimer. That is where complaints could be filed.

Mr. Scott. Before we get to complaints, how about guidance, setting the policy to begin with, establishing a culture?

Mr. Wertheimer. Well, we have supported guidance coming from the Office of Public Integrity and potential training to the extent --

Mr. Scott. And any kind of decisions or prospective guidance? "I want to go on this trip. What do you think?"

Mr. Wertheimer. I would have to double-check.

I think our view is to give formal guidance. I will just have to check on that. I am not sure whether our view was that the Members had to give formal guidance, rather than the office, as opposed to explanations. I will have to check that question.

In terms of the enforcement process, our sense is that the office would receive outside complaints or could conduct

an investigation on its own terms and could present a case to the Ethics Committee if it reached the conclusion that a matter should be presented to the committee.

Mr. Scott. So the Ethics Committee would find the facts?

Mr. Wertheimer. Yes, the Ethics Committee would make findings of fact/conclusions of what the rules are.

Mr. Scott. Decide guilt and assess punishment?

Mr. Wertheimer. Yes.

Mr. Scott. And everything up to the investigation would be by the outside group?

Mr. Wertheimer. Yes.

Mr. Scott. Now, how set are we on what this outside group looks like? I have heard one and three. Is it a large staff or a small staff?

Mr. Wertheimer. Our sense is, if there is a panel, that it should be a relatively small panel and that the office needs sufficient resources to carry out its responsibilities. As I said earlier, we would see additional responsibilities in terms of accepting reports, accepting lobby disclosure reports, centralizing the reports that are currently filed -- the financial disclosure reports, the lobbying reports, the travel reports -- in one body.

We would also see them responsible for overseeing the

reports filed by lobbying organizations and, where appropriate, referring matters to the Justice Department for civil enforcement since the enforcement of lobbying laws right now is done by the Justice Department, but the reports are filed here.

We would see other functions with the office so that it does not have as its only function enforcement questions. It would have other responsibilities.

Ms. McGehee. Could I just add a point of emphasis?

That is about the importance of the training and the advisory role that, I think, this office should have, and I think a lot of this -- as we all know, the best way to stay out of trouble is to not go down the path in the first place.

Professor Thompson, Dennis Thompson -- the Harvard professor who is an expert on ethics -- went through and conducted staffing reviews of Ethics Committees, and one of the things that he has written about is his interviews with the staff. What he has said is that the staffers are often, quote, "told not to be so hard on Members and to tell them how to do what they want to do." So a kind of common law develops under conditions of confidentiality. One staffer said it is parochial and permissive.

You know, I worked up on the Hill for 6 years. I never went through ethics training, and this was a number of years

ago. I think it is really important not only for Members -- I think they should be required -- but for staff to understand because some of this stuff is not immediately clear, and I think one of the big changes that this office could provide would be that important advisory role and a training role as well as being the repository for where the lobby disclosure reports come and even, perhaps, the disclosure over the Internet database of the personal financial disclosures.

I do not know if you have noted that. These are now sometimes appearing online, the personal financial disclosures of Members. They are being done by a private entity. There is no security there and no assurance to Members that what is being posted online of their own personal financial disclosures is, indeed, accurate, and I think that is something that should be within the control of the House and this office as well.

Mr. Fitton. You know, my concern is that, as to any appointment to this committee or to this Commission, whether it be an individual or a panel, I think the leadership or the Ethics Committee, whoever makes the appointment, should avoid personalities, strong political personalities who might see or be tempted to see such a role as a stepping stone to a higher political office or to another higher appointed office.

There is a vast difference between appointing a line attorney from the office of public integrity who has been a Justice Department official for 30-some odd years under multiple administrations and bringing in the State Attorney General, who just retired, you know, from elected office. They are going to have a very different approach, and I would be in favor of the more methodical approach from old-school line attorneys who have been around awhile, who really do not have much political capital in the process or who will be tempted to gain political capital in the process.

You know, I think the danger that, I am sure Don would agree on, is you do not want this entity to be the center of political power in the House. I mean it has got to be answerable to the committee, and so there are going to be times, I think, where the committee has to overrule what the independent entity is doing. Either they shut down an investigation too early or they are issuing too many subpoenas or doing too many interviews in a way that is disrupting the House proceedings for no seemingly good end.

You know, if they shut it down, there is going to be accountability. I am sure there will be noises about it, but if it is the right thing, it is the right thing, and they should not be afraid to do the right thing one way or another whether it be reining in an independent entity that

is appropriate under the rules that are set out or encouraging an independent entity to be more expressive.

Mr. Wolfensberger. I just might add, in Great Britain, they created in 1995 a Commission on Standards to supplement their own Standards Committee, and this was an independent entity, and the person who was first appointed went a little hog wild because it was a new office, and he started making things public when it was not appropriate and so on, so they had to put the brakes on a little bit and back up and make sure that there was an agreement as to when things should be confidential and when they should be made public, and this person did not get a reappointment, and they put in another person after that, but I would be interested in knowing how it has been going since.

Mr. Scott. Thank you.

The Chairman. Ms. McCollum.

Ms. McCollum. Thank you, Mr. Chair.

I want to thank the members for coming back here today to testify. This has been a learning process, one in which I have gone in with my "ears" wide open, and you need to listen, ask questions, reflect, ask questions again, and so I really appreciate your taking the time from your schedules to meet with us before, because this has been very enlightening for me, and you have all been very, very helpful. So, thank you.

Mr. Hobson asked the main question that I was going to put forward, and that deals with the tension between making sure that if someone has broken a law, that they are held to the highest standard, and the highest standard in the cases that have kind of been discussed is criminal law, but there are times when, maybe, staff or other members on the peripheral maybe did not break a criminal law, but maybe they did not live up to the high ideals, ethics, standards, and spirit of the law, and so I do see where at times dual things can be coming forward.

I think as has been pointed out by Mr. Hobson as well -- and we have not spoken about this with one another, so this is why I think it is so great working with the members who I have been on the panel; it is that whole issue of transparency as a Member, answering questions that are asked of me when I go back home -- "why isn't the Ethics Committee doing something?" You know, "What are you doing?" -- and not having the transparency that is there, and I think Members deserve that because they are held accountable to the public, and the public deserves some of that as well.

So, the question of ethics training, I was going to ask about that, but that came forward. In Minnesota, we had ethics training for staff when Members went, and they went kicking and screaming to it sometimes, but I think the end result was everybody could really feel good about what we

were trying to accomplish in the House and that we were trying to hold ourselves to high standards.

I do have a question in the way that -- I was not going to go here, but I heard one of you kind of say, you know, it is up to the Democrats to do this. This is more than Democrats or Republicans or Independents; this is about the institution of the House of Representatives, and I believe each and every one of us -- when we are given that sacred trust by the public to come here, each and every one of us has a responsibility to be true to that trust and to do our job to the best of our ability, and I really hope that we can make the public see that that is how we approach our roles.

So, besides the ethics process and maybe some more transparency, what are some of the other issues that you have thought about since you have had the discussion that you had with us and as to some of the questions that we had of maybe how things have evolved with you?

And then, Mr. Chair, I know that there are many bills besides Mr. Sheehan's out there, and if you would, maybe enlighten folks as to how this committee has proceeded in making sure everyone who has a bill out there will have an opportunity to review and study them, and then maybe they could answer my question.

Thank you.

Mr. Fitton. Well, just as an alternative -- I am not a lawyer -- you know, the lawyers in our legal briefs sometimes argue alternatives. If you cannot get what you want, there is an alternative process, and if there isn't a consensus or a significant majority in favor of an independent ethics board, you know, I think you have to think of alternatives, and the alternatives are how the ethics process can work better generally.

I drew your attention, I think, during some of the earlier meetings to the judicial misconduct and disability law and how that works where you have judges sitting in judgment of other judges, and there was a report issued last year under the guidance of Justice Breyer that criticized some of the cases under which that law was implemented and mainly the public cases; the ones that people were paying attention to they did not handle very well, but when you look at the law, there is a regular process for handling ethics complaints by members of the judiciary about other members of the judiciary. They are summarily dismissed, and if they are not summarily dismissed, they move forward quickly with an investigative process, and there is a chance for everyone to respond. There is the ability to conduct hearings, and then there is public disclosure as to what happens.

So I would encourage you to take a look at that law as

a way in terms of informing even an independent commission of how that might operate but also how the Ethics Committee, itself, might better operate if you choose not to go down that road.

Mr. Wertheimer. I was the one who talked about Democrats and Republicans, so I will address that.

There has always been an effort in this institution to try to deal with ethics questions and ethics enforcement on a bipartisan basis. That is why the committee is the only even committee in the institution -- the House Ethics Committee has the same number of Democrats and Republicans -- and we very much support that notion and that approach and very much hope that the committee will come up with a bipartisan approach.

The point I was making reflects the fact that this is also a partisan institution, as you all know better than we do, and the basic point I was making was that the goal of reaching a bipartisan agreement on an approach here cannot be a higher goal than solving the problem. The key here is to solve the problem for the institution. This is an institutional problem. Meredith touched on this. We actually think not just the institution but the Members will be better off with this kind of system, that there will be much more of an effort to try to prevent problems from occurring in the first place, much more credibility for

those Members who never get into trouble and sit around and go home and get accused or attacked for things that they had nothing to do with.

So our sense is that the institutional problem has to be solved here, and that is the highest order at this point, and if the only thing that can be agreed on on a bipartisan basis are changes that really will not solve the problem, we do not think that should be done. That was the point I was trying to make.

Ms. McGehee. I think the reason that it has a legitimate worry is that, if you look at the 1997 report that was done by the bipartisan task force, what comes through in that report is the set of recommendations that they ended up putting forward. As it very clearly states in the report, they came up with these because these were the only ones they could get bipartisan majorities for. I think the problem with that is that, in this instance particularly, you might end up in a situation where the results of that are not the changes that need to be made.

One of the reasons, very honestly, that I structured my written testimony the way I did is that there are some things that need to be done to this system that would be good, allowing the filing of outside complaints. That should be done. Increase transparency, that should be done. So there are a number of things that should be done to

improve the process. However, if that is all that is done, this task force in terms of the recommendations and, I think, ultimately the House will have failed, and to me, it would not be worth the effort, and if you go down the path of not having an outside entity such as the office of public integrity and some of the changes or modifications that we mentioned, I say why bother.

Mr. Wolfensberger. I say bother.

The most change that has been worthwhile in this institution has been incremental. Each time, the Congress has been criticized heavily for not going further, for not going for the whole thing that a lot of outside folks would like to see happen, and yet, incrementally, I think the Congress has improved its processes, not just in ethics but its legislative processes and so on without satisfying everyone.

So I do not say give it up completely if you cannot have everything. I just think that there is a lot to be said for incremental change, and the House has improved dramatically over the last 30 years as a result of a lot of small changes that were made along the way.

Mr. Camp. Could I ask the gentlewoman to yield for a moment?

I just want to go back to this comment also that you made. You know, I see the ethics process, and having served

on the committee, where it has broken down is when there has not been bipartisanship, and I think, as some members of this panel have said, that changes made by one party have no credibility. So, if we want to try to move ahead, I think in the ethics area particularly it is important to have a bipartisan agreement on something. I think this idea that one party can move forward in the ethics arena was an effort that was fairly disproved just a short time ago.

So I know what you are saying. You want us to do what you want to do or to do nothing, but I think it is important that, as to whatever we do, it will enhance the credibility of what we do if we do it in a bipartisan way.

So I thank the gentlewoman for yielding.

The Chairman. Okay. I think we are done here.

I want to thank the panel for coming. I particularly want to comment to Mr. Fitton's last comment. There is a plan B always. As for anybody who is in politics, if they do not have a plan B, they do not belong here. If they do not have a plan C, D, E, F, and G, they probably do not belong here either, and I do not know what any of those plans are yet, but I appreciate that understanding that that is the way this process works.

I will tell you that, thus far, this process has been very bipartisan. I think, for me, it has been very educational, and as we start entering the phase of this

process where some agreements will show and some disagreements will show, I would like to think that the goal, the ultimate goal for all of us, would be bipartisanship. I do not know if we can get there. I am not terribly worried. I mean, I would like to. I think we all would like to. I think we all would agree that is, by far, the best thing. I think that is one of the reasons this process has been run the way it has been run, which is trying not to get people put in corners and trying not to make public statements that are going to be inflammatory, because the idea is we are going to either make this work or we are not, and no matter what we do, I came to the conclusion about 10 seconds before the Speaker finished asking me to do this that, no matter what we do, there are going to be plenty of people out there to criticize us one way or the other, and I am just not worried about that because at least my life has been full of criticism. My family loves me, and that is all I need.

So, with that, I want to thank you all for participating. I will tell you and I will warn you -- not warn you because you have all been very cooperative -- that we may be reaching out to you again as we go forward, maybe, depending on what we need. Who knows? Maybe we will not. There is no way to tell yet.

I also want to thank the members of the task force for

being so understanding because I think, as many of you have noticed, we have run this relatively informally. We have done all of our meetings that way, and I hope that we will be able to continue that because we have such a small panel, and on such an issue, again, for the purposes of bipartisanship, the informality, I would like to think, enhances our ability to talk as opposed to our ability to pontificate to each other. So I want to thank the members of the task force for suffering through some informality.

I want to thank all of the people in the audience for suffering through little technical glitches.

With that, I believe this hearing is closed until the next process. Thank you very much.

[Whereupon, at 3:19 p.m., the task force was adjourned.]