

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE
FILE NO. _____

RECEIVED

JAN 25 2008
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NORTH CAROLINA GENERAL ASSEMBLY)
)
V.)
)
REPRESENTATIVE THOMAS WRIGHT,)
Respondent.)

RESPONSE TO ETHICS
COMPLAINT

HOUSE PRINCIPAL CLERK
NC GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-1096

The Respondent in the above captioned matter, Representative Thomas Wright, hereby responds to the ethics allegations contained in a complaint issued by the North Carolina House Select Committee regarding alleged conduct committed by Respondent which has been deemed by committee members to constitute unethical and unlawful on January 11, 2008 by showing the following:

COUNTS # 1 & 2

1. Respondent specifically denies that any contacts and interactions with Torlen Wade on either March 13, 2002 or March 15, 2002 occurred while Respondent was acting or serving in his capacity as a member of the North Carolina General Assembly and/or that his contacts and interactions with Torlen Wade were improper, illegal or unethical. Additionally, Respondent denies that the purported Wade letter was used to secure a loan from the Coastal Federal Bank in the amount of \$150,000 for the Community Health Foundation

2. The conduct alleged in the Ethics complaint as Counts # 1 & 2 does not constitute ethical and/or criminal conduct over which the Legislative Ethics Committee has jurisdiction to consider.

3. Merely soliciting and/or obtaining a letter from a State employee which contains untrue information does not constitute a criminal and/or ethical violation.

4. Respondent did not use nor intend to use a letter which was obtained from a State Employee to obtain a loan, grant or other funding for the Community Health Foundation.

COUNT 3

5. Respondent specifically denies that he improperly, fraudulently and unethically solicited and converted money received from the AstraZeneca Pharmaceuticals, LP which was intended for the work of the Community Health Foundation to his own use

6. The conduct alleged in the Ethics complaint as Count # 3 does not constitute ethical and/or criminal conduct over which the House Select Committee has jurisdiction to consider.

COUNT # 4

7. Respondent specifically denies that he improperly, fraudulently and unethically solicited and converted money received from the Anheuser-Busch Companies, Inc. which was intended for the work of the Community Health Foundation to his own use

8. The conduct alleged in the Ethics complaint as Count # 4 does not constitute ethical and/or criminal conduct over which the House Select Committee has jurisdiction to consider.

COUNT # 5

9. Respondent specifically denies that he improperly, fraudulently and unethically solicited and converted money received from the AT & T Corp. which was intended for the work of the Community Health Foundation to his own use

10. The conduct alleged in the Ethics complaint as Count # 5 does not constitute ethical and/or criminal conduct over which the House Select Committee has jurisdiction to consider.

COUNT # 6

11. Respondent specifically denies that he improperly, fraudulently and unethically solicited and converted money received as a "business line of credit" from the South East Community Credit Union which was intended for the work of the Community Health Foundation to his own use

12. The conduct alleged in the Ethics complaint as Count # 6 does not constitute ethical and/or criminal conduct over which the House Select Committee has jurisdiction to consider.

COUNT # 7

13. Respondent specifically denies that between January 1, 2000 and January 31, 2007 that he improperly, fraudulently and unethically failed to disclose contributions in the amount of \$185,000 received by his campaign which were required by law.

14. This allegation is so vague and over-broad that it does not put Respondent on notice of the specific contributions which the House Select Committee contends were not reported and does not provide any information from which Respondent can make this determination. As such,

this allegation violates Respondent's Due Process Rights under the Federal and State Constitutions.

COUNT # 8

15. This allegation, a purported summary of Counts 1 through 7 of this complaint, is denied.

FURTHER RESPONSES TO COUNTS 1 THROUGH 8

16. The allegations contained in the complaint does not constitute conduct committed by Respondent, who happens to be an elected Legislator, who was then acting within his official role or capacity as a member of the North Carolina General Assembly and a participant in the lawmaking process.

17. The House Select Committee is barred from considering the allegations contained in the complaint due to the expiration of its investigative and prosecutorial mandate and applicable Statute of Limitation and/or constitutes laches in that the House Select Committee has failed to allege and consider this matter in a timely manner pursuant to N.C. Gen. Stat. § 15A-120-102(a)(7).

18. The allegations contained in the complaint involves conduct which did not constitute a criminal and/or ethical violation at the time that it was allegedly committed and the House Select Committee's consideration of this complaint at this time is not authorized by N.C. Gen. Stat. § 120-102(a)(5) and (7) and violates the State and Federal Constitutions..

19. The conduct alleged in the complaint involves conduct which was allegedly committed during a past and closed session of the North Carolina General Assembly and said conduct did not violate any ethics rules and constitute criminal conduct at that time. The House Select Committee can not constitutionally be empowered to investigate conduct committed during past legislative sessions of the North Carolina General Assembly and the assumption of this authorization is contrary to N.C. Gen. Stat. § 120-102 and the Federal and State Constitutions.

20. The creation of the House Select Committee and actions which it has taken in this matter by initiating misconduct allegations against the Respondent, prosecuting those allegations and determining their validity violate State and federal Constitutional Rights of Due Process and Equal Protection.

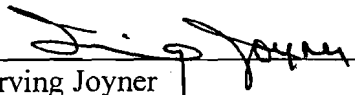
21. The creation of the House Select Committee and actions which it has taken in this matter by initiating misconduct allegations against the Respondent, prosecuting those allegations

and determining their validity violates Article II, Section 20 of the North Carolina Constitution.

22. The actions of the House Select Committee violate Article VI, Section 8 by seeking to disqualify Respondent from a legislative office in the North Carolina House General Assembly to which he was duly elected where he has not been convicted or adjudged guilty, by any competent authority, of treason, a felony, corruption or malpractice in office nor has he been removed from office by impeachment.

WHEREFORE, the Respondent, after responding to the complaint issued by the House Select Committee, respectfully moves to dismiss this matter, or, in the alternative, suspend any further proceedings or actions regarding this matter until criminal charges which have been lodged against the Respondent in the Wake County Superior Court have been resolved.

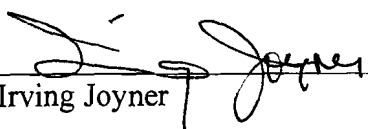
This the 25th day of January, 2008.


Irving Joyner
Attorney for Representative Thomas Wright
P.O. Box 374
Cary, North Carolina 27512-0374
Telephone: (919) 319-8353

CERTIFICATE OF SERVICE

The Attorney whose signature appears below certifies that a copy of the attached Response to Ethics complaint was duly served upon the North Carolina General Assembly's Legislative Ethics Committee by hand-delivering copies of same to the North Carolina Legislative Office Building, 300 North Salisbury Street, Suite 200, Raleigh, North Carolina 27603 addressed separately to Attorney O. Walker Reagan, Senator Dan Clodfelter and Representative Rick Glazier and by depositing a copy of same in the United States mail, first class postage prepaid and addressed to Attorney William Hart, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602.

This the 25th day of January, 2008


Irving Joyner

Received electronic copy

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE TO
INVESTIGATE ALLEGED MISCONDUCT
COUNTS 1 - 8
FILE NO. C-LEC-07-002

RECEIVED

JAN 25 2008
CWC 4:40 PM.

NORTH CAROLINA GENERAL
ASSEMBLY,)

v.)

REPRESENTATIVE THOMAS
WRIGHT)

HOUSE PRINCIPAL CLERK
NC GENERAL ASSEMBLY
MOTION TO CONTINUE AND STATE LEGISLATIVE BUILDING
MOTION TO HOLD IN ABEYANCE RALEIGH, NC 27601-1096

COMES NOW the Respondent, Representative Thomas Wright, and hereby moves the House Select Committee to Investigate Alleged Misconduct to continue this matter and hold this matter in abeyance pending the resolution of the criminal charges. In support of said Motion, Respondent shows the following:

1. The additional charges being considered by The Committee against Representative Thomas Wright are the same and/or intricately linked to the charges pending against him in Wake County Superior Court. Those charges have a Constitutionally guaranteed right of a jury trial and will be determined by a jury later this year.
2. If the Legislative proceeding goes forward, the proceeding can and will do great harm to the criminal process and will raise substantial Constitutional issues.
3. The Legislative process would necessarily be an action taken by the State simultaneously with the action taken by the State in Wake County Superior Court. The Legislative proceeding would also necessarily involve massive adverse publicity which would undeniably pollute the jury pool and risk that a fair trial could not be conducted.

4. The Legislative Committee also risks a Constitutionally unacceptable dilemma in which the jury might vote to remove Thomas Wright for violations and then a jury might find him not guilty of precisely the same charges. This would raise due process issues under both the North Carolina and the United States Constitutions and would do grave damage to the democratic process.

WHEREFORE, the Respondent moves that the House Select Committee to Investigate Alleged Misconduct continue this matter and hold all charges in abeyance until after the criminal charges pending in Wake County Superior Court are heard by a jury.

This the 25th day of January, 2008.

7/5/08
Douglas S. Harris
Attorney for Respondent

1698 Natchez Trace
Greensboro, North Carolina 27455
Telephone: 336-288-0284

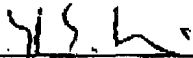
Certificate of Service

This is to certify that I have this day served the foregoing Motion to Continue and to Motion to Hold in Abeyance on the House Select Committee to Investigate Alleged Misconduct of Representative Thomas Wright by forwarding same by facsimile and by first-class U.S. Mail, postage prepaid, to the names, addresses, and facsimile numbers for the House Select Committee as listed below.

Ms. Denise Weeks
House Principal Clerk
NC General Assembly
State Legislative Building
Raleigh, NC 27601-1096
Facsimile: 919-715-2881

Mr. O. Walker Reagan
Committee Co-Counsel
300 N. Salisbury Street, Suite 200
Raleigh, NC 27603
Facsimile: 919-715-8365

This the 25th day of January, 2008.



Douglas S. Harris
Attorney for Plaintiff

1698 Natchez Trace
Greensboro, NC 27455
Telephone: 336-288-0284

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JAN 30 2008

Sen. Mike 10:27a

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE
FILE NO. _____

HOUSE PRINCIPAL CLERK
NC GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-1096

NORTH CAROLINA GENERAL ASSEMBLY)
)
 V.)
)
 REPRESENTATIVE THOMAS WRIGHT,)
 Respondent.)

LEGAL MEMORANDUM IN
SUPPORT OF RESPONDENT'S
ANSWER AND MOTION

**NORTH CAROLINA GENERAL ASSEMBLY DOES NOT POSSESS
CONSTITUTIONAL OR STATUTORY AUTHORITY TO DISCIPLINE OR REMOVE
AN ELECTED MEMBER OF THE HOUSE OF REPRESENTATIVES**

In the North Carolina Constitution, the powers and responsibilities of the North Carolina General are articulated. As such, actions taken by the General Assembly must be guided by the enumerated constitutional provisions. Those powers cannot be broadened nor can legislative actions diverge from the dictates of the State and Federal Constitutions.

With respect to the election of members of the North Carolina House of Representatives, the constitution provides: "Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election." Art. II, Sec. 7, North Carolina Constitution. Once a person has been qualified and elected, the constitution further provides: Each house shall be judge of the qualifications and elections of its own members, . . ." Art. II, Sec.20, North Carolina Constitution. The judging of qualification relates back to Art. II, Sec 7 and allows the elected members of the House of Representatives to do no more than be the judge of whether the

specific constitutional qualifications of the elected member which were established by the people of the State are satisfied. *See, Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944 (1969) and *Bond v. Floyd*, 385 U.S. 116, 87 S. Ct. 339 (1966)

North Carolina's Constitution declares that "[e]very qualified voter in [the State] who is 21 years of age, *except as in this Constitution disqualified*, shall be eligible for election by the people to office." (Emphasis Added) Art. VI, Sec. 6 of North Carolina Constitution. In Art. VI, Sec. 8, the people imposed specific disqualifications for office which are similar to those enacted in the 1868 and 1900 Constitutions. Among those which are pertinent to this action is:

[A]ny person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another State that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Art. VI, Sec 8 of the North Carolina Constitution can best be described as a prohibition from seeking elected office and not as a justification for removal from office. Once a person has been elected to the General Assembly, that right which has been exercised by the people of that legislative district must be respected and protected by that body unless the people chooses not to re-elect that person.

In North Carolina, Constitutional provisions are in place for the impeachment of identified elected officials as was recognized by the North Carolina Supreme Court in *State v. Spivey*, 345 N.C. 404, 480 S.E.2d 693 (1997). There the Court discussed those elected officials

who could constitutionally be subjected to impeachment by the General Assembly. Elected State Representatives and District Attorneys were not included in that listing. The listing included the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. *Spivey* at 412, 480 S.E.2d at 697. Although the Constitution gives the House of Representatives the sole power to impeach, that authorization does not identify another elected member of the House of Representatives as being a proper subject of impeachment. As such, since these elected officials are not specifically listed, they are to be excluded from this power under the maxim of *inclusio unius est exclusio alterius* (inclusion of one is exclusion of another) and the impeachment of an elected member of the House of Representative is not authorized by the Constitution. *See, Spivey* at 412, 480 S.E.2d at 697.

Consistent with the constitutional provisions cited above is Art. I, Sec 2 which provides that “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” By definition, this political power of the people is conveyed to elected officials only as dictated and authorized by the people. This interpretation is supported by the provisions of Art. I, Sec. 3 which provides:

The people of this state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and the form of government whenever it may be necessary to their safety and happiness; *but every such right shall be exercised in pursuance of law and consistently with the constitution of the United States.* (Emphasis Added)

With respect to the rights and powers of the people, the Constitution further provides for frequent elections to be held in order for the people to “redress grievances and for amending and strengthening the laws.” Art. I, Sec. 9, North Carolina Constitution. The frequent election provision is reinforced in Art. II, Section 4 where it is mandated that members of the House of Representatives are to be elected “biennially chosen by ballot” and their terms of office “shall commence on the first day of January next after their election. Art. II, Sec. 9, North Carolina Constitution. Each session of the General Assembly is required to “meet in regular session in 1973 and every two years thereafter on the day prescribed by law” or in extra sessions as directed by a petition signed by three-fifths of the members of that body. Art. II, Sec. 11(1) and (2), North Carolina Constitution.

There is no provision in the North Carolina Constitution which provides for or authorizes the North Carolina General Assembly and its House of Representatives, in particular, to discipline any of its members who are qualified for and elected to office by the people of the political district which they represent. The constitutional provisions discussed herein closely parallels the provisions of the 1868 constitution and two subsequent revisions. The notion that the North Carolina general Assembly has implied or inherent powers to discipline its members or to enlarge the constitutional qualifications was debunked by the United States Supreme Court’s opinions in *Powell v. McCormack* and *Bond v. Floyd*.

The absence of any authorization to discipline members of the General Assembly differs from provisions in the constitutions of other States. For example, the Arizona Constitution, by an expressed provision, provides for its Legislature to punish members for disorderly behavior and/or expel members “with the concurrence of two-thirds of its members.” Art. 4, Pt. 2 § 11 of

the Arizona Constitution. In addition, in Maryland, the Legislature, pursuant to the plain meaning of its constitution, is authorized to “punish a member for disorderly or disrespectful behavior and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.” Art. 3, Sec. 19 of the Maryland Constitution. By similar provisions, the constitutions of Alabama, Alaska, Georgia, Massachusetts, Pennsylvania and 36 other States allow for the disciplining and expelling of its elected representatives for misconduct while the elected person is in office. By a similar provision, the United States Constitution grants the House authority to discipline or expel a member “with the concurrence of two thirds. Art. I, Sec. 5 of United States Constitution. *See also, Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944 (1969)

The authorization to discipline and expel members of the legislative bodies in other States is not present in the North Carolina Constitution. North Carolina citizens have had, at least, two opportunities to amend its Constitution since 1868 and, in none of those efforts, did the people seek to include this authorization. It is, however, acknowledged that thirteen (13) elected law-makers have been expelled from the North Carolina General Assembly, but eleven (11) of those exclusions occurred before the enactment of the 1868 Constitution; the other two occurred in 1875 and 1880. The failure to include authority in the State Constitution to discipline and expel its elected members acts as a limitation on what this General Assembly is constitutionally allowed to do.

Despite the absence of a constitutional provision to remove or impeach an elected District Attorney, the North Carolina Supreme Court in *State v. Spivey* clearly concluded that the North Carolina General Assembly had the power to enact a statute which authorized the

removal of a person from that position. In *Spivey*, the Court determined that a legislative enactment of the General Assembly is a valid expression of the will of the people even though there is no expressed constitutional authority for the it.

As we have often noted, it is 'firmly established that our State Constitution is not a grant of power. All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution. (Cite omitted) Therefore, this Court gives acts of the General Assembly great deference, and a statute will not be declared unconstitutional under our Constitution unless the Constitution clearly prohibits that statute.

Spivey at 413, 480 S.E.2d at 698.

Since the North Carolina Constitution was silent on the authority to remove the elected District Attorney from office in *Spivey*, the Court determined that the legislative enactment which expressly authorized this removal and set out a detailed procedure for the Presiding Judge to follow when doing so deserved the "presumption of constitutionality" and that removal statute would control as long as the official was accorded due process of law. *Id.* In *Spivey*, N.C. Gen. Stat. § 7A-66 specifically identified the grounds for either the suspension or removal of the elected District Attorney from office. The grounds are:

1. Mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent;
2. Willful misconduct in office;
3. Willful and persistent failure to perform his duties;
4. Habitual intemperance;
5. Conviction of a crime involving moral urpitude;
6. Conduct prejudicial to the administration of justice which brings the office into disrepute; or
7. Knowingly authorizing or permitting an assistant district attorney to commit any act constituting grounds for removal, as defined in subdivisions (1) through (7) hereof.

N.C. Gen. Stat. § 7A-66 (2007)

The statute specifically authorized a Superior Court Judge, upon a finding of relevant facts which supported the existence of one of the disabling provisions, to enter an order permanently removing the District Attorney from office.

With respect to the North Carolina General Assembly's ability to remove an elected member of the House of Representative from office, there is not a comparable statute which authorizes that removal. In 2007, the North Carolina General Assembly created the Legislative Ethics Committee and authorized it to investigate complaints of ethics violations, to conduct necessary hearing and "refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of a criminal statute." N.C. Gen. Stat. §120-103.1 et. seq. (2007) The problem with this statute is that it does not authorize the General Assembly to discipline or remove an elected Legislator if a referral is received from the Legislative Ethics Committee. Even with this statute which create an investigative Committee, the General Assembly does not possess the same power and authority as was conveyed to Superior Court Judges under N.C. Gen. Stat. § 7A-66.

HOUSE SELECT COMMITTEE DOES NOT POSSESS CONSTITUTIONAL OR STATUTORY AUTHORITY TO DISCIPLINE OR REMOVE AN ELECTED MEMBER OF THE HOUSE OF REPRESENTATIVES

For the reasons discussed above, the House Select Committee does not have authority to discipline or remove an elected member of the General Assembly from office. The House Select Committee was recently appointed by the Speaker of the House of Representatives to investigate complaints of ethics violations against Representative Thomas Wright. The creation of this Committee was accomplished without a legislative enactment or action by the House and Senate

and approval by the Governor. While this procedure is appropriate for internal activities of the House of Representatives, it does not confer any power or authority which remotely over-rides the constitutional and statutory infirmities discussed above.

To the extent that investigations of the House Select Committee is to “be governed by Article 5A, Committee Activity, of Chapter 120 of the General Statutes,” the Committee is restricted to “alleged violations of the criminal law by a legislator while acting in the legislator’s official capacity as a participant in the lawmaking process.” N.C. Gen. Stat. § 120–103.1(a)(3) (2007) By definition, allegations of misconduct which occurred outside of the Legislator’s lawmaking activities can not be the subject of scrutiny by this General Assembly.

In further reliance upon the dictates of Chapter 120 of the General Statutes, the work of the House Select Committee is restricted to an investigation of the “rules legislative ethics and conduct” adopted by the House of Representatives which create the standard of conduct for that legislative session. N.C. Gen. Stat. § 120-102(7)(2007) These legislative rules of ethics and conduct have not been established by the North Carolina General Assembly for this session or for those past legislative sessions in which the alleged conduct committed by Representative Wright is supposed to have occurred, namely 2001 through 2006.

HOUSE SELECT COMMITTEE DOES NOT POSSESS CONSTITUTIONAL OR STATUTORY AUTHORITY TO DISCIPLINE OR REMOVE AN ELECTED MEMBER OF THE HOUSE OF REPRESENTATIVES FOR CONDUCT WHICH WAS COMMITTED DURING PRIOR SESSIONS OF THE LEGISLATURE

In the landmark case of *Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944 (1969), the United States Supreme Court discussed the propriety of disciplining an elected Congressional

Representative for conduct committed during a prior session of Congress. In its opinion, the Court noted that both houses of Congress “distrusted their power to punish” a member for conduct committed during a prior congressional session. *Powell* at 509, 89 S. Ct. at 1957.

[I]t must be said that with practical uniformity the precedents in such cases are to the effect that the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884, Speaker Carlisle Decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member, and added, ‘That has been so frequently decided in the House that it is no longer a matter of dispute.

Powell at 509, 89 S. Ct. at 1957.

In *Powell*, Adam Clayton Powell had been regularly elected as the Congressman from New York City’ 18th Congressional District since 1945 and had served as and, based upon his seniority, was destined to continue in the position as the Chairman of the House Committee on Education and Labor at the time of this challenge to his qualifications. Powell completed his service the 89th session of Congress and was returning to be sworn in for the 90th Congressional session following his re-election. During the 89th Congressional Session, claims arose and were presented in Congress that Powell had inappropriately used congressional funds for travel and salary for his wife during that session. Based upon this alleged conduct, an effort to prevent Powell from being sworn in for the 90th Congressional Session was successfully launched. From that exclusion, Powell filed an action in the federal court which ended-up in the United States Supreme Court.

Powell’s claim before the Supreme Court that the only qualifications that he needed to present and satisfy was that he met the Constitutional qualifications to serve as a member of

Congress and could not be excluded because of past claims of transgressions. It was noted in this opinion that neither Congress nor its committees are continuing bodies, but their powers and duties expire when the session for which they are elected expire. In Congress, that expiration occurs every two years just as the North Carolina General Assembly terms for members of the House expire every two years.

With respect to Congress' power and authority to expel Powers from the 90th Congressional session, the Supreme Court concluded that Congress could only review whether Powell possessed the qualifications at that moment in time which were articulated in the federal Constitution. The Powell Court reasoned: "A fundamental principle of our representative democracy is, in [Alexander] Hamilton's words, 'that the people should choose whom they please to govern them.'" *Powell* at 547, 89 S. Ct. at 1977. Equally instructive in this effort to discipline and/or expel Representative Wright from the North Carolina General Assembly is this conclusion:

Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases, that interest can be sufficiently safe-guarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds. In short, both the intention of the Framers, to the extent that it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

The authority to expel an elected Congressional Representative for disorderly behavior in *Powell* was upheld because the Constitution specifically authorized that action upon a vote of two-thirds of its members. That is not the situation in North Carolina where the State's

constitution does not authorize the exclusion of an elected House Member. The central lesson in *Powell* is that the people have the right to elect their own representatives as a fundamental principle of a representative democracy and the frequency of elections allows the people to speak often and regularly on this important and weighty issue. In the absence of specific authorization to expel or exclude an elected member, the only qualifications that can be utilized to determine the Legislator's ability to serve his constituents are those articulated within the Constitution.

In judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution. . . . Therefore, we hold that, since Adam Clayton Powell, Jr., was duly elected by the voters of the 18th Congressional District of New York and was not ineligible to serve under any provision of the Constitution, the House was without power to exclude him from its membership.

Powell at 550, 89 S. Ct. at 1979

Powell concerned claims of misappropriating federal funds which occurred during the previous Congressional Session. The Supreme Court held that conduct from that previous Congressional session, the 89th, could not serve as the basis for a determination of Powell's qualifications to serve in the next, the 90th, Congressional session. By contrast, the House Select Committee seeks to hold Representative Wright's alleged improper conduct from 2001 through 2006 as grounds or justification to discipline or expel him from the present legislative session. The time frame involved in Representative Wright's situation covers four separate and distinct legislative sessions rather than the one Congressional session involved in *Powell*. If the *Powell* ouster violated the federal Constitution, then certainly the effort to discipline or expel Representative Wright offends the same Constitutional protections and provisions.

HOUSE SELECT COMMITTEE'S ADOPTED RULES AND PROCEDURE VIOLATE DUE PROCESS RIGHTS OF REPRESENTATIVE WRIGHT

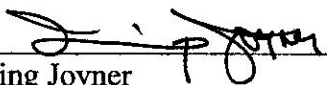
Even in the context of proceedings in the North Carolina General Assembly, Due Process protections are implicated and must be complied with, particularly as here, where the General Assembly seeks to interfere with a property right and interest of Representative Thomas Wright. No State shall deprive any person of life, liberty, or property without due process of law. The constitutional inhibition against depriving any person of his property without due process of law is a 'restraint on the legislative as well as on the executive and judicial powers of the government and cannot be so construed as to leave the General Assembly free to make any process 'due process of law,' by its mere will." *Den ex Dem. Murray v. Hoboken Land and Imp. Co.*, 59 U.S. 272, 276-277, 1855 WL 8216 (U.S.N.J.)(U.S. December Term 1855) Substantive due process is a guaranty against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary or capricious and that the law be substantially related to the valid object sought to be obtained. *State v. Joyner*, 286 N.C. 366, 371, 211 S.E.2d 320, 323 (1975)

The North Carolina Supreme Court articulated in *In re: Hardy*, 294 N.C. 90, 240 S.E.2d 367 (1978) that removal from office on the ground of misconduct in office is a matter of the most serious consequences and the person is subject to be deprived of the honor, power and emoluments of the office. *Id.* Other State Courts, as well as the federal courts, have concluded that election to public office imbues the office holder with a constitutionally protected property and/or liberty interests. *See, McNeil v. Butz*, 480 F.2d 314 (4th Cir. 1973); *Crowe v. Lucas*, 595 F.2d 985 (5th Cir. 1979); *Gordon v. Leatherman*, 450 F.2d 562 (5th Cir. 1971); *Fredericks v. Vartanian*, 529 F. Supp. 264 (D. Mass. 1981); *Ludowici v. Stapleton*, 375 S.E. 2d 855 (Ga.

1989); *Errichetti v. Merlino*, 457 A.2d 476 (N.J. Super. 1982)

The recently adopted rules of the House Select Committee impermissibly shifts to representative Wright the burden of showing by a preponderance of the evidence that he should be exonerated of the charges which have been leveled against him. *See, Paragraphs 14 & 15 of House Select Committee Rules*. This requirement violates the fundamental fairness notion of Due Process to compel the charged party to establish, by an level of proof, his innocence. Not only is Due Process violated, but the legislator's Fifth Amendment rights are also implicated and surrendered by this requirement.

This the 30th day of January, 2008

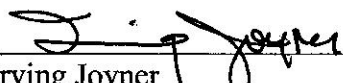


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Telephone:(919)319-8353

CERTIFICATE OF SERVICE

The Attorney whose signature appears below certifies that a copy of the attached Legal Memorandum In Support Of Respondent's Answer and Motion was duly served upon the Clerk of the North Carolina General Assembly by hand-delivering copies of same to the North Carolina Legislature and to Representative Rick Glazier at 300 North Salisbury Street, Suite 200, Raleigh, North Carolina 27603 addressed separately to Attorney O. Walker Reagan and by depositing a copy of same in the United States mail, first class postage prepaid and addressed to Attorney William Hart, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602.

This the 30th day of January, 2008



Irving Joyner

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE TO
INVESTIGATE ALLEGED MISCONDUCT
COUNTS 1 - 8

V.

REPRESENTATIVE THOMAS
WRIGHT

HOUSE PRINCIPAL CLERK
BRIEF OF SPECIAL COUNCIL GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-1036

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NSH GENERAL ASSEMBLY

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601-1036

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NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE TO
INVESTIGATE ALLEGED MISCONDUCT
COUNTS 1 - 8

BRIEF OF SPECIAL COUNSEL

It has been argued by Representative Wright that this provision of the Constitution relates to the qualifications for election to office in Article II, Section 7 of the Constitution. Although Article II, Section 20 is certainly related to Article II, Section 7 for purposes of determining qualifications for election to office, there is nothing in Article II that limits the application of Article II, Section 20 only to qualifications for election. In addition, Article VI, Section 8 sets forth disqualifications for office that must also be considered. Art. VI, Sec. 8, Constitution of North Carolina. And, a criminal conviction or having been adjudged guilty is not the only determination that may disqualify a person for public office. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978)(due process determination by Supreme Court by clear and convincing evidence that public

official had engaged in willful misconduct in office is sufficient for disqualification from office), cert. denied, 442 U.S. 929, 61 L. Ed. 2d 297 (1979). Therefore, in North Carolina, either house of the General Assembly may take any action reasonably necessary for the proper administration of its business as the lawmaking body of the people of the State. This includes investigation into allegations of improper, illegal, or unethical actions by any of its members and taking action that is appropriate to punish such actions.

"An act of the General Assembly is legal unless the Constitution contains a prohibition against it." Plemmer v. Matthewson, 281 N.C. 722, 726, 190 S.E.2d 204, 207 (1972), citing McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961). The Supreme Court of North Carolina has continuously stated as follows:

it is "firmly established that our State Constitution is not a grant of power. All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution."

In re: Spivey, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997); State ex rel. Martin v. Preston, 325 N.C. 438, 448-49, 385 S.E.2d 473, 478 (1989); Lassiter v. Board of Elections, 248 N.C. 102, 112, 102 S.E.2d 853, 861 (1958); McIntyre v. Clarkson, 254 N.C. at 515, 119 S.E.2d at 891; Airport Authority v. Johnson, 226 N.C. 1, 8, 36 S.E.2d 803, 809 (1946). This is consistent with Article I, Section 2 and Article II, Section 1 of the Constitution of North Carolina. Article I, Section 2 provides in pertinent part: "All political power is vested in and derived from the people" Article II, Section 1 describes how the people exercise that sovereignty: "The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives." Indeed, our legislature is called the General Assembly "because all the people are present there in the persons of their representatives." John V. Orth, The North Carolina State Constitution: With History And Commentary 78 (1993). The General Assembly's exercise of the sovereignty "vested in and derived from the people," then, is valid except where expressly limited by the Constitution. The pertinent inquiry is not whether the Constitution authorizes the House of

Representatives to discipline its members for unethical conduct. Rather, the pertinent inquiry is whether the Constitution prohibits or limits the House's ability to do so.

Courts have the inherent power to do all things that are reasonably necessary for the proper administration of justice, State v. Gravette, 327 N.C. 114, 124, 393 S.E.2d 865, 871 (1990); Beard v. The North Carolina State Bar, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987). In the same way, legislative bodies have the implied and inherent authority to investigate and discipline its members. French v. Senate, 146 Cal. 604, 606, 80 P. 1031, 1032 (1905) (every legislative body has implied power to expel a member for any cause deemed sufficient); Hiss v. Bartlett, 69 Mass. 468, 473, 3 Gray 468, 473 (1855) (power of expulsion is a necessary and incidental power, to enable the house to perform its high functions, and the house is the sole judge of the exigency which may justify and require its exercise); Justice Joseph Story, Commentaries on the Constitution of the United States, Vol. II, Section 835. That power has not been limited to offenses committed by the party as a member or committed during the same session as the inquiry. Id., Section 836.

The North Carolina House of Representatives has the inherent authority to investigate and to discipline or expel one of its members. That inherent authority has not been limited by the Constitution of North Carolina. And, that inherent authority has been acknowledged and protected by the General Assembly in the Legislative Ethics Act that it passed. The General Assembly has specifically provided that "[a]ny action or lack of action by the [Legislative Ethics] Committee," under N.C.G.S. § 120-103.1, "shall not limit the right of each house of the General Assembly to discipline or to expel its members." N.C.G.S. § 120-103.1(m). Indeed, the General Assembly has exercised that authority numerous times in the past: ¹

- James Carter - expelled from House in 1757 for mishandling public funds
- Francis Brown - expelled from House in 1758 for perjury, conduct unworthy

¹ Information gleaned from chart prepared by Research Division of the General Assembly and presented to the House Select Committee at hearing on January 9, 2008.

- Hermon Husband - expelled from House in 1770 for gross prevarication, falsehood, promoting riot and seditions
- William Gilbert - expelled from House in 1779 for intentionally defrauding public
- Edward Clay - expelled from House in 1784 for petit larceny (no criminal charge)
- Henry Montfort - expelled from House in 1786 for fraud in disbursement of public money
- John Bonds - expelled from House in 1787 for fraud
- John Roberts - expelled from Senate in 1816 for forgery and fraud committed during War of 1812
- Robert Potter - expelled from House in 1835 for engaging in fight after card game and drawing a pistol and a knife
- J. Wm. Thorne - expelled from House in 1875 for advocating and promulgating a "most sacrilegious doctrine, subversive of the principles of the constitution of the State of North Carolina and of sound morality
- Josiah Turner - censured, then expelled when he left House Chamber, for gross improprieties, disorderly conduct, defiant conduct, and disrespectful manner in 1880
- Ken Miller - censured by House in 1996 for making unsolicited and inappropriate sexual remarks to a female employee, a female lobbyist, and a female page

The unethical, improper, and, in most cases, criminal acts alleged in the charges pending against Representative Wright - conversion of money, soliciting false statements in documents with the intent to use those false representations to obtain a loan, and failing to disclose campaign contributions that are required to be disclosed to the voting public - constitute conduct at least as egregious as the acts that served the basis for the expulsions listed above.

II. The House Select Committee has authority to hold hearings and to recommend action by the full membership of the House of Representatives.

The General Assembly "cannot delegate its power to make a law; but it can make a law to delegate a power to determine some facts or state of facts upon which the law makes, or intends to make, its own action depend . . ." State v. Curtis, 230 N.C. 169, 171, 52 S.E.2d 364, 365

(1949)(citations omitted). Not only may the General Assembly delegate fact-finding power to agencies, it may delegate such power to committees. N.C.G.S. §§ 120-14; 120-19.1. Such committees have the power to hold hearings, compel attendance of witnesses, and compel testimony to make findings on any matter properly before them and to report any findings and recommendations to the appropriate house. *Id.*

Representative Wright contends in his legal memorandum that the House Select Committee is limited by N.C.G.S. § 120-103.1(a)(3) to "alleged violations of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process." He also contends that N.C.G.S. § 120-102(7) limits the Committee to an investigation of the "rules of legislative ethics and conduct" adopted by the House of Representatives for the current term. Such arguments would apply to actions by the Legislative Ethics Committee. However, those arguments do not apply to actions by the House of Representatives and the House Select Committee.

Just as "[a]ny action or lack of action by the [Legislative Ethics] Committee," under N.C.G.S. § 120-103.1, "shall not limit the right of each house of the General Assembly to discipline or to expel its members," N.C.G.S. § 120-103.1(m), the limitations provided in the Legislative Ethics Act apply to actions by the Legislative Ethics Committee, not to either house or any authorized committee acting under the inherent authority of that house. Thus, the House and the House Select Committee are not limited to considering conduct that constitutes "alleged violations of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process" or to considering conduct that violates "rules of legislative ethics and conduct" adopted by the House of Representatives for the current term. The House and the Committee may properly consider any conduct which is improper, unethical, criminal, or unbecoming and unfitting for a member of the House.

The North Carolina House of Representatives has the inherent authority to investigate and to discipline or expel one of its members. That inherent authority has not been limited by the Constitution of North Carolina. And, the House of Representatives has the authority by statute to

delegate to a committee the investigation of facts surrounding allegations of unethical conduct of one of its members. N.C.G.S. § 120-14; N.C.G.S. § 120-19.1. In this case, the House Select Committee, then has the power to hold hearings to investigate and determine the facts, to report those findings to the full House, and to make appropriate recommendations on disciplinary action that the House should take. The role of the Committee is to determine facts and to make recommendations to the House, not to take action against Representative Wright. It is only the full House that has authority to take disciplinary action.

This same type of procedure is used for investigation of complaints of ethical violations made against judges. The Judicial Standards Commission conducts a hearing, determines the facts, and makes a recommendation to the Supreme Court of North Carolina on the appropriate sanctions for any unethical conduct found. The Supreme Court then reviews the findings below and the record to determine what violations, if any, it finds, and what sanctions to impose. N.C.G.S. § 7A-376; Rules of the Judicial Standards Commission; Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission; In re Renfer, 345 N.C. 632, 634-35, 482 S.E.2d 540, 542 (1997); In re Hardy, 294 N.C. 90, 97, 240 S.E.2d 367, 372 (1978); In re Nowell, 293 N.C. 235, 244, 237 S.E.2d 246, 252 (1977).

III. The House Select Committee has authority to recommend to the full House of Representatives that it discipline or expel an elected member of the House based on conduct that was committed during prior sessions of the General Assembly.

In North Carolina, either house of the General Assembly may take any action reasonably necessary for the proper administration of its business as the lawmaking body of the people of the State. This includes investigation into allegations of improper, illegal, or unethical actions by either house of any of its own members and taking action that is appropriate to punish such actions.

"An act of the General Assembly is legal unless the Constitution contains a prohibition against it." Plemmer v. Matthewson, 281 N.C. 722, 726, 190 S.E.2d 204, 207 (1972), citing

McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961). The Supreme Court of North Carolina has continuously stated as follows:

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Courts have the inherent power to do all things that are reasonably necessary for the proper administration of justice, State v. Gravette, 327 N.C. 114, 124, 393 S.E.2d 865, 871 (1990); Beard v. The North Carolina State Bar, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987). In the same way, legislative bodies have the implied and inherent authority to investigate and discipline its members. French v. Senate, 146 Cal. 604, 606, 80 P. 1031, 1032 (1905)(every legislative body has implied power to expel a member for any cause deemed sufficient); Hiss v. Bartlett, 69 Mass. 468, 473, 3 Gray 468, 473 (1855)(power of expulsion is a necessary and incidental power, to enable the house to perform its high functions, and the house is the sole judge of the exigency which may justify and require its exercise); Justice Joseph Story, Commentaries on the Constitution of the United States, Vol. II, Section 835. That power has not been limited to offenses committed by the party as a member or committed during the same session as the inquiry. Id., Section 836.

Representative Wright places much reliance in his argument to the contrary on the decision of the United States Supreme Court in Powell v. McCormack, 395 U.S. 486, 23 L. Ed. 2d 491 (1969). Powell is inapplicable here for three reasons. First, Powell dealt with the United States House of Representatives' power to exclude someone who had been elected on the grounds that he did not meet the qualifications for office, not the power to expel someone after he was seated in the House. Id., at 507, 23 L. Ed. 2d at 509, Fn. 27. Second, and more fundamentally, Powell dealt with

the authority of the United States House of Representatives under the United States Constitution, not the power of the North Carolina House of Representatives under the North Carolina Constitution. Unlike the North Carolina Constitution, which is a limitation on the authority of the legislative branch, the federal Constitution is a grant of power to the federal government. Congress can only act as authorized by the federal Constitution. United States v. Butler, 297 U.S. 1, 63, 80 L. Ed. 477, 487 (1936). This being so, the Supreme Court's analysis in Powell has no bearing on the authority of the General Assembly under the North Carolina Constitution. Finally, the discussion in Powell about the power of Congress to expel extending to conduct during previous sessions was in the context of interpretation of authority granted by House Rules, and it is *dicta*, as the Court determined that the action taken was exclusion, not expulsion.

Because there are no limitations in the Constitution or in statutes applicable to the House on the conduct which it may consider or the time of occurrence of that conduct, the House and the House Select Committee may inquire into any allegations of improper conduct. The House has taken timely action once it became aware of the allegations it is considering, and the House Select Committee has proceeded expeditiously and with due process.

The House Select Committee, pursuant to the direction of the Speaker of the House, has authority to conduct a hearing into allegations of unethical conduct by one of the members of the House of Representatives, even if that conduct occurred prior to the current Session.

IV. The House Select Committee Rules do not violate the due process rights of Representative Wright.

The House Select Committee Rules do not impermissibly shift the burden of proof to Representative Wright. Rather, the Rules provide for three possible outcomes in the vote of the House Select Committee. By referencing both paragraph 14 and paragraph 15 of the Rules, it is clear that the Committee will have three possible outcomes on each charge:

(1) If the Committee finds the alleged violations are established by clear and convincing evidence, the Committee shall do one or both of the following:

a. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution if the Committee finds substantial evidence of a violation of a criminal law that is not already the subject of an indictment.

b. Refer the matter to the House of Representatives for appropriate action, which may include admonishment, censure and expulsion.


(2) If the Committee fails to find the alleged violations are established by clear and convincing evidence, the Committee shall report this to the House of Representatives and to the accused legislator.

(3) If the Committee finds by a preponderance of the evidence that the accused legislator should be exonerated of the charges, the chair shall transmit this finding in writing to the accused legislator and to the House of Representatives.

The House Select Committee Rules do not impermissibly shift the burden of proof to Representative Wright. Rather, the Rules provide for an additional possible outcome that can benefit him. The Committee may find he committed ethical violations if convinced by clear and convincing evidence. The Committee may find that the allegations of ethical violations have not been proved by clear and convincing evidence. And, the Committee may decide that not only have the charges not been proved by clear and convincing evidence, but that he should be found to be exonerated of the charge of that violation. It may do so, rather than just finding the charges not proved, if it believes so by a preponderance of evidence. In contrast, in criminal courts there are only two possible verdicts, and a not guilty verdict or acquittal only denotes the failure of the prosecution to establish guilt beyond a reasonable doubt; it does not affirmatively establish innocence. Taylor v. Taylor, 257 N.C. 130, 134, 125 S.E.2d 373, 375 (1962). There is no violation of due process by the Committee in creating the additional possible outcome of exoneration that can actually benefit Representative Wright.

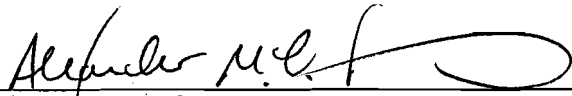
In addition, the Committee has provided Representative Wright with compulsory process, the right to be present and to confront witnesses, and the right to discovery.

Respectfully submitted this the 7th day of February, 2008.



William P. Hart
Special Deputy Attorney General
Special Counsel for the House Select Committee

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing BRIEF FOR THE HOUSE SELECT COMMITTEE upon the RESPONDENT by placing a copy of same in the United States Mail, first class postage prepaid, and by e-mail, addressed to his ATTORNEYS OF RECORD as follows:

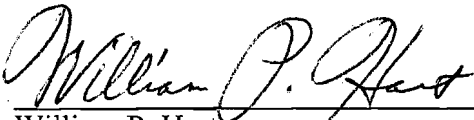
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This the 7th day of February, 2008.



William P. Hart
Special Deputy Attorney General
Special Counsel for House Select Committee

MEETING OF THE HOUSE SELECT COMMITTEE
TO INVESTIGATE ALLEGED MISCONDUCT AND OTHER MATTERS
INCLUDED IN INDICTMENTS REGARDING
REPRESENTATIVE THOMAS E. WRIGHT

TRANSCRIPT OF THE PROCEEDINGS

February 11, 2008

THE SELECT COMMITTEE:

Rep. Rick Glazier, Chair
Rep. Paul Stam, Vice-chair
Rep. Marvin Lucas
Rep. William McGee
Rep. Edith Warren
Rep. Laura Wiley

In Raleigh, N.C.
11:07 A.M.

Reported by:
Katherine M. Becker

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1 THE CHAIR: All right. Good morning. This
2 House Select Committee to Investigate Alleged
3 Misconduct and Other Matters Included in
4 Indictments Against Representative Thomas E. Wright
5 is convened February 11th, 2008, approximately
6 eleven-ten in the morning, Room 544, Legislative
7 Office Building. We'll begin, because we are being
8 recorded by the court reporter, Ms. Becker--and
9 welcome again, Ms. Becker, and thank you--I'm going
10 to ask everyone to quickly introduce themselves who
11 are at these tables, and then at the three tables
12 below the podium. So we'll start with the vice-
13 chairman.
14 REP. STAM: Paul Stam, vice-chair.
15 MS. SABEL: Carin Savel, Committee clerk.
16 THE CHAIR: We'll start over here--
17 MS. SMITH: Amanda Smith, staff.
18 MS. HUNTLEY: Denise Huntley, staff.
19 MR. REAGAN: Walker Reagan, Committee
20 counsel.
21 MR. GOLDSMITH: Kory Goldsmith, Committee
22 co-counsel.
23 MR. KREHELY: Brad Krehely, Committee
24 co-counsel.

-3-

1 MS. FENNELL: Heather Fennell, Committee
2 co-counsel.
3 THE CHAIR: Representative Warren?
4 REP. WARREN: Edith Warren, State
5 Representative, 8th House District.
6 REP. LUCAS: Marvin Lucas, Committee
7 member.
8 REP. WILEY: Laura Wiley, District 61.
9 REP. MCGEE: Bill McGee, Committee
10 member.
11 THE CHAIR: If we could, Representative
12 Wright--
13 REP. WRIGHT: Representative Thomas
14 Wright.
15 THE CHAIR: You'll--you'll need to hold
16 the button down--
17 MR. HARRIS: Oh, okay.
18 THE CHAIR: --Mr. Harris. I'm sorry.
19 MR. HARRIS: I see. Thank you. No
20 problem. All right. This is--I'm Doug Harris, the
21 attorney for Thomas Wright, Representative Wright.
22 THE CHAIR: All right.
23 PROF. JOYNER: Irving Joyner and Heather
24 Rattelade.

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1 THE CHAIR: Also as counsel for
2 Representative Wright?
3 PROF. JOYNER: Yes, sir.
4 THE CHAIR: Okay. Thank you. Mr. Hart?
5 MR. HART: William Hart, Senior Deputy
6 Attorney General from the Attorney General's
7 Office, and Special Counsel.
8 MR. PETERS: Alexander Peters, Special
9 Deputy Attorney General, and Special Counsel to the
10 Committee.
11 THE CHAIR: All right. Thank you very
12 much. All right. This meeting is called to order.
13 We've introduced staff and legal counsel, and what
14 we want to do today--and I'm going to review
15 quickly the purpose of the meeting and the order of
16 business that will follow.
17 This meeting is to hear dispositive
18 motions filed by Representative Wright. The staff
19 has prepared for all counsel, as well as for
20 Committee members, the list of motions that the
21 Chair intends to hear. This has been reviewed by
22 the Committee's special counsel and by Mr. Joyner
23 and Mr. Harris. The Chair's intent is to consider
24 the motions in the order in which they were listed.

1 Under the Committee's rules, the Chair is
2 to rule on the motions initially. And what I
3 anticipate doing is a procedure that goes something
4 like this: I'll call the motion and then ask
5 Mr. Harris or Professor Joyner, whoever is going to
6 argue the motion, to argue your point on the
7 motion. Then I'll open it up to the Committee for
8 questions that they would have of Counsel. Then,
9 Mr. Hart or Mr. Peters, you'll argue the Committee
10 and Counsel's position, and, again, the Committee
11 can then follow your questions--or your comments
12 with questions.

13 After we finish comments by Counsel and
14 questions by any members of the Committee, then I
15 will make the Chair's ruling and issue that ruling
16 orally to the extent I'm able to do that, and at
17 that point will then turn to the Committee and ask
18 if any member of the Committee seeks to overrule
19 the motion of the Chair or the ruling of the Chair,
20 because ultimately, although the Chair makes the
21 initial ruling, the Rules certainly allow the
22 Committee to override the Chair should they choose
23 to do that. And we'll go through motion by motion.

24 There are twelve motions pending. In

1 THE CHAIR: Certainly. The Legislative
2 Ethics Committee received the initial complaint,
3 obviously, as--as you now know, with regard to the
4 concerns as it relates to Representative Wright.
5 That committee, in December, forwarded its
6 recommendation on to the Speaker of the House,
7 indicating it had significant concerns with the
8 indicted conduct but felt that the indicted conduct
9 jurisdictionally, because of the LEC statute, did
10 not give the LEC jurisdictional basis to review
11 that indicted conduct, but did give the LEC the
12 opportunity to refer to the House of
13 Representatives to act on its own disciplinary
14 measures, independent of the joint LEC.

15 That recommendation went to Speaker
16 Hackney, and Speaker Hackney immediately formed the
17 House Select Committee which you're now appearing
18 before. This House Select Committee will and did
19 review all the evidence it--that was available to
20 it and, as you may remember--I think it was January
21 the 9th--determined probable cause existed as to
22 eight specific counts, which you then got notice of
23 in writing, and Representative Wright did, and gave
24 two weeks to file the written response, which you

1 addition, there is a request, and I think
2 appropriately, from Professor Joyner to review the
3 discovery matters that were filed and make sure we
4 have those--and make sure we have those in order.
5 So that will also be something that we'll do after
6 we get through the--the list of motions.

7 Any questions on the procedure that we'll
8 use for the hearing of the motions? All right.

9 Then the first motion--the first motion
10 that I want to--

11 PROF. JOYNER: Mister--Mr. Chairman?

12 THE CHAIR: Yes?

13 PROF. JOYNER: I just--just want a
14 clarification now. I apologize--

15 THE CHAIR: Sure.

16 PROF. JOYNER: --for interrupting you,
17 but we initially received a one-count complaint
18 from the Legislative Ethics Committee, which--to
19 which we responded at an earlier point. Subsequent
20 to that, we received complaints from the House
21 Select Committee. So for my clarification, would
22 you tell us what is the status of this Legislative
23 Ethics Committee complaint, and how does that fit
24 into the framework of where we are now?

1 have responded to.

2 The LEC retained jurisdiction over one
3 count. That LEC count remains within the LEC's
4 jurisdiction, not directly in our jurisdiction.
5 However, that count seems to be included within the
6 eight counts that we have, and so what the LEC
7 would choose to do with that count is a
8 determination they will have to make, and they, of
9 course, meet in a different setting.

10 But this House Select Committee's job is
11 to work through the eight counts that we now have
12 probable cause on, and which I assume you've now
13 responded and filed motions on, and those would be
14 the eight counts, if they survived motions, that
15 would be the form of the evidentiary hearing--the
16 basis of the evidentiary hearing before this
17 Committee.

18 It would be up to the LEC to determine
19 whether they want to proceed independently on their
20 one count. I can't speak for the LEC, since only
21 part of the LEC essentially exists here. But
22 that's the procedure of where we are. All right?

23 All right. The first motion to be heard
24 today is a motion to dismiss filed by

Representative Wright as to all counts generally for lack of jurisdiction. Who will be arguing that motion?

PROF. JOYNER: I will.

THE CHAIR: Okay. Professor Joyner-- and--and you may go to the podium, which may be much easier than sitting there holding the button. If the sergeant-at-arms would assist, please--

(DISCUSSION OFF RECORD)

THE CHAIR: Professor Joyner?

PROF. JOYNER: Mr. Chairman, thank you for this opportunity, members of the House Select Committee. The first motion that--that's before you is the motion to dismiss all counts for lack of jurisdiction or authorization. And in support of that motion, we look at some of the--some of the law which I think is supposed to undergird our actions here today and in the days to come, if that occurs.

But I want to start with the fundamental document which gives to the General Assembly its power, and that is the North Carolina Constitution. And that Constitution is then supported by the federal Constitution, the United States

Constitution, which is a Constitutional imperative in--under the North Carolina Constitution. There is a specific provision of the North Carolina Constitution, which says that the federal Constitution is supreme to the North Carolina Constitution. Decisions from the United States Supreme Court and other courts have upheld that--that notion.

So why don't we just start from the power, the grant of authority to--to the General Assembly, especially as it relates to the issue of disciplining or expelling a legislator from--from this body, and then look at North Carolina statutes in that regard, because those are the enactments by the North Carolina General Assembly which gives to various operating bodies the authority to--to proceed.

Starting first with the--our claim and the response from the North Carolina Attorney General's Office, it is crystal clear, and everyone seemingly is in agreement, that there is not a Constitutional provision which allows the General Assembly to discipline or expel a member from its body. Expressly stated, it's not there, nor is

there a statute that's been enacted by the North Carolina General Assembly which provides authority to discipline or expel a legislator for any action.

There are provisions in the Constitution--in the Constitution and in statutes which allow for the impeachment of any number of elected officials in the state. But not included in that authorization is impeachment or any actions directed against a sitting member of the General Assembly, either in the Senate or in the House.

And in the two briefs that's--that you've been provided with, you don't find a claim that that power exists under either the Constitution or the North Carolina statutes. Now, I'm--I'm--I'm reporting. I'm not arguing this point. The--the law is what the law is.

In the absence of some authority, this General Assembly does not have the power to act. If the Constitution does not give to the General Assembly a power or--based on the United--the North Carolina Supreme Court's decision in *State versus Spivey*, if the General Assembly has not created a mechanism or an authorization for it or some other body to act, then it is without power to act.

Now, the Attorney General suggests that there is this thing called the inherent power of the General Assembly. And the inherent power of the General Assembly is something that sounds good. It conveys the notion that you can do any doggone thing you want to do. And, of course, that's the reason you have the Constitution and the statutes, is to circumscribe what, in fact, you can do.

So the Attorney General's office is arguing on your behalf that there is this inherent power. And in support of this inherent power, it cites two cases. It'll just take me a moment to just find--one is *Hiss versus Bartlett*. It's a Massachusetts case from 1855. It's a case originating in the days of slavery, a case that predates the 13th, 14th, and 15th Amendments of the United States Constitution, and a case which predates the 1868 North Carolina Constitution. And I say that to say that its validity or its impact on these proceedings ought to be nonexistent, because since 1855 all of the laws of the land have changed significantly.

Then they rely upon a California case, *French versus Senate*, and that is a case decided in

1905. And they state the proposition that "every legislative body has implied power to expel a member for any cause deemed sufficient."

And I--I direct your attention to the constitution of California, and, in fact, I want to direct your attention to the constitutions of just about every state in this country. And in those constitutions the law--or the constitution not only provides a section that members of the House are judges of the qualification of its members as is defined by the constitution, but it goes on to say in each of those instances that where a two-thirds majority so decides, and if there is sufficient grounds for it, a person can be disciplined or expelled from its body. North Carolina does not have that provision in its Constitution.

So in that sense, the California constitution and the *French* case that we've just made reference to, talking about inherent power, that decision flows from the grant of power that's contained in the California constitution. Obviously, that grant of power isn't present in the North Carolina Constitution.

An inherent power can only flow from

expressed powers. In California, the expressed power is the power of two-thirds members of the majority to expel or to discipline. In North Carolina, that grant of authority is not there. Now, I didn't write the Constitution, so don't blame me for it. But it is a deficiency.

Well, it may not be a deficiency, because the North Carolina General Assembly has had any number of opportunities to come back and amend this Constitution. There was an amendment--in 1890 it was amended. There were--there have been subsequent amendments as late as 1969. In none of those instances did the North Carolina General Assembly see fit, in its infinite wisdom, to enact a provision in its Constitution to expel or discipline members of its body. And, again, that's not just the House, but it is the Senate, as well.

At the same time, by statute, the North Carolina General Assembly has codified several impeachment-like provisions in the state law. There is the Judicial Standards Commission, for instance, and a procedure set in place that allows for the expulsion and discipline--disciplining of judges, superior court judges, district court

judges. And that process works, and there have been a number of judges who have been expelled from office or otherwise disciplined. And for the most part--well, in each of those instances, that is done pursuant to the grant of authority given by the state--by the General Assembly to the Judicial Standards Committee--Commission.

In the case of *State versus Spivey*, dealing with the expulsion of a district attorney from office, our Supreme Court noted in that opinion that the Constitution of North Carolina did not provide a basis to expel a--an elected district attorney from office. There was nothing in the Constitution that provided it, and based on that, our Court recognized that under the Constitution that could not happen.

But the Constitu--but the Supreme Court also saw that the General Assembly had enacted a specific provision, specific statute, in the state which provided for the removal of district attorneys where certain conduct had occurred. And the Court held that the act of the General Assembly in instituting that statute or enacting that statute was done on behalf of the people, since the

legislature speaks for the people, that the act of creating this statute which provided for the removal was sufficient to give to the Superior Court judge, in that particular case, the authority to remove the sitting and elected district attorney from office down in--in Wilmington, of all places.

Wilmington's had a pretty glorious history--we always go back to 1898, but--and work our way on back up now that--a whole lot of people are removed from office seemingly down in Wilmington. It's kind of noted for that.

But our Supreme Court, in *Spivey*, said that because the General Assembly had enacted a statute which gave to the Superior Court judge the authority to remove, that that was sufficient to convey the sense of the people and the approval of the people for that process. And we've noted, I believe, the *Hardy* case and several other cases dealing with judicial impeachment.

My point is that in each of those instances where our Court, our Supreme Court, has upheld this removal power, it flows from the enactment of a statute by this General Assembly concurring with--concur--in concurrence with the

Senate--and, of course, now signed and agreed to by the governor, but, of course, when these acts were enacted, the governor was not a part of the--of the equation--but that there had to be some specific, expressed power granted to allow for the discipline and removal of an elected official.

At no point in the history of North Carolina has this General Assembly acted to provide a similar provision dealing with the removal or disciplining of a state legislator, either a member of the House or a member of the Senate. And in the absence of that authorization, this General Assembly is without authority to do that.

Now, I mentioned the fact that there are more than thirty-six states that have provided and authorized the punishment of a member for disorderly or disrespectful conduct with the consent of two-thirds of its members. The United States Congress has a similar provision. And in the United States Congress, pursuant to the federal Constitution, there is an expressed provision which says that with two-thirds of the members of the House or the Senate, and upon a showing of disorderly or disrespectful behavior, a elected

Congressional representative or an elected U.S. senator can be removed from office. And that has happened from time to time, and it has happened in other states from time to time. But in every instance, it is pursuant to expressed authorization either contained in the Constitution itself or by some statute.

This notion of inherent power--and our Supreme Court has spoken to that, as well--flows from a grant of power, a grant of power specifically given by the General Assembly to some other agency or institution, or to itself, because the General Assembly can--can--can do that. In the absence of that, the General Assembly can't just take up and do anything that it wants to do. And even where there is a grant of authority to do that, then that grant must satisfy both the federal and state notion of due process.

An arbitrary ad hoc committee being constituted and given the power to discipline or expel a legislator is contrary to both the North Carolina Constitution--it is contrary to the notion of due process. Due process speaks to this notion of fundamental fairness, fundamental fairness, in a

process that is open and transparent, that allows for a person to present their case and to attack the case that's being presented against them. The Rules that I've seen established for this Committee does not provide that, and as such would run afoul of the Court's pronouncement in *Spivey* that where you have this grant of authority, that grant of authority must also satisfy the Court's notion of due process, which is something that is missing in the effort that we have here.

Now, as I understand it, Mr. Chairman, this Committee is--this House Select Committee has been authorized by the Speaker of the House. It is not a committee that is authorized by the General Assembly. And as the Speaker of the House, rather than the Dictator of the House, he has no power to convey a power to any committee to discipline or dismiss any legislator in this body. Now--

THE CHAIR: You understand, do you not, Professor Joyner, that the power of this Committee is limited to recommendations, and that this Committee does not discipline or expel any member on its own, it only has the power to recommend to the full House?

PROF. JOYNER: I--I--I understand that, and that was my next--my next point.

You--you--you can't recommend to expel when the party that you are recommending it to doesn't have the power to do it. And--and--and it's clear there are some people who would like to do that. But in terms of the law as the law is established in this state, this General Assembly and its ad hoc Committee does not have the authority to--to go forward with an action to discipline or expel a legislator from this--from this body. I would certainly urge that this body consider--considers doing that and enacting appropriate legislation to do that.

And with that, I'll let the Attorney General's office come up and argue it--its inherent authority.

THE CHAIR: Let's see if we've got questions first for you, Professor Joyner, from any member of the Committee. The Chair has several.

Just so I'm clear on what the position is, do you argue that the House has no authority under the Constitution or statute to discipline in any manner any of its members for conduct in the

1 House of Representatives?

2 PROF. JOYNER: That--that--that--that is

3 what--what we're arguing.

4 THE CHAIR: So if someone was on the

5 House floor and refused to sit down and to abide by

6 the Speaker's ruling to be quiet and just kept

7 talking, is it your view that the Speaker would

8 have no ability under the Rules, because there is

9 no statute or Constitutional provision, to ask the

10 sergeant-at-arms to escort that person, as a matter

11 of discipline, off the House floor?

12 PROF. JOYNER: There--there are rules of

13 procedure, typically, for those sessions. Those

14 rules and procedures have been adopted by the

15 General Assembly, and where those rules and

16 procedures have been adopted by the--by the General

17 Assembly, then they are in action of the General

18 Assembly. Those are rules in place prior to

19 whatever misconduct you are--you're referring to.

20 But that--that's known, and that's--it's

21 something that has been adopted by the General

22 Assembly and is a grant of authority by the General

23 Assembly to itself as a part of its internal

24 operation and its internal proceeding. So yes, the

1 THE CHAIR: So if--if--if the particular

2 witnesses did not want to seek criminal charges,

3 then the House would be, in your view, not able to

4 invoke any internal ethics discipline on that

5 legislator; it's simply a matter of the police

6 having to deal with it, and if they don't, or if

7 the witnesses don't want to proceed in a criminal

8 court, then the House would have no authority to

9 discipline its member--

10 PROF. JOYNER: Right.

11 THE CHAIR: --right now?

12 PROF. JOYNER: The discipline--and--and--

13 and this is the framework in which both our federal

14 Constitution and our state Constitution has been

15 established. The legislator represents people, and

16 they are the embodiment of the people. They've

17 been sent by those people here to do the people's

18 business, and the discipline and expulsion of that

19 legislator rests uniquely within the body of people

20 who sent that legislator there. And that is, as it

21 stands now, the only authority in North Carolina

22 that can discipline or expel a legislator, by

23 simply not voting that person back into office the

24 next time he runs. That's one of the reasons the

1 Speaker would have the power in that instance to

2 have the sergeant-at-arms to remove that person,

3 which is significantly different than an action to

4 discipline a legislator or to expel a legislator

5 for that conduct.

6 THE CHAIR: Let's assume that the

7 legislator--and--and for whatever reason--there

8 isn't a criminal action pending, so let's not worry

9 about any crime issues, but let's assume a

10 legislator steals twenty-five times from

11 legislative assistants' purses, simply goes around

12 the building and takes money, no criminal charges

13 brought. Would it be your position that because of

14 the deficiency in the Constitution, as you suggest,

15 and in the statute, that the House would have no

16 capacity to discipline that legislator?

17 PROF. JOYNER: The House would have the

18 authority to call the police in and have that

19 person arrested and prosecuted for the crime

20 for--which has been alleged, and that matter then

21 be adjudicated in a--in a court of law. But in

22 terms of--and I go back to the absence of this

23 authority in the Constitution, and by statute,

24 you've not given yourself that power to do that.

1 legislator has to run every two years.

2 THE CHAIR: Well, let's assume

3 instead--and let's take it out of the criminal

4 context, so that there's no ability to call police.

5 Let's assume that a legislator sexually harasses

6 pages or other members, female members, of the

7 staff, and does so in a repeated manner that's

8 reported. There is no crime of sexual harassment.

9 There's a certainly a civil action that might be

10 available, but there's no--

11 PROF. JOYNER: Well, there's--there's a

12 crime.

13 THE CHAIR: Well, there's a--

14 PROF. JOYNER: There's a crime.

15 THE CHAIR: There's not a crime of verbal

16 sexual harassment. Assume we're not talking about

17 physical touching, that we're talking about verbal

18 issues, and it's repeated. And again, assume with

19 me that it's not a criminal action, but maybe, if

20 someone wanted to process it, civil actions.

21 Again, my question comes in. Are you

22 suggesting that because of this deficiency in

23 this--in--in the Constitution, that the House would

24 have no capacity to discipline and potentially

1 expel its member who repeatedly sexually harassed
2 women if--and assuming, again, that there's not a
3 criminal charge that's available, understanding
4 there may be a civil prosecution available? I
5 mean, is that your position?

6 PROF. JOYNER: Well, the--the--the--the
7 authority wouldn't have been based on the action or
8 the result of the--of the action. I mean, that is
9 a--that is--verbal sexual harassment is a crime, as
10 well. They call it assaultive behavior, because
11 placing one in fear and apprehension, even where
12 there's not a touching, is sufficient to make out
13 assaultive conduct.

14 But the question that you raised, the
15 answer is--is--is the same. No, this--this body
16 would not, because this body has never given itself
17 the authority to do that, nor does the Constitution
18 give to this body the authority to do that.

19 And even if the legislator walked in here
20 and shot somebody dead right here in front of
21 everybody on the World Wide Web, this body would
22 not, as presently constituted, have that authority.
23 Now, if you went to California and did that, then
24 the legislature could expel the person, because

1 never--it's never--it's never--it's never been
2 raised.

3 REP. STAM: Okay. If I--

4 PROF. JOYNER: Now, when you talk about
5 the expulsions, with the exception of one, they--
6 they occurred prior to 1900.

7 REP. STAM: But let me ask you this on
8 that, because I think I heard you saying that cases
9 before 1868 were inadmissible because they were too
10 old--did--

11 PROF. JOYNER: Well, that wasn't--that
12 wasn't--I mean, I said that, but that wasn't the
13 reason that I said it.

14 REP. STAM: Did the Constitution before
15 1868--there was one in 1835. There was one in
16 about 1776. There was one from the Lord's
17 Proprietors in the 1600s. Did any of those
18 Constitutions under which the dozen or more
19 expulsions occurred have an explicit grant of
20 authority to expel a member?

21 PROF. JOYNER: I'm--I'm not sure. I've
22 not sure. I've not seen--I've not seen--I just
23 know that from 1868, which is the base year of the
24 Constitution that we're dealing with now, which

1 they have an expressed grant of authority in its
2 Constitution that says, "Upon two-thirds' vote, we
3 can expel this person for misconduct."

4 But that is not the situation in North
5 Carolina, and I'm sorry to say that.

6 THE CHAIR: I--I understand your
7 position. Thank you. Any other--now, questions.
8 Representative Stam?

9 REP. STAM: Thank you. I have two. And
10 I--I appreciate you saying that, because that is
11 the consequence of your position.

12 About a dozen times, the House or the
13 Senate of North Carolina has expelled a member.
14 Are you aware of any case authority in North
15 Carolina questioning that authority by our
16 appellate courts?

17 PROF. JOYNER: It's not been raised, as
18 far as I've been able to--to research. The--it's
19 not been raised in the context of the House and the
20 Senate. It's been raised in the context of
21 judicial officials--

22 REP. STAM: Well, that was my question,
23 expelling a member of a House or Senate.

24 PROF. JOYNER: Right. No. It has

1 brought in significant changes to the Constitution
2 of--of North Carolina, that has not--

3 REP. STAM: But on that item it didn't
4 change. There wasn't an expressed grant before,
5 there wasn't an expressed grant afterwards--is my
6 question. And--

7 PROF. JOYNER: Well, before--

8 REP. STAM: --I guess the answer is you
9 don't know.

10 PROF. JOYNER: Yeah, I--I don't know.
11 I've not seen that.

12 THE CHAIR: All right. Other questions,
13 members of the Committee? Representative Wiley?
14 I'm sorry.

15 THE CHAIR: All right. For now, thank
16 you, Professor Joyner. We may--may have some more
17 after Mr. Hart--or--is it Mr. Hart or Mr. Peters
18 going to argue? Mr. Hart.

19 MR. HART: Good morning, Mr. Chairman and
20 members of the Committee.

21 THE CHAIR: Good morning.

22 MR. HART: Mr. Joyner and I have a
23 fundamental difference of opinion on the law of
24 what the General Assembly has the authority to do

regarding anything in the State of North Carolina. Mr. Joyner believes that just like the United States Constitution, the North Carolina Constitution is a grant of authority to this body, the General Assembly, and without a specific grant of authority of the Constitution, that this body has no authority to act. That is not the law.

The law, as interpreted by the North Carolina Supreme Court, has specifically stated that the Constitution of North Carolina is a limitation of authority of the General Assembly, not a grant of authority of--and it is unlike the U.S. Constitution.

The United States is made up of fifty states. In order to provide for that joinder of states, the states wanted to have states' rights. They wanted certain rights left to the states, and they were willing to grant certain authority to the United States government. So the United States Constitution is a specific grant of authority to the Congress. And without a specific grant in the Constitution, Congress is limited and cannot pass statutes that affect the people of the United States.

specific provision.

That is the same kind of authority that this body has. It has the authority of the people to do what is necessary to conduct the business of the people. There is no limitation in the North Carolina Constitution. Article I, Section 2 of the North Carolina Constitution says, "All political power vested in and derived from the people is granted to the General Assembly."

Article II, Section 20 provides the General Assembly has the authority to judge the qualifications of its members. Now, there's been an argument in the Respondent's brief that that is limited to simply what qualifications are necessary to file for and to be elected as a member of the legislature. Unfortunately, that argument does not account for Article VI, Section 8 of the North Carolina Constitution, which adds an additional disqualification as a member--as a public official.

Article VI, Section 8 provides that any public official, any elected official can be disqualified from office based on certain grounds, and amongst those are in a judgment of being guilty of a criminal offense. But the North Carolina

However, the General Assembly of North Carolina, just like any other state in the union, has the authority of the people to do the people's business. Again, the North Carolina Supreme Court has said this in countless cases over the last hundred years. You have the authority to do what is--whatever is necessary to conduct the business of the people of the State of North Carolina, and the only limitation you have is if there is a specific provision in the Constitution that prohibits it, or unless this body, the General Assembly, has passed a specific statute limiting it. That is necessary.

In the same way, the courts have been held to have inherent authority to do the business of the courts. The courts, by Constitution of North Carolina, have been granted certain authority, but the U.S.--the North Carolina Supreme Court and the North Carolina Court of Appeals have both said over the years in countless cases that the courts have inherent authority to conduct the business of the courts and to enforce its judgments. And so it does have limited authority to do certain things, even if there is not a

Supreme Court has said that that is not to be interpreted strictly, that there are times when a public official can be adjudicated as having been involved in inappropriate conduct that does not amount to necessarily a criminal offense and can be disqualified from public office.

In the case of *In Re: Peoples* that is noted in the Special Counsel's brief, the North Carolina Supreme Court, in deciding the case of a superior court judge, found that the due-process provisions of the Judicial Standards Commission and recommendation to the North Carolina Supreme Court that a judge had engaged in willful misconduct, and the finding by the North Carolina Supreme Court that those findings were appropriate and that that punishment was appropriate, that that expulsion fit within Article VI, Section 8 of the North Carolina Constitution. We argue to you that in the same way this body, with its inherent authority to do the people's business, can make similar adjudications of misconduct of its members.

I've noted that there's no limitation in the Constitution. I would also argue to you that there is no limitation by statute.

1 In Respondent's brief, there are a number
2 of arguments raised about limitations provided by
3 the Legislative Ethics Act, the creation of the
4 Legislative Ethics Committee. I would argue to you
5 that that passage of the Legislative Ethics Act and
6 the creation of the Legislative Ethics Committee
7 did not in any way limit the authority of the House
8 of Representatives or the Senate to discipline or
9 expel its members. And I specifically point you to
10 Statute 120-103.1, Subsection M, by which in the
11 Legislative Ethics Act this body, the General
12 Assembly, specifically stated that it was--the
13 Legislative Ethics Act was not intended to limit
14 the authority of the General Assembly to discipline
15 or expel its members.

16 One of the arguments that Mr. Joyner made
17 regarding the constitutions of the United States
18 and the Constitution of other states was that there
19 are specific provisions both in the constitutions
20 and in statutes that no member of the legislature
21 could be removed without a two-thirds majority
22 vote. And I would argue to you that those are
23 limitations, and that if--if the General Assembly
24 chose to, it could pass a limitation that this body

1 conduct of legislators and methods by which the
2 General Assembly may discipline or expel its
3 members. And we have not been able to find any
4 provision in any Constitution that--that we have
5 been able to locate. We have--we have not
6 exhausted our--our research, but at least at this
7 point we have not found that previous constitutions
8 did have that authority in--in any way specifically
9 laid out as opposed to our current Constitution.

10 In pursuit of the inherent authority that
11 the General Assembly has, it also has the ability
12 to delegate investigation and fact-finding to a
13 committee. And there are specific statutory
14 provisions in G.S. 120-14, G.S. 120-19.1, and
15 those--those have been cited in *State v. Curtis*,
16 which is on Page 4 of the State's brief--and that
17 is that a committee which is specifically delegated
18 authority to find facts and to make
19 recommendations--that that is within the power of
20 the General Assembly or either of its houses.

21 And that's what this committee's role is.
22 It has been designated to simply investigate, to
23 make findings, and to make a recommendation to the
24 House. That is within the authority of the

1 could not discipline or expel a member without a
2 two-thirds majority vote. That would be a
3 limitation. That would--is not a grant of
4 authority.

5 Also, Mr. Joyner cited to specific
6 statutes and specific provisions in constitutions
7 of other states that involve certain conduct as
8 being inappropriate and subject to discipline or
9 expulsion. Again, I would argue to you that those
10 are limitations, not grants, of authority. Similar
11 to North Carolina, every state has the inherent
12 authority to discipline its members.

13 In fact, the General Assembly, as noted
14 in a question by Representative Stam, and as
15 you've, Members of Committee, heard on January 9th
16 with a presentation by staff--heard that the
17 General Assembly, and the House in particular, has
18 chosen to discipline or expel numerous members in
19 its history.

20 Mr. Peters and I have tried to, to the
21 best that we have been able to so far, determine
22 whether there was any provision in any
23 constitutions that North Carolina has ever had that
24 in any way did any more to provide specifically for

1 statutes and the House rules, and it is within the
2 authority of the House to so delegate to the
3 Committee in pursuit of its authority to discipline
4 or expel its members.

5 Again, I'd like to specifically point out
6 that the General Assembly specifically, in passing
7 the Legislative Ethics Act, retained its inherent
8 authority to discipline or expel its members by
9 specifically including the provision in
10 G.S. 120-103.1, Subsection M.

11 THE CHAIR: Anything further, Mr. Hart?

12 MR. HART: Just a couple--just a couple
13 points--

14 THE CHAIR: Certainly.

15 MR. HART: --Mr. Chair.

16 I listened carefully to Mr. Joyner's
17 argument, and at several points in his argument he
18 seemed to tell you that this legislature has never
19 taken the opportunity to enact a statute to cover a
20 situation like this. He spoke about the provisions
21 of the Legislative Ethic--Ethics Act, which
22 authorized certain actions that can be taken by the
23 legislature, by the General Assembly. And he
24 seemed to concede that the General Assembly had the

1 authority to do that. That counters his argument
2 that there is no inherent authority of the General
3 Assembly to take this kind of action. If it has no
4 authority, then it can't delegate to itself by
5 statute the authority to take action.

6 If Mr. Joyner is correct that the General
7 Assembly has no authority to discipline or expel
8 its members, then the Legislative Ethics Act is
9 unconstitutional, and that's just not the case.
10 Again, there--there is an inherent authority that's
11 been recognized for hundreds of years for state
12 legislatures to discipline or expel its members.

13 THE CHAIR: Questions for Mr. Hart from
14 any member of the Committee? Representative Stam.

15 REP. STAM: I--I would say the--the
16 interesting question is whether that inherent
17 authority is in the Assembly, or is it in the
18 individual houses? And I wonder if you've come
19 across any authority from other states that say
20 that it has to be--that it has to be the Assembly
21 as a whole rather than the individual houses. I
22 would think the common law would be to allow any
23 body to discipline its own members, but I don't
24 know.

1 PROF. JOYNER: In--in response to--in
2 response to what Mr. Hart has--has said, let me see
3 if I can't frame this a little differently.

4 My argument and my reading of the law is
5 not that this General Assembly is without the power
6 to enact legislation that will allow for a
7 legislator to be disciplined or expelled. That's
8 not the position that I took, and it's not what I
9 said. What I said was that this General Assembly
10 had not done it. And because it has not enacted a
11 law, like the Judicial Standards Commission,
12 similar to the laws allowing for the removal of a
13 district attorney from his or her position--that's
14 a grant of authority. The General Assembly can do
15 that. The General Assembly has the power to do
16 that. And in those instances, the General Assembly
17 did, in fact, do that. And in those instances, the
18 Court upheld the exclusion of members from the
19 judiciary and from the district attorney based on
20 those acts.

21 And that is what is called doing the
22 people's business, because the General Assembly is
23 a legislative body, and it convenes for the purpose
24 of enacting legislation. And in enacting

1 MR. HART: And it--I--I want to be
2 careful, because it's been a few weeks since I read
3 the two cases that I cited. But I believe that the
4 actions that were taken in the *French* case and the
5 *Hiss versus Bartlett* case involved specific houses
6 of the general assembly of--of those states. And
7 I--and I believe that the same argument would hold
8 for the entire body as it would for a specific
9 house. As--as--as you say, Representative Stam, it
10 would seem that--and the courts have held that--
11 that any particular body seems to have the inherent
12 authority to discipline or expel its members.

13 REP. STAM: Well, if I could--one
14 follow-up: Certainly in North Carolina the custom
15 is for one house to do it. We know that. I was
16 just wondering if you had found anything in the
17 writings around the country that made that
18 distinction.

19 MR. HART: I have not found that
20 distinction.

21 THE CHAIR: Other questions by any member
22 of the Committee? Thank you, Mr. Hart.

23 And rebuttal from Mr. Joyner--Professor
24 Joyner, and then any final questions.

1 legislation, they speak for the people. And in
2 those instances, it spoke. And it is from those
3 enactments that the inherent power of those bodies
4 to act as they did was created.

5 Now, let me just go to the *Spivey* case.
6 And this is the North Carolina Supreme Court in the
7 case of Jerry Spivey. The Court said--and this is
8 also in response to Representative Stam's
9 question--the 1868 Constitution was unusual among
10 the states because it did not list either the
11 officers subject to impeachment or the proper
12 grounds for impeachment. That's what it said.
13 North Carolina was unusual. It was unusual with
14 respect to the removal of district attorneys from
15 office, and it's unusual with respect to the
16 removal of or in discipline of state legislators
17 from office.

18 I've already outlined for you--and
19 there's no dispute about it--that the provisions
20 are different in other states.

21 Then our Supreme Court went on to say
22 prior to our Constitution of 1868, however, no such
23 omissions were found in our state Constitution,
24 Representative Stam. The omission dates from the

1 1868 Constitution--"the omissions date from." This
2 inability to remove dates back to 1868.

3 Our Supreme Court said the 1835
4 Constitution, which in this respect simply
5 elaborated the original language, listed both the
6 offices subject to impeachment--governor, supreme
7 court justice--supreme court justices, superior
8 court justice--judges, and all other officers of
9 this state--and the grounds were willful violation
10 of the Constitution, maladministration, and
11 corruption.

12 Now, our Supreme Court recognized that
13 the 1835 Constitution did allow for the General
14 Assembly to impeach or remove officers as listed in
15 the Constitution from office. It says it right
16 here, and it--and--and I'm reading it. I'm not
17 making this up. But they recognized that the 1868
18 Constitution was deficient in that regard and did
19 not give or provide the same authorization.

20 And that's why in *Spivey* the Court said
21 "notwithstanding this omission," because the
22 General Assembly has now enacted a statute which
23 provides for the removal of a district attorney,
24 then that speaks for the people, and the General

1 Assembly had the inherent power to enact that
2 legislation calling for that removal or providing
3 for that removal, as long as those acts were
4 consistent with due process. Now, that--now,
5 that's what--that's what the case said.

6 So in 1868 the deficiency was created,
7 and that deficiency in the power of this
8 legislature to act continues. It continues not
9 because it's not in the Constitution, but because
10 this body has never enacted a statute which allows
11 this body to discipline its members. Now, that's
12 probably on purpose. It's probably not an
13 oversight. I mean, it's probably not an oversight,
14 because people want to protect their power.

15 They made--took pains to provide for the
16 removal of judges. They took pains to provide for
17 the removal of district attorneys. Don't you think
18 that if they took powers--pains to provide for the
19 removal of those elected officials, that the
20 decision not to include legislators in that was on
21 purpose, it was not an oversight? But our Supreme
22 Court recognized that that's what happened in--in
23 *Spivey*.

24 Now, in addition to that, Mr. Hart was

1 talking about, you know, this--this discon--
2 disconnect between the federal Constitution and
3 what the federal Constitution mandates and what the
4 state Constitution mandates, and tries to prick up
5 this states' rights argument. Our Constitution is
6 also unique in the sense that it says, "Every
7 citizen of this state"--

8 THE CHAIR: What provision are you
9 looking at? I'm sorry.

10 PROF. JOYNER: Article I, Section 5.

11 THE CHAIR: Thank you.

12 PROF. JOYNER: Article I, Section 5:
13 "Every citizen of this state owes paramount
14 allegiance to the Constitution and government of
15 the United States," not paramount allegiance to the
16 Constitution of North Carolina, but paramount
17 allegiance to the Constitution and government of
18 the United States, "and no law or ordinance of the
19 state in contravention or subversion thereof can
20 have any binding force."

21 I didn't write this. I didn't write
22 this. I didn't write this. These were people in
23 1868 who said that. And that would certainly belie
24 this notion of this supreme states' rights argument

1 that the Attorney General's office is making at--at
2 this point.

3 In *In Re: Peoples*--and I've--I've read
4 that case several times, forty-one-page opinion.
5 And what the Court said in *In Re: Peoples* is no
6 different than what the Court said in *Spivey*, in
7 that this General Assembly created a Judicial
8 Standards Commission to look at the conduct of
9 judges, and in looking at the conduct of judges,
10 when they find willful misconduct, it need not
11 constitute a crime, but that body, based on what
12 the General Assembly has provided to them, has the
13 authority to remove that person from office. And
14 that is all that happened in *In Re: Peoples*. And
15 it happened in *In Re: Peoples* because the first
16 step of that process was that this body, the
17 General Assembly, passed a statute which authorized
18 that to happen.

19 And the argument that I'm making to you,
20 which is supported by the law, is that in the
21 absence of that statute, in the absence of this
22 body taking some positive and affirmative action to
23 give to itself that grant of power, that grant of
24 power does not exist so that it can be used willy-

nilly from legislative session to legislative session. It doesn't happen that way. Due process--due process and fundamental fairness would argue against that.

And that's the position that we're taking, and not that this body does not have the authority to enact legislation, but in the absence of this body actually enacting legislation, then it doesn't have the authority that it now claims to have.

THE CHAIR: Thank you, Professor. Any final comments, Mr. Hart? All right. Any final questions from any Committee member for counsel? If not, the Chair will rule.

The specifics--rules that we operate under require me to enter into the record my ruling in as much detail as I can so that the Committee can then determine whether they want to proceed on that basis. I'm going to ask the Committee for a little leeway in that I'm issuing oral rulings. I will follow up with confirmatory written rulings that won't change the tenor of my ruling but may change a line or--grammatically or citation to--to apply. So I will do my best to give you the full

power can only flow from an expressed power, and that since there is no expressed grant of such authority in the North Carolina Constitution or exercised by the General Assembly, no inherent authority can exist; in the absence of legislation, this Committee is without authority to do so.

Number 3 [sic]. Committee counsel argues instead that the North Carolina Constitution is, unlike the United States Constitution, a limitation on the General Assembly's authority, not a grant of that authority, and that no specific Constitutional power must exist to allow the General Assembly to exercise inherent powers necessary and proper to proceed under the Constitution or statutes of the state. Specifically, Mr. Hart also argues that there is no specific Constitutional provision limiting nor is there any statute limiting jurisdiction in the case today.

Number 5. For background, since we are dealing with inherent-authority issues, background of how we came to this position through the practice of Parliament, the practice of the common law, the practice of this state previously must be reviewed.

breadth of what I intend to rule so that you can move on that.

All right. Number 1. This matter is before the Chair and the Committee on motion from Representative Wright to dismiss all counts pending before the House Select Committee generally for lack of jurisdiction. The issue has been expertly briefed by both sides and argued orally today. This motion is now ripe for disposition.

Number 2. The issue is whether the House Committee has jurisdiction to proceed to consider disciplinary action against Representative Wright on the counts that are pending before the Committee.

Number 3. Representative Wright's argument is essentially that no Constitutional provision exists to allow the General Assembly to discipline or expel a member from this body, nor has the legislature passed any statute allowing such action. Thus, there is no inherent power of the General Assembly available and no explicit or statutory or Constitutional authority available to proceed and provide a basis for jurisdiction to act today. Further, Counsel argues that an inherent

The House of Commons and English Parliamentary practice had the exclusive right to control its own proceedings, including the power to discipline its members. Criminal conduct and noncriminal conduct warranted expulsion. Members were expelled when they had been convicted of a crime or when their actions were viewed as criminal by the House, and specifically in the areas of corruption in office or bribery. Take a look at-- or see the case of John Trevor in 1621, the case of Edward Lord Howard in 1632, the case of Robert Walpole in 1712, the case of Thomas Vernon in 1721.

In addition, members were expelled for conduct which was essentially private in nature and which merely reflected upon the member's character as a whole, including private torts and fraudulent business practices. Again, take a look at the case of John Lord Barrington in 1723, the case of John Driffo [phonetic] in 1642 as examples.

In sum, the scope of Parliament's power to expel its members was not confined by statute or rule, and the practice strongly suggests that Parliament recognized no substantive limit on that power.

1 The--next number. The practice in the
2 colonial legislatures assumed as broad a discretion
3 to expel members as had the English Parliament.
4 The colonial assemblies expelled for whatever they
5 considered misconduct of sufficiently grave
6 proportions, including at least one hundred persons
7 who were expelled from assemblies in the
8 Continental colonies. As was true in England, the
9 basis of expulsion was not defined by statute or
10 rule, and in practice, the grounds for expulsion
11 ranged from crime to religious preference. Thus,
12 colonial legislatures adopted unquestionably the
13 Parliamentary view of the power to expel as a
14 matter within the absolute discretion of the
15 legislative body, without scrupulous regard to
16 freedom of opinion, I might add.
17 Next number. The colonial legislatures
18 also exercised the power to expel members even
19 though the power was not enumerated in their
20 charters. For example, the charters of
21 Massachusetts and Virginia contain no reference to
22 the power to expel, yet the legislatures of those
23 colonies freely and repeatedly expelled offending
24 members.

1 state senator who was facing disciplinary
2 proceedings in the state applied for a writ of
3 prohibition seeking to order the senate to refrain
4 from holding any hearings and disciplining the
5 senator regarding alleged sexual misconduct with a
6 senate page. The Supreme Court of South Dakota
7 declared consistent with the exact argument made by
8 Mr. Hart and Mr. Peters today, and I quote as
9 follows: "The South Dakota Constitution, unlike
10 the Constitution of the United States, does not
11 constitute a grant of a legislative power.
12 Instead, our Constitution is but a limitation upon
13 the legislative power, and the legislature may
14 exercise that power in any manner not expressly or
15 inferentially proscribed by the federal or state
16 Constitutions. Thus, accept as limited by the
17 state or federal Constitutions, the legislative
18 power of the state legislature is unlimited. What
19 the representatives of the people have not been
20 forbidden to do by the organic law, they may do."
21 And in that case, the Supreme Court held
22 that the trial court had no jurisdiction to halt
23 the legislative disciplinary process nor any
24 authority to preclude disclosure of that process.

1 Next number. When it came to the
2 Congress, Congress has also held, under the United
3 States Constitution, that criminal conduct that has
4 not yet led to conviction does not preclude
5 expulsion or disciplinary action. Congress has
6 assumed that the power to expel is not limited to
7 punishing misconduct in office, and Congress has
8 proceeded, as well, in a number of instances to
9 discipline and censure members under the United
10 States Constitution and under its statutory powers.
11 Next number. The practice in other
12 states includes states that do not have a provision
13 providing for disciplinary action for their members
14 and do not have a two-thirds voting provision, and
15 yet those states have, in fact, enacted discipline
16 on their members, including, most recently, censure
17 in Hawaii in 1989 of a member, and in 1983, the
18 resignation of a member in the state of New York
19 following committee recommendations for
20 disciplinary proceedings.
21 Furthermore, in the most recent case
22 available, the case of *Gray versus Gienapp*--
23 G-I-E-N-A-P-P--at 727 Northwest Second 808 from
24 South Dakota Supreme Court, January 18, 2007--a

1 Next number. In North Carolina, there
2 have been a number of members expelled from the
3 House and the Senate. They are listed in the brief
4 of Mr. Hart: James Carter in 1757; Francis Brown
5 in 1758; Hermon Husband in 1770; William Gilbert in
6 1779; Edward Clay in 1784; Henry Montfort in 1786;
7 John Bonds in 1787; John Roberts in 1816; Robert
8 Porter in 1835; and importantly, following the 1868
9 Constitutional change, J. William Thorne in 1875,
10 and a censure that occurred followed by expulsion
11 of Josiah Turner in 1880, both of those cases
12 following the 1868 Constitution.
13 Most recently, this body has determined
14 it had the capacity and jurisdiction to proceed to
15 discipline a member in 1996 when it censured
16 Representative Ken Miller.
17 Thus, North Carolina practice makes clear
18 that the North Carolina legislature has always
19 considered, under any of the Constitutional
20 enactments that we have, that the power exists for
21 the House and the Senate to discipline its members.
22 Furthermore, the legislature understood
23 that in passing the Legislative Ethics Act, and
24 specifically reserved in North Carolina General

Statute 120-104(m), "any action or lack of action by the Committee"--meaning the LEC--"under this Section shall not limit the right of each house of the General Assembly to discipline or expel its members." Clearly the legislature understood when it passed this bill in 2006 that the right to discipline or expel its members was part of the process that existed under the law of the State of North Carolina.

Finally, it is my conclusion as a result of that information and those cases that the North Carolina courts have held that an inherent power exists for the legislature to do all things that are reasonably necessary for the proper administration of justice, and legislative bodies have the implied and inherent authority under that to investigate and discipline their members, similarly to the holdings in California and in Massachusetts.

Accordingly, I find that the North Carolina House of Representatives has the inherent authority to investigate and discipline, including the right to expel, one of its members. That authority has not been limited by the Constitution

of the State of North Carolina nor by any state statute. The motion, therefore, is denied.

Professor Joyner, exception to my ruling is noted. And now I turn to the members of the Committee. Does any member of the Committee seek to overrule the motion and decision of the Chair?

REP. STAM: Not--

THE CHAIR: Representative Stam.

REP. STAM: Not for that purpose, but if I could just say why I don't--

THE CHAIR: That'd be fine.

REP. STAM: Since we last referred to the Constitution of 1835 or 1776, staff has gotten a copy of it, and I can't find in a quick read where there's any expressed power to either House or Senate to exclude members. And since a dozen of our precedences [phonetic] occurred during those Constitutions, it must not be required.

THE CHAIR: All right. We've been at it for an hour and a half, and although we've only handled one motion, it was an important motion. So I am going to suggest that we give the court reporter and the rest of us a ten-minute break, and we will reconvene in ten minutes. Thank you all

very much.

(FIFTEEN-MINUTE RECESS)

THE CHAIR: Representative Warren is back, and we'll--we'll head to our next motion in a moment. I want to add two findings to the ruling of the Chair, just to add in. The first is that the House has the capacity under House Rule--or House has the capacity to create its own rules of procedure. House Rule 26 specifically allows that the Speaker shall have the exclusive right and authority to establish select committees.

The second finding is that Luther Cushing, who is one of the preeminent commentators on the law and practice of legislative assemblies, specifically states that the power to expel a member is, quote, "naturally and even necessarily incidental to all aggregate and especially all legislative bodies, which without such power could not exist honorably and fulfill the object of their creation."

Those two additions are made. Does that cause any member of the Committee to have any

concern? Seeing none--and again the exception to the additions is noted. All right.

We're moving to the second motion. This is a motion to dismiss Count 1. I think I'm right. Is that how we've got it, motion to dismiss Count 1 as not alleging criminal or unethical conduct?

UNKNOWN SPEAKER: No.

THE CHAIR: No, that's not right. Sorry. I got a wrong sheet.

The second motion is the motion to dismiss all counts on statute-of-limitations grounds and in violation of N.C.G.S. 120-102(a)(7). Mr. Harris or Professor Joyner? Dr. Joyner. Okay.

PROF. JOYNER: Mr. Chairman, it seems to me that if we--if this Committee is not proceeding under General Statute 120 exec [phonetic] those provisions relating to the Legislative Ethics Committee, that an argument dealing with those is not proper--dealing with those provisions would not be appropriate before this Committee.

THE CHAIR: All right. Do--do you just withdraw the part of the argument on the statutory ground--

PROF. JOYNER: Well, I with--withdraw the

1 portion dealing with anything referring to the
2 Legislative Ethics Committee.
3 THE CHAIR: I understand. All right.
4 That is withdrawn, and we'll--
5 PROF. JOYNER: And--and without--
6 THE CHAIR: --go forward with the motion
7 to dismiss on statute-of-limitations grounds
8 generally. Thank you.
9 PROF. JOYNER: This motion is supported
10 mainly--and I use as--I guess our predicate cases
11 for that is the *Adam Clayton Powell versus*
12 *McCormack*, U.S. Supreme Court case--and that's
13 cited in our memorandum to you--and *Julian Bond*
14 *versus Sloppy Floyd*, U.S. Supreme Court case, in
15 the one instance, the U.S. Supreme Court case with
16 Adam Clayton Powell dealing with exclusion from
17 Congress, and *Julian Bond versus Sloppy Floyd*
18 dealing with the exclusion from a state legislature
19 and the applicability of the federal Constitution
20 to those actions. And in both of those actions, in
21 both of those cases, one in 1966, the other in
22 1969, we look at this notion of how far back can
23 the alleged action be considered by the Committee.
24 THE CHAIR: I'm--Dr. Joyner, I just want

1 PROF. JOYNER: It's--it's essentially the
2 same argument.
3 THE CHAIR: All right. Let me ask--
4 Mr. Hart, any objection, Mr. Peters, to doing that?
5 MR. HART: No, sir.
6 THE CHAIR: All right. Let's go ahead
7 and do that. So we're really hearing Motions 2, 3,
8 and 11 consolidated. All right. I'm sorry. Go
9 ahead.
10 PROF. JOYNER: All right. In--in the
11 *Bond* and *Powell* cases, the U.S. Supreme Court
12 talked about the ability of those legislative
13 bodies to go back and to look at conduct from prior
14 sessions. And legislative sessions are a little
15 different than most other administrative
16 proceedings. Every legislation--every legislative
17 session has a beginning and an end. And that end,
18 in North Carolina, covers a two-year frame, each
19 legislative session. So you start out at the
20 beginning of the session. At the end of the
21 session, actions taken by the body during that time
22 are dead. That's the end of it. They--they reach
23 a conclusion.
24 We have in our laws citizens who vote

1 to interrupt you so I'm clear, because we've got
2 listed--and that was unclear in the response, so I
3 wanted to be--when I set this, I wanted to be sure.
4 But Number 11, the motion which you specifically
5 had later in your response, was to dismiss the
6 counts on grounds that the legislature is not
7 empowered to investigate, prosecute, or discipline
8 conduct committed in past legislative sessions. So
9 is this--are we--is this the same argument, or is
10 there an independent SOL argument that we need to
11 deal with?
12 PROF. JOYNER: No. No, I think all of
13 them, each of those, if you look at 2, 3, and 11,
14 they're essentially the same thing, whether this
15 body, this General Assembly, whenever it meets can
16 go back and consider conduct which allegedly
17 occurred in past legislative sessions.
18 THE CHAIR: So would it be your
19 preference to consolidate for argument Motions 2,
20 3, and 11?
21 PROF. JOYNER: If that's what you want to
22 do, Mr. Chair--
23 THE CHAIR: Well, if it's the same
24 argument, I'm inclined to do that.

1 every two years to create a new legislative body,
2 and that new legislative body comes in fresh to
3 deal with new matters which accrue or are presented
4 to that body at that time.
5 In this situation, the claims raised
6 against Representative Wright goes back as far as
7 five--four or five legislative session--sessions
8 ago. We're talking about conduct which is alleged
9 to have occurred from 2000 to 2006. None of the
10 claims deal with conduct which is alleged to have
11 occurred during this legislative session.
12 Assuming that a court upholds your
13 finding about being able to go forward, we question
14 whether this Committee can now, consistent with the
15 constitutions--and that question has not been one
16 that's been raised in North Carolina, so there are
17 no North Carolina cases on this point, although all
18 of the actions against the legislators that
19 Representative Stam identified occurred during
20 session and not during past sessions.
21 It's a dangerous precedent that's being
22 established for a future legislative body to look
23 back on conduct that occurred or allegedly occurred
24 in past sessions, in this instance, past sessions

where some of the alleged conduct was perfectly proper during that time, but has recently been deemed to be improper.

Under this new Legislative Ethics Act that's been created last session, conduct--and I--and let's say specifically campaign contributions. I'll just use that as an example. There are things that you can do with campaign contributions--that you can't do with campaign contributions now as a result of the new law that was passed that you could do with campaign contributions in prior sessions, because those acts were perfectly legal. Although some people may not agree with them, they were perfectly legal within the North Carolina system. And some of the other allegations follow the same vein.

So we question whether this Committee or the legislature has the power to go back and make now unethical and/or criminal conduct which was not deemed to be unethical or criminal during the time that it is alleged to have occurred. And we think that to do so is in violation of the U.S. Supreme Court decisions in both *Adam Clayton Powell* and--and *Julian Bond*.

unreasonable delay in taking action. And if--if the Committee goes back and looks at the history of how this was dealt with, the Board of Elections had a hearing on May 15th of 2007. Out of the hearing came information that was--became--that the--that was referred to the Legislative Ethics Committee. Staff did an analysis and presented on June 6th, 2007, a memo to the Chairs of the Legislative Ethics Committee.

Senator Clodfelter made a request to the Attorney General to have Special Counsel appointed on June 7th. The SBI began conducting an investigation pursuant to the request of the district attorney of the 10th Prosecutorial District, and this--the Legislative Ethics Committee, unfortunately, had to wait during that time period until that was--that was done.

However, there were three meetings, September 11th, October 4th, and December 18th, if--I believe I'm correct, where the Legislative Ethics Committee did try to deal with these matters and--and track the progress of the SBI investigation and the efforts of Special Counsel and staff. And finally, on December 18th, there

And I'm going to stop right there, because I know that much of this has already been determined. But we'll make that--those comments for--for the record and let Mr. Hart make his argument.

THE CHAIR: All right. We may have questions, but we'll go ahead--are there questions from the Committee, any Committee members? I will have some when we finish, but I want to hear Mr. Hart--let me hear--let's hear Mr. Hart first, and then we'll go ahead. Mr. Hart?

MR. HART: Thank you, Mr. Chairman. First of all, the--Motion Number 2 deals with the statute of limitations, and that's exactly what it--it says, and that is a statute of limitations. There is no statute or Constitutional provision or House rule that limits the inquiry of this Committee or the inquiry of--of the House into the conduct of Representative Wright. The--the argument before--this Committee has the inherent authority to investigate and determine the conduct of Representative Wright, and there is no statute limiting that authority.

As far as laches, that really deals with

was a referral to the House, and on January 9th this Committee met and--and investigated and made certain determinations of probable cause.

I think it's clear from that timetable that once the General Assembly became aware of the allegations of unethical and improper and criminal conduct by Representative Wright, it took all reasonable action it could take in as--in a reasonable manner of time. Although there was some delay, I think that was necessary delay, and I certainly see no basis for a finding that there was unreasonable delay in the action that either this Committee or the Legislative Ethics Committee took. And so I don't believe there could be any finding of--of laches.

As far as the *Powell* case that Mr. Joyner discusses, *Powell* was a U.S. Supreme Court case that dealt with provisions of the U.S. Constitution, statutes that had been passed by Congress, and Congressional rules. Ultimately, that case dealt with the fact that Mr. *Powell* was excluded as a member of Congress, and there was a specific finding by the Court--by the Supreme Court in *Powell* that he was not expelled from the

1 Congress. So the discussion of expulsion was
2 actually dicta in that case. And even so, what it
3 dealt with was interpretation of Constitutional
4 provisions--U.S. Constitutional provisions, U.S.
5 statutes, and rules of the Congress, not anything
6 to do with North Carolina law.

7 The actions by Representative Wright that
8 are alleged in the charges that have been brought
9 by this Committee involve unethical and improper
10 and criminal conduct, certainly conduct that is not
11 appropriate for a member of the House, if--if these
12 allegations are true. And certainly, this
13 Committee has the authority under the authority of
14 the House to make appropriate investigation and to
15 make appropriate recommendations regarding that
16 conduct, even if that conduct occurred prior to the
17 current session.

18 The conduct involved is the kind of
19 conduct that would make Representative Wright unfit
20 to continue to be a member of the House of
21 Representatives of North Carolina. And for that
22 reason, the arguments involving statute of
23 limitations and laches is simply not appropriate.

24 THE CHAIR: Questions of Mr. Hart?

1 Representative Stam.

2 REP. STAM: This applies to arguments of
3 laches and--and the other: How can a person who's
4 concealed his conduct claim laches?

5 MR. HART: I don't--I don't think he can.
6 I--again, I think this--the General Assembly and
7 all of its committees that have dealt with this
8 have acted in a perfectly reasonable and
9 appropriate way once the conduct was discovered.
10 It was only in May of last year that anybody became
11 aware that these allegations were out there, and I
12 think that since then all appropriate, deliberate
13 speed has been taken to--to deal with this.

14 THE CHAIR: Other questions by any
15 member? I just have--and not for you, Mr. Hart,
16 right now, but Professor Joyner, I do have a
17 question. And I--because I understand the
18 argument, and I--and I do worry about the political
19 ramifications of someone wanting to use this tool
20 to go back in time to oust a political opponent.
21 And I think that is a concern about how this is
22 done if it's to be done here, so I recognize the
23 problem.

24 But here's my--my question. Assume that

1 we don't find out about conduct--and I'm going to
2 change the type of conduct. But assume that the
3 conduct occurred two years ago. It's hidden
4 conduct. It simply becomes known through, let's
5 just say, an anonymous complaint two years later.
6 An investigation is done that verifies the conduct
7 occurred.

8 Is your claim that even with conduct that
9 was concealed, that the rule ought to be that if
10 you've gone through one election cycle, that that
11 obviates or--not obviates--eliminates the ability
12 of the current House or current Senate to do
13 anything about the prior conduct of which, with
14 reasonable diligence, it wouldn't have known but
15 has just become aware?

16 PROF. JOYNER: Well, first of all,
17 Mr. Chairman and Mr. Vice-chair, I'm going to
18 object to the conclusion that you both make and
19 articulate here that someone has concealed some
20 conduct. That goes to the heart of what these
21 hearings are all about. And if you've already
22 concluded that Representative Wright has concealed
23 his conduct, then why are we going through a
24 hearing to determine what the facts are if you've

1 already concluded what the facts are?

2 THE CHAIR: Dr. Joyner, I think that's
3 not a correct interpretation of my question.

4 PROF. JOYNER: Well--

5 THE CHAIR: My question didn't assume
6 anything. It was a hypothetical that said I'm
7 concerned about how we deal with an issue, and my
8 hypothetical was if someone concealed conduct that
9 just came about to be known by a House, is it your
10 view that that's the same circumstance as conduct,
11 for example, in Powell, which was known and the
12 voters still decided they wanted to re-elect Adam
13 Clayton Powell? And I'm trying to find for
14 precedential purposes where that dividing line is.

15 PROF. JOYNER: Well, I was responding to
16 the comments that you made and the question that
17 Representative Stam made previously. And they
18 seemed to follow the same view that--somehow that
19 Representative Wright had concealed, which implies
20 to me some deliberate action to hide. Now, when
21 you talk about the failure to discover, that's a
22 different issue, and that's a different point. But
23 when you start talking about somebody concealing
24 something, that raises a conclusion about a

person's actions. And notwithstanding your fact--that you raised the question in a hypothetical format, it leads us to the same place.

Now, in response to the--to the question, the *Adam Clayton Powell* case--and the Court discussed specifically whether the Congressional action taken by Congress at that time to exclude Adam Clayton Powell after he had been re-elected was an act based on the exclusion or the past conduct that was alleged to have occur--have occurred but not proven to have occurred in the immediately prior session of--of Congress. And the Court basically held that if we were looking back at that, then that would be outside of the scope of Congress' power at that point.

But a question as to Powell's qualifications and credentials to serve in the present or the session that was beginning at that point was an appropriate one for the general--for the Congress to make, but that he satisfied all of those prerequisites, and therefore the actions to exclude him was unconstitutional.

Now, there seems to be some argument here that North Carolina is so great that the

Constitution of the United States makes no difference and that decisions made by the U.S. Supreme Court have no meaning in--in North Carolina. I beg to differ, because I've read too many opinions which says--and our own Constitution says that the Supreme Court Constitution--or the U.S. Constitution and its interpretation are supreme, even here in--in North Carolina. So to that extent, the decision in *Powell* does have meaning to what you're seeking to do here in this action.

Now, in this case, we're not talking about last legislative session. We're talking about, in Count 1, March 2002. In Count 2, we're talking about April 2002. That is, according to my count, about six years ago. And in Count 3, we're talking about December 2003. And in Count 4, we're talking about 2004; Count 5, 2004; Count 6, 2001.

THE CHAIR: Dr. Joyner, does--under your argument, does it matter how far back? That is, isn't the argument that you're making that back even a session, let alone two, three, or four sessions, you reach the same conclusion?

PROF. JOYNER: That's correct. That is

correct. But I--my point is that here we're not simply talking about alleged conduct from the last legislative session; we're talking about now going back three and four legislative sessions to try to make conduct at that point--and some of the things here deal with matters that were perfectly legal in those past sessions but now have been deemed to be improper--

THE CHAIR: Well, let me ask--

PROF. JOYNER: --during this legislative session.

THE CHAIR: Let me ask this question: Do you believe that it was proper in 2000 through 2006 if this occurred--but obviously we're at a probable--post-probable-cause stage--but do you believe it was legal for a House member not to report substantial contributions made during those periods of time?

PROF. JOYNER: Well, that's--that's not the issue. I mean--

THE CHAIR: Well, I think it is an issue. I think you've just raised it.

PROF. JOYNER: No, that's an issue-- that's an issue for you. The--the issue is whether

this Committee, based on *Powell* and *Bond*, has the right to go back four or five different--I don't--I don't care what you decide.

THE CHAIR: Well--

PROF. JOYNER: What--what I'm saying is that the question is, do you have the authority to go back in past sessions, sessions that have ended, sessions that have concluded all of the business, and now dredge that past history up? It falls under a notion at least that I've heard about in the Constitution or in our laws called *ex post facto*.

THE CHAIR: I'm going to again ask the question. My question is, do you believe that the law of the state from 2000 to 2006 is different in the sense that it didn't require reporting contributions when received--has that fundamental premise changed from 2000 through 2006 to now?

PROF. JOYNER: I'm--I'm not prepared to answer that question.

THE CHAIR: All right. Well, let me ask a second question.

PROF. JOYNER: I'm prepared to answer-- answer questions dealing with the procedural

1 matters--
2 THE CHAIR: Well, I think it--
3 PROF. JOYNER: --and not drawing
4 judgments about--
5 THE CHAIR: I'm not drawing judgments,
6 Dr. Joyner.
7 PROF. JOYNER: [inaudible]
8 THE CHAIR: Dr. Joyner, I'm not drawing
9 judgments, but you've raised an issue, and I'm
10 going to ask the questions to try to get to my
11 understanding of the issue, because I think it
12 dramatically affects the issue. And that is, if
13 there was an obligation then to report, and if
14 there is an obligation now to report, do you
15 believe there is no continuing obligation to
16 correct mistakes from the past reports?
17 PROF. JOYNER: Let me--let me--let me
18 answer it this way, if I may.
19 THE CHAIR: Sure.
20 PROF. JOYNER: In the *Powell* case, the
21 U.S. Supreme Court looked at allegations that Adam
22 Clayton Powell had misappropriated funds, federal
23 funds, for travel, expenses, putting his wife on
24 salary, a number of other things, conduct which

1 The question I have, and what goes to the
2 heart here of why I think there's an argument about
3 *Powell*, is not that *Powell* may have no
4 applicability in a general sense; it's that on its
5 specific facts, *Powell* dealt with a case where the
6 public knew the prior misconduct but still voted
7 him in. There's no information that's before me,
8 at least, on this motion that the public knew of
9 any of the alleged prior misconduct before the 2006
10 election. And so we're not in the same situation
11 as *Powell*, are we?
12 PROF. JOYNER: We are. We are, because
13 the action taken by Congress was initially an
14 action to expel, not an action to exclude. And the
15 Court held that an action to exclude was improper.
16 And the only thing left was an action to exclude
17 [sic], because he had been re-elected. And on that
18 basis--and on that basis, they did--there was
19 no--there was nothing in the record that would
20 support the decision to exclude. But the action to
21 expel was the focus of the Congressional action.
22 Even though there was an action started or an
23 investigation started--because that's all that
24 happened, was an investigation began in the prior

1 most people would conclude would have been a
2 violation of the law. In its analysis of whether
3 they could go forward with an action to expel
4 Representative *Powell*--Congressman *Powell*, that was
5 not something that was at issue. Whether the
6 conduct occurred, whether it was legal or not was
7 irrelevant--
8 THE CHAIR: Was it known?
9 PROF. JOYNER: --to the Cons--to the
10 Supreme Court's analysis of whether Congress had
11 the power to go back and look at that.
12 THE CHAIR: Was the conduct--
13 PROF. JOYNER: And I would say that the
14 same thing applies in this case.
15 THE CHAIR: Was the conduct in *Adam*
16 *Clayton Powell*--prior to his re-election, it seems
17 to me, the conduct was clearly known. In fact,
18 there were pending proceedings in the prior session
19 with regard to that conduct. And then while those
20 proceedings were pending, the re-election occurred,
21 we moved to the new session, and instead of trying
22 to expel him, we now moved to an exclusion. But
23 the conduct that formed the basis of the exclusion
24 in *Powell* was known in the prior session.

1 session. It did not conclude. So when they had
2 the--the vote, it was to expel and not to exclude.
3 So to that extent, it applies in this case.
4 And in that analysis, my--my point was
5 simply that the U.S. Supreme Court didn't look at
6 whether he did or didn't commit these acts that he
7 was alleged to have committed, and this was from
8 the immediate prior session. I think that it is
9 certainly applicable to this situation, where what
10 we have now is going back three, four different
11 legislative sessions to bring up conduct that is
12 alleged to have been committed by--by
13 Representative Wright.
14 THE CHAIR: Do the Chair's questions
15 cause any questions from any Committee member?
16 Representative Stam.
17 REP. STAM: Let me try this hypothetical.
18 We had a--a former speaker who is in prison for
19 giving and accepting bribes. Now I'll give--that's
20 a fact. Hypothetically, suppose a news release was
21 given today by--this is pure hypothetical--that
22 Representative So-and-So had cooperated in that
23 investigation, they'd given him immunity, but he
24 had taken or received bribes. Is it your position

1 that that--I understand your position now is that
2 although we never knew about that, we could not
3 expel that member, although it was demonstrated
4 through transcripts before the grand jury that this
5 person had taken or received bribes. Is that your
6 position, really?
7 PROF. JOYNER: I mean, obviously, you
8 don't want that to be my position, the way--
9 REP. STAM: I just want--
10 PROF. JOYNER: --that you phrased the
11 question.
12 REP. STAM: --to know what your position
13 is.
14 PROF. JOYNER: My--my--my position is
15 that if it was conduct which occurred in a prior
16 session, then this session, which is a new session,
17 cannot look back at that conduct. And I think that
18 that is consistent with both the--with the Supreme
19 Court decisions in--in the *Adam Clayton Powell* case
20 and in the *Julian Bond* case. And that's--that's
21 the position that I take.
22 Now, whether it was--you know, when we
23 look at this notion of laches, in--in our--in our
24 laws today, there is an exception made for conduct

1 that was concealed as opposed to conduct that was
2 not discovered. You've both used the term
3 "concealed." You have regular record--reporting,
4 as far as I know, requirements for campaign
5 contributions. And the fact that something wasn't
6 discovered doesn't mean that it wasn't--that it was
7 concealed and that there was some intent to conceal
8 it. And laches has never drawn as an exception
9 this notion of late discovery of some conduct which
10 you allege to be improper.
11 THE CHAIR: All right.
12 PROF. JOYNER: Anything else?
13 THE CHAIR: No. Any further questions?
14 Any further comment by Mr. Hart or Mr. Peters? All
15 right. Give the Chair a minute to get his thoughts
16 together.
17 All right. This matter--Number 1. This
18 matter is before the Chair and the Committee on
19 three consolidated motions to dismiss all counts on
20 statute-of-limitations grounds, on grounds of
21 laches, and on grounds that the legislature is not
22 Constitutionally empowered to investigate,
23 prosecute, and discipline for conduct committed in
24 past legislative sessions, and therefore it

1 violates state law and federal and state
2 Constitutional provisions.
3 Number 2. The issue, thus, is whether
4 the counts before the Committee are barred on
5 either laches, statutes of limitations, or
6 Constitutional grounds, and would therefore deprive
7 us of any jurisdiction to proceed.
8 Number 3. The position of Representative
9 Wright is that if conduct was committed in a
10 previous session, this session of the legislature
11 may not look back to that conduct committed in
12 previous sessions and whether or not that is--
13 excuse me--let's stop there--strike that--and that
14 that position is grounded, says Representative
15 Wright, on the *Adam Clayton Powell* and *Julian Bond*
16 cases with Constitutional overtones, as well as on
17 general grounds of laches and a general premise
18 behind the statute-of-limitations defenses.
19 Number 4. The Committee's counsel's
20 position is that there is no statute of limitations
21 that has--exists in state or--Constitution or
22 statute that bars proceeding, that the doctrine of
23 laches is not available as an equitable doctrine in
24 this case, and that *Powell* is fully distinguishable

1 and does not bar or control these proceedings.
2 Number 5. I find that there is no
3 statute of limitations that has been argued under
4 the Constitution or state law by Representative
5 Wright in his brief or orally, and thus no statute
6 of limitations which is a creature directly of
7 statute exists that would prohibit this action.
8 Number 6. The doctrine of laches is an
9 affirmative defense in the civil law. It has been
10 pled in this case. It is the burden on the moving
11 party always to establish that laches exists.
12 Laches is simply a doctrine that would bar
13 proceeding as a result of unreasonable delay in
14 prosecuting a particular claim such that it
15 prejudices the defendant in the case.
16 In this matter--next number. Laches is a
17 doctrine based on equitable circumstances and
18 requires that the asserter of the doctrine come to
19 the doctrine with clean hands, next, that the
20 doctrine of laches also requires, for it to be
21 used, that the presenter of the doctrine show that
22 he is prejudiced either in the fact that witnesses
23 no longer exist, memories have faded, documents are
24 lost, or somehow he is unable to defend the claim

1 against him in order for the doctrine to be used.
2 Next number. In this case, there has
3 been no claim, let alone any evidentiary
4 presentation, of any prejudice to Representative
5 Wright under the doctrine of laches in terms of any
6 lost witness, lost document, expired witness, or
7 faded memory, and thus the doctrine is not
8 available.

9 In addition, at this point in the
10 proceedings, every institution that has reviewed
11 the facts such as they are of this case has made
12 the determination that there is probable cause to
13 believe that there have been crimes that include
14 fraudulent conduct at issue. That is not a proven
15 fact in this case, but it is where we are at the
16 motions hearing. For purposes of motions to
17 dismiss, the facts as asserted by the governing
18 body or the State are presumed to be true under the
19 law for jurisdictional and motions purposes. At
20 this point, since the charges include grounds of
21 fraud, they would bar as an equitable matter the
22 doctrine of laches proceeding, particularly where
23 there is no evidence of prejudice.

24 Finally--next number--the *Adam Clayton*

1 *Powell* case has been argued as a basis to proceed
2 to a holding that a future legislature may not look
3 back to a prior--to prior misconduct committed
4 before that legislative session. For a number of
5 reasons, I find the *Powell* case fully
6 distinguishable.

7 First, in *Powell*, *Adam Clayton Powell* had
8 been regularly elected as a congressman from New
9 York City's 18th Congressional District since 1945
10 and was destined to continue in his position as
11 Chairman of the House Committee on Education and
12 Labor. *Powell* completed his service to the 89th
13 session of Congress and was returning to be sworn
14 for the 90th session following his re-election.

15 During the 89th session, claims arose and
16 were presented in Congress that *Powell* had
17 inappropriately used Congressional funds for travel
18 and salary for his wife during that session. Based
19 upon that alleged conduct, an effort to prevent
20 *Powell* existed in the new session from being sworn
21 in to the 90th session. It is that issue of
22 exclusion that created the action in federal court
23 which ended up in the United States Supreme Court.

24 *Powell* is distinguishable first because

1 it dealt with and solely dealt with the issue of
2 exclusion of a member in a following session, not
3 expulsion of a member, which is at issue in this
4 case.

5 Second, the *Powell* case dealt with an
6 interpretation of the United States Constitutional
7 provisions with regard to Congress and the rules of
8 Congress, not an attempt to set for state
9 legislatures federal Constitutional principles as
10 to an interpretation of state law and state
11 constitutional provisions.

12 Third, the discussion in the *Powell* case
13 about the power of Congress to expel extending to
14 conduct during previous sessions was in the context
15 of interpretation of authority granted under the
16 United States House Rules and was fully dicta, with
17 the Court not having to determine that action since
18 the action was one of exclusion and not expulsion.

19 Next number. As a policy matter, it
20 seems to me that many of the claims alleged in the
21 counts are ones that have a continuing duty, a
22 continuing duty to report and a continuing duty to
23 correct erroneous reports. And thus the conduct,
24 to that extent, is a continuing misconduct if it is

1 found by clear and convincing evidence that there
2 has been an attempt to not report in a pattern-and-
3 practice manner of campaign violations.

4 Next number. The *Torlen Wade* count is
5 alleged to be a count where there was an active
6 attempt to conduct a transaction where there was an
7 understanding from the beginning that money being
8 sought was not legally available, that money being
9 sought was going to an organization that did not
10 have legal viability, for a purpose that it was not
11 intended to be used, and from an official who had
12 no authority to issue the letter.

13 Again, for purposes of motions, we must
14 assume for the motions that the allegations found
15 at probable cause are true. To that extent, those
16 allegations suggest, as do the campaign-law
17 violations, that this is conduct that without--that
18 was conduct that would constitute potential fraud
19 and is further conduct that, even with reasonable
20 diligence, would not have been known to the House
21 of Representatives.

22 Next point. In fact, this conduct was
23 not made public on any of the counts until after
24 re-election in 2006, and therefore, the first

1 action that could be taken has been taken in this
2 session of the House of Representatives.

3 In addition, the electorate in
4 Representative Wright's district have not had an
5 opportunity to determine how they viewed the
6 misconduct, and thus Powell is fully
7 distinguishable, because Adam Clayton Powell's
8 district knew of his misconduct and re-elected him.
9 Representative Wright is not in that same position
10 at this time, and thus Powell is distinguishable on
11 that basis, as well.

12 For these reasons, I'm going to deny the
13 motion to dismiss on grounds of statute of
14 limitations, on grounds of laches, and on grounds
15 the legislature is not Constitutionally empowered
16 to investigate, prosecute, and discipline for
17 conduct committed in past legislative sessions.

18 And I make this distinction, and will in
19 the written order: I agree with Representative
20 Wright's counsel that if conduct is known, not
21 concealed, and with reasonable diligence could have
22 been found and should have been found, that there
23 are potential Constitutional issues in a
24 legislature going back to that conduct.

1 But in a case where conduct is concealed,
2 not disclosed when the law requires full
3 disclosure, when that is the genesis of the crime
4 or the count, that in that case, the Constitution,
5 neither federal or state, would prohibit the
6 legislature from acting once it has made with
7 reasonable diligence its efforts to know and to
8 proceed promptly after that point.

9 Your exception to the rulings on all
10 three motions is noted. Do my rulings cause any
11 member of the Committee to seek to override the
12 ruling of the Chair?

13 Seeing none--all right. We are about, I
14 hope, close to halfway through the motions, and
15 everyone needs to get a little something to eat.
16 And I don't want our court reporter keeling over
17 over there. So we're going to take a lunch break,
18 but make it short, and we're going to be breaking
19 for half an hour. We'll be back, hopefully, to
20 finish the motions fairly quickly thereafter, but
21 as much time as needed, and then to--if counts
22 remain, to look at discovery issues.

23 We'll be back in a half an hour. Thank
24 you.

1
2 (LUNCH RECESS)
3 (1:30 P.M. - 2:09 P.M.)
4

5 THE CHAIR: All right. We are back in
6 session. Thank you all, and I hope everyone had at
7 least an opportunity to get something to eat.

8 That'll move us to the fourth motion,
9 motion to dismiss Count Number 1 as not alleging
10 criminal or unethical conduct. Dr. Joyner?
11 Mr. Harris? Dr. Joyner. Okay.

12 PROF. JOYNER: Mr. Chairman, I think that
13 in your prior rulings you've really kind of already
14 read that anyway.

15 THE CHAIR: All right. So there's no
16 independent basis to--to move, other than that
17 which you've already discussed?

18 PROF. JOYNER: No, no. Well--yeah.
19 Okay. Let me--

20 THE CHAIR: All right. We're on motion
21 to dismiss Count 1 as not alleging criminal or
22 unethical conduct. Okay.

23 PROF. JOYNER: Mr. Chairman, members of
24 the Committee, obviously, you've already found

1 probable cause on these, and now you sit as the
2 judge of our motions. But Count 1 deals with
3 obtaining a letter from Torlen Wade and--that was
4 allegedly supposed to be used to obtain a hundred-
5 and-fifty-thousand-dollar loan. And I'm not aware
6 of any law which says that obtaining a letter which
7 contains truthful or untruthful information is a
8 criminal violation or an ethical violation.

9 To the extent that Count 1 intersects
10 with Count 2, I would think that if there is--if
11 you have some evidence that a person has obtained a
12 letter and used it in a fraudulent matter, that
13 that might state a criminal violation, if believed.
14 But merely soliciting a letter is not a crime, at
15 least in anything I've seen in North Carolina law
16 or United States law, under the federal system.
17 And so we would move on that grounds to dismiss
18 Count 1 of--of this indictment.

19 I'm not dealing with the conclusory
20 matters in the--in the count, which obviously speak
21 to a finding of fact that you're supposed to make,
22 but now to the raw request or solicitation of a--of
23 a letter from Torlen Wade by Representative Wright.

24 THE CHAIR: Questions from any member of

1 the Committee for Dr. Joyner? Representative Stam.
2 REP. STAM: Well, yes, the motion is not
3 alleging criminal or unethical conduct. Could you
4 address--you've hypothetically convinced me it
5 doesn't allege criminal conduct. Are you saying
6 that it's ethical to solicit a letter from an
7 acting head of a department over whom--whose budget
8 you have jurisdiction on a committee, knowing
9 both--and this is what it alleges--"where both
10 Thomas E. Wright and Torlen L. Wade knew that
11 Thomas E. Wright would use the letter in seeking to
12 fraudulently obtain funding for Community Health
13 Foundation from other sources"? Is your contention
14 that that is also ethical?
15 PROF. JOYNER: Representative Stam,
16 you--you interjected facts and conclusions that's
17 not a part of Count 1.
18 REP. STAM: I--I was reading--
19 PROF. JOYNER: There--there--
20 REP. STAM: --straight from Count 1.
21 PROF. JOYNER: Well, there's nothing in
22 Count 1, unless I misread it, that said that--that
23 alleged that Representative Wright had budgetary
24 control over someone that they were soliciting a

1 Is--you--are you telling us that that is
2 not unethical?
3 PROF. JOYNER: No, I was saying, first of
4 all, that there is some overlap in the allegations
5 in Count 1 and Count 2. One (1) speaks to
6 obtaining a letter. The other parts of it is
7 really the same thing as in Count 2. The only
8 difference is--between Count 1 and Count 2 is that
9 this letter was used to obtain a--a loan for a
10 hundred and fifty thousand dollars (\$150,000).
11 And my position was that merely obtaining
12 a letter which contains truthful or untruthful info
13 is not a criminal violation nor an unethical
14 violation.
15 REP. STAM: Well, if I could follow up
16 one--one last time--
17 THE CHAIR: Follow-up?
18 REP. STAM: All right. Assume that
19 obtaining the letter--two people just concoct a
20 crazy letter, that both of them know it's not true.
21 That's--for whatever reason they did it, maybe it's
22 not unethical. But the count charges that both of
23 them knew that Thomas Wright was going to use that
24 letter to try to get money from other people. Does

1 letter from--I--I--
2 REP. STAM: Well, that was--
3 PROF. JOYNER: --I don't--I don't--I
4 don't--I don't see that.
5 REP. STAM: All right. Well, let's leave
6 that--
7 PROF. JOYNER: That may be the conclusion
8 that you--that you've reached.
9 REP. STAM: That was in the evidence we
10 had. But leave that part of it to the side.
11 Let's--
12 PROF. JOYNER: Well, I'm--I'm just
13 talking about the count.
14 REP. STAM: All right. Just the count
15 itself alleges--
16 PROF. JOYNER: And the count is--
17 REP. STAM: --that both of them knew that
18 Thomas E. Wright would use the letter in seeking to
19 fraudulently obtain funding for the Community
20 Health Foundation from other sources such as
21 financial institutions, and that these other
22 organizations that make grants and that--and
23 that--would believe and rely on the false
24 representation in the letter.

1 that not strike you as not a very ethical thing to
2 do?
3 PROF. JOYNER: Well, Mister--
4 Representative--
5 REP. STAM: That's the last part of the
6 count.
7 PROF. JOYNER: Representative Stam, then
8 there ought to be a merger, then, of Count 1 and
9 Count 2 so there's one count, because the conduct
10 would either have to be separated in terms of
11 obtaining the letter and using the letter--the
12 using the letter in a fraudulent way would go to
13 the intent of obtaining the letter, if you had
14 evidence to establish that. And obviously you have
15 concluded that that is what occurred.
16 And I'm saying that either one or the
17 other has to go, because it's duplicative as it's
18 written at this point, because one part separates
19 out--separates out the writing, and the other one
20 separates out the use, and they ought to be either
21 one--or--one ought to go, or they ought to be
22 combined into one count.
23 THE CHAIR: Do--let me follow up on
24 Representative Stam's question, Dr. Joyner.

1 Either, again, from a civil or criminal
2 perspective, do you have any law that I need to
3 look at talking about duplicative counts?

4 PROF. JOYNER: Well, no, I'm not prepared
5 to present you with a case dealing with
6 duplicative--as a lawyer, you're aware of the
7 notion of prosecuting persons twice for the same
8 conduct.

9 THE CHAIR: Certainly, from a jeopardy
10 point of view, but that--I don't know that that--

11 PROF. JOYNER: I mean, so we've got two
12 counts here that's alleging one half of the same
13 thing.

14 THE CHAIR: I understand the argument.
15 All right. Any other questions that members of the
16 Committee have? Mr. Hart or Mr. Peters?

17 MR. HART: Thank you, Mr. Chairman.
18 As--as to the--Counsel's not contending that this
19 charge is a crime, a criminal offense. What--
20 what--what we are--charged in--in the draft that we
21 presented to the Committee and the Committee
22 approved is that Representative Wright improperly,
23 unethically, conduct unbecoming and unfitting a
24 legislator, improperly solicited a letter falsely

1 stating a commitment of a hundred and fifty
2 thousand for the purpose of submitting it to
3 financial institutions to secure a loan. That is a
4 fraudulent solicitation of a false document that,
5 as the charge indicates, both parties knew was
6 going to be used for an improper purpose, an
7 illegal purpose.

8 I see that there's just no way to say
9 that that is not unethical conduct, if proven. And
10 we would submit that it is a proper charge and that
11 there's no reason not to have that continue. It
12 should not be dismissed.

13 THE CHAIR: Questions by members of the
14 Committee? Thank you both. All right. Just give
15 me one minute.

16 All right. As to Motion Number 4, this
17 matter is before the Committee and the Chair in a
18 motion to dismiss Count 1 as not alleging criminal
19 or unethical conduct. The matter has been argued
20 and briefed and is now ripe for disposition.

21 Number 2. The defendant--Representative
22 Wright's position is, number one, that the
23 allegations in Count Number 1 and Count Number 2
24 overlap and are duplicative; number two, that a

1 letter which contains even untruthful information
2 may not be criminal--may not constitute a criminal
3 violation or unethical conduct; and number three,
4 that Counts 1 and 2 ought to be merged.

5 Next number. The Special Counsel for the
6 Committee's position is that Count Number 1 does
7 not allege a crime but alleges unethical conduct in
8 that it alleges Representative Wright improperly
9 solicited a letter falsely stating that the agency
10 could commit one hundred and fifty thousand dollars
11 (\$150,000) to a project knowing that the letter
12 contained false information and knowing that the
13 letter would then be used at a later time to seek
14 additional funding for that project.

15 I find first that the Count Number 1
16 alleges specifically the fraudulent solicitation of
17 the letter, while Count Number 2, which is criminal
18 in nature, alleges then the use of the letter to
19 obtain essentially the loan by false pretenses, and
20 that they're alleging two entirely separate and
21 distinct acts, in that Count 2 did not have to
22 occur as a result of Count 1, but did,
23 independently; that is, it was then used to obtain,
24 or allegedly to obtain, the hundred and fifty

1 thousand dollars (\$150,000) from the bank. That is
2 the allegation contained in Count 2. As such, on a
3 motion to dismiss the counts, the counts on their
4 merits, as written, do not overlap and are not
5 duplicative.

6 The next finding is that it--if Count 1
7 is proven, should be true by clear and convincing
8 evidence, it is painfully obvious that that
9 constitutes unethical and fraudulent conduct, if
10 proved.

11 Number 3 finding on my part is that for
12 reasons that the counts stand on their own merits
13 independently, allege independent acts, they are
14 not duplicative and should not be merged.

15 Accordingly, the motion to dismiss Count
16 Number 1 is denied. Any--an exception by
17 Dr. Joyner and Representative Wright is noted. Any
18 motion by any member of the Committee to overrule
19 the ruling of the Chair? All right.

20 We'll move, then, to the fifth motion,
21 which is a motion to dismiss Count 7 as vague,
22 overbroad, and a violation of due process of law as
23 well as state Constitutional provisions.

24 And before we proceed, I do want to

1 indicate in preliminarily reviewing the briefs in
2 this I have concerns as well about the count, and
3 have asked in a way to perhaps handle this motion
4 before we have to argue it--I'm--you can certainly
5 argue the motion, Dr. Joyner, but I would grant the
6 bill of particulars, essentially, for this motion,
7 and would ask that a motion be made by the panel to
8 amend the count so that it is very clear that it
9 only applies to the specific contributions of a
10 hundred and eighty-five thousand dollars (\$185,000)
11 listed in the report made of probable cause by
12 Special Counsel Peters, and that is the only
13 contributions that may apply.

14 And with that, before--so before we move
15 into any argument, I'm going to seek a motion from
16 a member of the Committee to that effect. And if
17 we could distribute the potential language to
18 everybody, please--we'll be at ease until that's
19 distributed.

20 (DISCUSSION OFF RECORD)

21 THE CHAIR: All right. First, to get
22 this on our floor, is there a motion to amend
23 Count 7 by any member? Representative McGee is
24 recognized.

1 REP. MCGEE: I move that Count 7 of the
2 charges of unethical conduct by Representative
3 Wright adopted by the Committee at its meeting on
4 January 9, 2008, be amended by adding the following
5 additional sentence to read: "The contributions
6 that are subject of this count are set out in
7 Exhibit 9 of the presentation by William P. Hart,
8 Outside Committee Co-counsel, dated January 9,
9 2008, and incorporated into this count by
10 reference," closed quote.

11 THE CHAIR: Representative McGee so
12 moves. Is there a second? Representative Warren
13 seconds. All right. Discussion and debate on the
14 motion? I assume, Representative McGee, what this
15 sentence is attempting to do is to incorporate that
16 and make it specific that the count only relates to
17 the specific allegations set out in Exhibit 9 and
18 that this--your motion is to add that sentence at
19 the end of Count 7. Is that correct?

20 REP. MCGEE: That is correct,
21 Mr. Chairman.

22 THE CHAIR: Thank you. Any further
23 discussion or debate?

24 All right. Seeing none, the question

1 before the Committee is an amendment--a motion to
2 amend Count Number 7 to add the sentence you have
3 in front of you that reads as a last sentence to
4 Count 7: "The contributions that are subject of
5 this count are set out in Exhibit 9 of the
6 presentation by William P. Hart, outside Committee
7 co-counsel, dated January 9, 2008, and incorporated
8 into this count by reference."

9 All those in favor will vote "aye." All
10 those opposed will vote "no." The clerk will call
11 the role.

12 THE CLERK: Chairman Glazier?

13 THE CHAIR: Aye.

14 THE CLERK: Vice-chairman Stam?

15 REP. STAM: Aye.

16 THE CLERK: Representative Lucas?

17 REP. LUCAS: Aye.

18 THE CLERK: Representative McGee?

19 REP. MCGEE: Aye.

20 THE CLERK: Representative Warren?

21 REP. WARREN: Aye.

22 THE CLERK: Representative Wiley?

23 REP. WILEY: Aye.

24 THE CHAIR: All right. That amendment

1 has been adopted unanimously. And now I'll turn,
2 Dr. Joyner, to your argument. Does that limitation
3 on the count, which seems to get at your motion
4 that you had to make it clear that it is limited
5 only to those matters that were looked at in
6 probable cause--does that solve the motion, or do
7 you still have a motion to dismiss that count as
8 vague, overbroad, and a violation of due process?

9 PROF. JOYNER: Yes, Mr. Chairman. I
10 don't think this cures the problem. My
11 recollection--I--I have seen something that I
12 assume is Exhibit 9. I don't know. I don't have
13 it before me. But if what I've seen, which I
14 assume to be Exhibit 9--it contains something in
15 the neighborhood of thirty or forty different
16 items--

17 THE CHAIR: Well, let's hold for a minute
18 to make sure you have Exhibit 9 and--and that your
19 table has Exhibit 9. So we're--we're on hold until
20 you get that. Members, in your notebooks it is
21 Exhibit Number 9 on the "January 9, 2008" tab, near
22 the end of the--next to the back. And it is a
23 chart that lists the name of the contribution, the
24 contributor, the bank account, the amount, the

deposit date and the report contribution--that it should have appeared in but did not.

PROF. JOYNER: Right. Now--

THE CHAIR: Dr. Joyner?

PROF. JOYNER: Right. Now, it--this is--this is the document that I saw. And it has considerably more items than I had recalled, something like--

THE CHAIR: It's about three hundred and ninety-five of them.

PROF. JOYNER: Yeah, three hundred--about four hundred items. Now, is it this Committee's contention that proof of one or all is necessary to satisfy Count 7, or do you have to have proof of fifty percent of them, or thirty percent of them?

These are all separate items, so you--you're putting us to the task of having to defend against four hundred different items which we've just received information about. So is it your intent that we be prepared to respond to each and every one, and that if there is a failure of proof as to any of them, that this count is not set out? Or is this like the machine-gun approach, where you allege everything under the sun that you can think

of and require that--that we respond to everything under the sun? Because we have items here starting in 2000 and going up through 2006, and you are scheduling a hearing where you are ostensibly supposed to conclude facts about this thing in a couple of weeks, seemingly an impossible burden. So we--we object to that. And I don't think that this amendment cures the--the vagueness issue that we presented.

THE CHAIR: Mr. Peters? Mr. Hart?

Actually, before I do that, questions for Dr. Joyner from any member of the panel? All right. Seeing none, Mr. Hart?

MR. HART: First of all, Mr. Chairman, I'd like to note for the record that although Counsel and Representative Wright were not present at the January 9th hearing, they were invited to attend, they were provided with all materials that were presented, and one of the documents that--that was provided to them was this particular document, Exhibit 9. Also, the same document has been provided to them in discovery by the District Attorney of the 10th Prosecutorial District, Colon Willoughby, as that is the document that is the

subject of one of the indictments that has been pending against Mr. Wright for some substantial period of time.

The provision of--of this Exhibit 9 as an addendum to the charge by motion of the Committee is no different than in criminal court where the defendant asks for a bill of particulars and the State is required to provide the substance of--of the factual allegations that--that would be the basis of the charge.

Similar to an embezzlement count where the--a--a defendant might be charged with embezzling three hundred different items, whether they be three hundred checks or three hundred--three hundred different bonds or anything of that nature, this charge is an all-encompassing charge. And if--if--I would submit to the Committee that if--if Representative Wright is found to have not reported any of these contributions, that would be--that would be sufficient.

Conceivably, he could have been charged with three hundred or four hundred different counts. But the fact is, if he has intentionally engaged in--in not reporting his campaign

contributions, then--then he is answerable to that.

I do have today a copy--a CD which has on it the digital copy of the chart that is Exhibit Number 9 and also has all of the permutations of that that Mr. Peters referenced in his presentation before the Committee on January 9th by which he presented what the different quarters and years showed as far as the campaign contributions. And those are all present on this, and I'm going to provide that to Counsel right now.

THE CHAIR: Any questions for Mr. Hart?

REP. STAM: May I ask just one quick question?

THE CHAIR: Yes, Representative Stam.

REP. STAM: And this is not directly appropriate to this motion, but just very briefly, have you made any success in finding out the source of the ones that are listed from Thomas E. Wright himself, these cashiers' checks?

MR. HART: We have--we have not yet. We're still in discussions with Kim Strach from the Board of Elections, but we have--we have not yet determined that.

THE CHAIR: Any further questions for

1 Mr. Hart? Dr. Joyner, in rebuttal?
2 MR. HARRIS: I was curious to know--
3 before Mr. Hart leaves, I was curious to know--
4 THE CHAIR: I'm sorry. Okay.
5 Mister--I'm sorry. Mr. Harris?
6 MR. HARRIS: I was curious to know how he
7 happens to know what was or was not provided by--by
8 Colon Willoughby to myself and to Mister--and to
9 Representative Wright, and I'm curious to know if--
10 if the prosecution of this matter is being
11 coordinated with Colon Willoughby.
12 THE CHAIR: Okay. Mr. Harris, I'm
13 assuming that you're asking that through the Chair,
14 since we're--
15 MR. HARRIS: I am.
16 THE CHAIR: --at a Committee meeting. Is
17 that--
18 MR. HARRIS: I am.
19 THE CHAIR: All right. And--and at this
20 point--we will be talking about discovery matters
21 at the end of the motions, and we'll be talking
22 potentially, if the counts survive, at a pretrial--
23 pre-hearing conference. So let's hold that for
24 that point, and let's stay on this motion.

1 did receive a packet of information last week
2 from--from this Committee. And in that packet of
3 information, there was this chart. At that time,
4 there was no reference to that chart and this
5 count. It was just now that the significance of
6 this chart became apparent to me--that this was--
7 that these were all of the items here that you were
8 dealing--now, I could make some assumptions, but
9 this is the first time that this matter has been
10 properly calendared here.
11 It certainly still puts us in a position
12 that we're having now to go out in a couple of
13 weeks and deal with the preparation of a defense to
14 three hundred and ninety-five different charges,
15 because that's what you are providing us with here.
16 That's three hundred and ninety-five charges, and
17 it's not one charge. And that's an onerous burden
18 for us to have to bear.
19 And--and, too--and I know you are already
20 on schedule to move this thing on, and I know
21 what--that the design is already set. But I just
22 want to note our objection that you--you're putting
23 us, with respect to this one, in an impossible--
24 impossible position to properly investigate and

1 Dr. Joyner?
2 PROF. JOYNER: It's strange, really. Now
3 we're going to criminal stan--standards for--in
4 criminal court, you would have three hundred and
5 ninety-five counts. You wouldn't have an omnibus
6 claim involving three hundred and ninety-five
7 different items. And then you're talking about
8 here a failure to report that covers four different
9 reporting cycles of the State Board of Elections,
10 four different--
11 THE CHAIR: Actually, just so you know,
12 it covers twenty-two reporting cycles over a
13 four-year election--four--
14 PROF. JOYNER: Okay. Well--
15 THE CHAIR: --election periods.
16 PROF. JOYNER: Well, twelve--well, I
17 meant four different terms. And--and--and you're
18 right, Mr. Chairman, that we're talking about--and
19 so what you're doing is that you're--you're putting
20 us in a impossible position of having to deal with
21 all of these matters in--in one count without--
22 not--without being able to specify what particular
23 one we will be responding to.
24 In addition to that, and more of--and--I

1 prepare this--this matter for this body.
2 Now, Attorney Harris may have gotten
3 whatever he got from the D.A.'s office. I'm not
4 connected with the D.A.'s office. You know, that--
5 that's not--I haven't looked at that. I'm looking
6 at what I have. And what I have was something that
7 was received either the first part of last week or
8 the latter part of the week before that. So this
9 is an unfair burden that's being posed--presented
10 to us at the last minute.
11 THE CHAIR: I understand the argument.
12 Any questions from--Representative Stam.
13 REP. STAM: Yes. Professor Joyner,
14 isn't--aren't these the same hundred and eighty-
15 five thousand dollars (\$185,000) in contributions
16 that the State Board of Elections itemized to your
17 client last May?
18 PROF. JOYNER: I--I don't know.
19 REP. STAM: Have you asked him?
20 PROF. JOYNER: I don't know. No. I'm
21 just seeing it for the first time. No, I haven't
22 asked him. You just present me to this--present
23 this to me now, and then you ask me if I've asked
24 him about it? No, I haven't asked him about it.

1 Maybe if we had a five-minute recess, I might. But
2 I was not involved in the State Board of Election
3 hearing.

4 THE CHAIR: The Committee is in recess
5 for five minutes--

6 PROF. JOYNER: So I'm dealing--you know,
7 I'm dealing with--

8 THE CHAIR: --so that you may consult
9 with your client.

10 PROF. JOYNER: --with what I'm dealing
11 with here, and not what somebody else dealt with--

12 THE CHAIR: Thank you, Dr. Joyner. The
13 Committee is in recess for five minutes. We'll
14 allow Dr. Joyner to consult with his client and
15 then respond to Representative Stam's question.
16 We're in recess for five minutes.

17
18 (SEVEN-MINUTE RECESS)
19

20 THE CHAIR: I forgot to do this. I do
21 want to thank, and I know I extend the thanks of
22 everyone in the room, to the sergeant-at-arms who
23 are here today, to Mr. Brandon, Mr. Sills,
24 Mr. Fingers, Mr. Rossi, and Mr. Perry. We really

1 appreciate it very, very much. Thank you.

2 Now, I know that--I hope that was enough
3 time to at least have a minute with your client.
4 And, Dr. Joyner, I think Representative Stam's
5 question was related to you, and you needed a
6 moment to talk to your client about that.

7 PROF. JOYNER: The--the answer to the
8 question is no. This is the first time
9 Representative Wright has seen this list.

10 It appears--I don't know when this
11 exhibit was prepared, but it was not presented at
12 the State Board of Elections, nor were these
13 individual checks, alleged checks, three hundred
14 and ninety-five checks, presented at the State
15 Board of Elections, nor is--my understanding is,
16 was there any finding from the State Board of
17 Elections regarding these three hundred and ninety-
18 five checks individually or by identification or
19 anything like that.

20 The--the date that I see on this exhibit
21 is January 9th. I don't know if that was the date
22 that this was assembled, or if that was the date
23 that this document was presented to you for
24 your--for your deliberation. But this is the first

1 time that we have seen this document and these
2 listings--this listing of checks that you have
3 here.

4 But, you know, having answered that, I'm
5 sure it's not going to change anything about the
6 decision.

7 THE CHAIR: Well, I appreciate the answer
8 very much, and--Mr. Peters, a question for you:
9 The document that was Exhibit 9 is what I
10 understood that you created as a work product to
11 consolidate the information and present it at the
12 probable-cause hearing. Was the information that
13 is contained in Exhibit 9 presented at the State
14 Board of Elections hearing?

15 MR. PETERS: The--the document that's
16 Exhibit 9 itself, I did not create. I received
17 that from Kim Strach at the State Board of
18 Elections hearing. The other permutations of that
19 that are on the CD that we've provided to
20 Representative Wright's counsel, those are the ones
21 that I created using the information from the
22 original docu--document that Ms. Strach did.

23 I'm trying to recall from the transcript
24 of the hearing whether the document itself was

1 presented. I know Ms. Strach presented testimony
2 regarding the contributions that were not reported
3 during the time period, and actually identified
4 more than a hundred and eighty-five thousand
5 dollars (\$185,000) in contributions at the time of
6 the hearing. I was not present at the hearing, but
7 my memory of the transcript and from conversations
8 with Ms. Strach is that it was presented at that
9 time. But that's based on my memory of that.

10 THE CHAIR: Thank you. Are you--well,
11 let me ask a follow-up. But you are clear that in
12 the testimony Ms. Strach presented to the Board of
13 Elections that she presented evidence showing more
14 than a hundred and eighty-five thousand dollars
15 (\$185,000) in non-reported contributions?

16 MR. PETERS: That's my recollection of
17 the transcript.

18 THE CHAIR: All right. All right. Thank
19 you. All right. Any--does that create any further
20 questions by any member of the Committee? All
21 right.

22 PROF. JOYNER: Mister--Mr. Chair?

23 THE CHAIR: Dr. Joyner?

24 PROF. JOYNER: My objection was to each

1 of these individual items. Each item was not
2 presented at the State Board of Elections. There
3 may have been a summary conclusion regarding an
4 amount of money that--involving checks that were
5 not reported, but--and Mr. Peters can speak to
6 this--the transcript would not itemize these
7 checks, these three hundred and ninety-five checks
8 or more that we have here in this--in this exhibit,
9 nor was this exhibit, as I understand it, presented
10 as--as evidence, other than in summary form by
11 somebody who testified about an amount of money
12 that was not reported.

13 THE CHAIR: Mr. Peters?

14 MR. PETERS: Again, my memory of the
15 transcript--and the last time I read the transcript
16 was on Friday--there was not--in the testimony,
17 Ms. Strach did not go through each of the examples
18 that are listed in what is Exhibit 9. Excuse me.
19 She did give a general overview and, I believe,
20 gave some illustrative examples of contributions
21 that were in there, and then the totals that were
22 involved.

23 THE CHAIR: Were there--well, let me ask
24 two questions. Was Representative Wright allowed

1 to participate and be at that hearing?

2 MR. PETERS: Again, not having been
3 present at the hearing, my understanding--I know he
4 was present, and my understanding, he was allowed
5 to participate or able to participate.

6 THE CHAIR: All right. My next question
7 is--

8 PROF. JOYNER: Before--before you do, let
9 me--let me just--

10 THE CHAIR: Well, let--let me finish--let
11 the Chair finish his questions, and then we'll go
12 back and forth, as opposed to counsel talking to
13 each other.

14 My next question is: The data that
15 you--or that is contained in Exhibit 9 was--had to,
16 obviously, come from the Board of Elections; is
17 that accurate?

18 MR. PETERS: That is correct.

19 THE CHAIR: So the data was accumulated
20 by the Board of Elections in looking at all of the
21 transactions and the reports?

22 MR. PETERS: That's correct. It was--

23 THE CHAIR: All right. Well, let me--let
24 me--and--and each of those reports was filed--the

1 reports themselves were filed by Representative
2 Wright or his treasurer or campaign organization;
3 is that correct?

4 MR. PETERS: That's correct.

5 THE CHAIR: All right. And the--how did
6 the Board of Elections, as far as you understand
7 the transcript, determine that the contributions of
8 at least the hundred and eighty-five thousand
9 dollars (\$185,000), in their mind, were accepted
10 but not reported? What was the process of doing
11 that?

12 MR. PETERS: My understanding is Kim
13 Strach and her staff examined not only the
14 disclosure reports that were filed during the
15 period in question, but that they also examined the
16 bank accounts, and they looked at basically every
17 check that had been deposited into the bank
18 account, compared those with the disclosure
19 reports, making an effort as best they could to
20 determine which checks were made for a contribution
21 purpose and which ones may not have been.

22 THE CHAIR: All right. My next question,
23 then: When you say "the bank accounts," are you
24 talking about the bank accounts of Representative

1 Wright or his campaign committee, bank accounts
2 within his control?

3 MR. PETERS: Yes. That's correct.

4 THE CHAIR: And so the Exhibit 9 is
5 simply a work product that accumulates the
6 discrepancies--alleged discrepancies between what's
7 contained in Representative Wright's bank accounts
8 and what was disclosed on the campaign contribution
9 forms; is that correct?

10 MR. PETERS: That is correct.

11 THE CHAIR: All right. Thank you. Now,
12 Dr. Joyner?

13 PROF. JOYNER: Well, see, my--my
14 information is that during that hearing there was a
15 claim made of some amount of money that had not
16 been reported and that at that time, Representative
17 Wright, who was present and was represented by
18 another--by another attorney, did request
19 information detailing the origin of that--that
20 conclusion and has not been provided with anything,
21 was not provided then with anything by the people
22 at the State Board of Elections, nor, subsequent to
23 that, have I received anything until I got this
24 thing in the mail within the last week or so. And

1 so that's--you know, that's--that's--you know--
2 THE CHAIR: Thank--thank you.
3 PROF. JOYNER: Obviously, it's, well--
4 THE CHAIR: I appreciate the point. Now,
5 the Chair has another question for Committee
6 counsel staff. My recollection is that immediately
7 following the probable-cause hearing on January the
8 9th, and by that I mean within forty-eight hours,
9 the documents that were admitted on January the 9th
10 were transmitted to counsel for Representative
11 Wright. Is that accurate?
12 MR. REAGAN: Mr. Chairman, that's our
13 recollection. We've asked Denise to check that for
14 us. We have a transmittal letter that should have
15 been dated and signed, and she's in the process of
16 checking that. But that would be our understanding
17 from what her recollection was.
18 THE CHAIR: All right. We're going to be
19 on hold for a minute until I get that--to see that
20 that transmittal letter occurred. All right.
21 Thank you.
22 (DISCUSSION OFF RECORD)
23 THE CHAIR: All right. Let's come back
24 into session. I know. I've got it. Thank you.

1 Next number. As to the issue of
2 vagueness, that issue was resolved sufficiently by
3 the amendment to Count 7, which now specifically
4 limits that count and the evidence related to it to
5 the matters alleged with specificity and
6 particularity in Exhibit Number 9. That exhibit
7 contains the last name and first name of the
8 alleged contributor, the bank account that it was
9 found in, the amount of the check, the deposit date
10 of the check, and when it should have appeared but
11 allegedly did not appear as a reported contribution
12 by Representative Wright.
13 That is a significant amount of
14 information as to each specific check. Do not--and
15 the Chair does not know what else could be provided
16 to make that less vague. Therefore, I find that
17 the count is, in fact, not vague, is not overbroad,
18 in fact, is very specific and defined, and does not
19 violate due process of law or any state
20 Constitutional provision.
21 As to the issue of notice, Exhibit 9
22 contains simply information fully available for
23 many, many, many months to Representative Wright on
24 information accessible by simply looking at his

1 All right. I'm ready to rule on this motion.
2 Number 1. This matter is before the
3 Committee and the Committee Chair on motion to
4 dismiss Count 7 as vague, overbroad, and a
5 violation of due process of law and the state
6 Constitution. The matter has been briefed by both
7 sides and argued and is ripe for disposition.
8 Number 2. The argument by Representative
9 Wright is two-fold, first, that the count as
10 originally stated was vague, overbroad, and
11 insufficient--provided insufficient notice to
12 Representative Wright of what was being alleged
13 to--to--that--to--what was alleged that he had
14 violated; secondly, that once the count was amended
15 that--to include the three hundred and--
16 approximately three hundred and ninety-five
17 specific allegations of a failure to report
18 contained in Exhibit 9 at the probable-cause
19 hearing, that then the count required an
20 exceptional burden on the defense to investigate
21 three hundred and ninety-five specific, independent
22 violations of which there was no significant prior
23 notice. For the reasons that follow, I'm going to
24 deny the motion to dismiss Count 7.

1 personal and campaign accounts and the campaign
2 contribution reports he filed. There is simply no
3 independent evidence contained in the counts or in
4 the Exhibit 9, and the Exhibit 9, in fact, is a
5 work product that should make it easier to defend
6 as opposed to more difficult.
7 Second, that information in its pure form
8 was available for the Board of Elections hearings
9 process, which Representative Wright was able to
10 attend.
11 Number 3--or next number. The
12 information contained in Exhibit 9 was presented in
13 open hearing to which Representative Wright and his
14 counsel were invited on January 9th and did not
15 have to attend and chose not to. But that
16 information was presented in open at that time. In
17 addition, the next day Counsel was informed that
18 they would be given copies of all of the material
19 that was introduced at the January 9th probable-
20 cause hearing.
21 And, in fact--next number--on January
22 the 14th, 2008, at three-thirty-eight P.M., an
23 e-mail was sent to Representative Wright, to
24 Mr. Joyner at *ijoyner@nccu.edu*, and to

1 dharris@triad.rr.com--this is January 14th,
2 three-thirty-eight P.M.--containing a number of
3 exhibits included--including the packet of
4 materials, exhibits numbered 1 through 11 from
5 Committee counsel Bill Hart and Alex Peters. That
6 was sent by mail, as well, to Counsel.
7 Number--next numbered document--or next
8 numbered finding. In addition, the information
9 contained in Exhibit 9 is the subject, just as
10 Count Number 7 is the subject, of a criminal count
11 in the Wake County Superior Court for which
12 Representative Wright stands trial. That count
13 almost identically mirrors the criminal count, and
14 therefore the information is not new information to
15 Representative Wright and his counsel, since that
16 information would have been contained within the
17 discovery disclosed by the district attorney's
18 office.
19 Next number. In the end, there should be
20 absolutely no confusion at all over what the
21 hundred and eighty-five thousand dollars (\$185,000)
22 refers to in the count and to which checks it
23 applies.
24 Next number. However, the Chair does

1 the next motion. The motion now is to dismiss all
2 counts on jurisdictional grounds and that the
3 investigation is not authorized under G.S. 120-
4 102(a)(5)(7)--(a)(5) and (a)(7).
5 And, Dr. Joyner, is this motion still
6 viable given--
7 PROF. JOYNER: No.
8 THE CHAIR: --that it's not an LEC
9 matter?
10 PROF. JOYNER: I was under the impression
11 that we had pulled that--
12 THE CHAIR: Okay.
13 PROF. JOYNER: --and that we would go
14 to--I believe, it's 8.
15 THE CHAIR: All right. So Motion Number
16 6 is withdrawn? Is that--am I correct?
17 PROF. JOYNER: It's not withdrawn.
18 It's--it's--it's not appropriate before this
19 Committee, because this is for the Legislative
20 Ethics Committee.
21 THE CHAIR: Well, again--but since this
22 is just the House Select Committee, for our
23 purposes, I'm assuming you're withdrawing it from
24 our consideration as the House Select Committee.

1 disagree with Committee counsel's statement that
2 even if one of the three hundred and ninety-five
3 checks were to have been unreported, it would meet
4 the language of Count 7.
5 Count 7 was drafted by the Committee in
6 an effort to be totally consistent with due process
7 of law for Representative Wright and to not engage
8 in a parsing of single counts, and specifically
9 says that the count is violated only if Thomas E.
10 Wright did improperly, fraudulently, and
11 unethically engage in a pattern of conduct. The
12 pattern of conduct would certainly suggest there
13 has be some showing of continuity and
14 pervasiveness. The extent to which that occurs
15 we'll leave for any motions that need to be heard
16 during the trial of the evidence on the merits.
17 That being said, the motion to dismiss
18 Count 7 as vague, overbroad, a violation of due
19 process of law and the state Constitution is
20 denied. Exception by Representative Wright and his
21 counsel is noted.
22 Does anyone seek to overrule the Chair's
23 ruling?
24 Seeing none, we move to Count Number--or

1 We're not act--we don't act as the LEC. So you can
2 certainly file that before the LEC, but for our
3 purposes, the House Select Committee is not the
4 LEC. Are--is the motion still up for our decision,
5 or is it withdrawn from our consideration?
6 PROF. JOYNER: No. I had indicated--I
7 was under the impression that we had made it clear
8 that we were withdrawing anything that had to do
9 with the Legislative Ethics Committee.
10 THE CHAIR: Okay. That--that's all my
11 question is, is it withdrawn as to this Committee,
12 and the answer is yes. All right. The motion is
13 withdrawn as to this Committee.
14 Okay. And--and, Dr. Joyner, the court
15 reporter has asked if you can speak up just a
16 little bit, because she could not hear what you
17 were saying earlier.
18 Okay. Number 7, motion to dismiss all
19 counts for lack of jurisdiction on grounds the
20 conduct was not committed in Representative
21 Wright's law-making capacity. Dr. Joyner?
22 PROF. JOYNER: This, I guess, goes to the
23 notion of scope of review, or the scope of this
24 Committee's responsibility.

1 There are--as to Count Number 3, Count
2 Number 4, Number 5, and Number 6, and Number 7--
3 that the conduct alleged there, at best, deals with
4 actions that Representative Wright is alleged to
5 have taken in dealing with the Community Health
6 Foundation, which is resident in Wilmington and has
7 absolutely nothing to do with his duties or
8 responsibility as a legislator, nor is the--nor are
9 the allegations that--that these acts were
10 committed as a part of his responsibilities or
11 duties or using his position as a legislator. And
12 we would think that it is outside of the scope of
13 this General Assembly's work.

14 THE CHAIR: Questions by any member of
15 the Committee by Dr. Joyner? All right. Mr. Hart?
16 Mr. Peters?

17 MR. HART: Thank you, Mr. Chairman. The
18 argument as to this particular motion is similar to
19 what we have already been arguing, and that is that
20 the--this Committee and the House of
21 Representatives have inherent authority to inquire
22 into, investigate the conduct of Representative
23 Wright, regardless of whether it's in his official
24 lawmaking capacity. Although the Legislative

1 exceed the scope of the jurisdiction allowed for
2 the House Select Committee.

3 Next number. Mr. Hart argues, as Select
4 Committee counsel, that the inherent authority of
5 the House Select Committee is to investigate
6 conduct--to investigate misconduct regardless of
7 whether it is misconduct directly in the lawmaker's
8 official capacity.

9 In reviewing what has occurred both at
10 the Parliamentary level in England, at the colonies
11 level, post-colonization in the United States,
12 Congress, as well as in the states, it is clear
13 that in every jurisdiction that has engaged in any
14 discussion of the issue of legislative misconduct,
15 that legislators have been disciplined by
16 assemblies for private misconduct, fraud,
17 corruption, criminal misconduct unrelated to their
18 office, but criminal conduct nonetheless. And I
19 will include in the final order that I sign for the
20 Committee a citation to a number of those states
21 and cases but will not include that in our
22 discussion now.

23 The motion is denied.

24 All right. The next motion to be

1 Ethics Committee is bound by the specific
2 provisions of the Legislative Ethics Act, this
3 Committee is not. The House of Representatives is
4 not. And you can inquire into activity that would
5 make him unfit to be a legislator and may act in
6 accordance with your inherent authority.

7 THE CHAIR: Specific questions by any
8 member of the Committee? All right. Thank you,
9 Mr. Hart. All right. The Chair is ready to rule
10 on this motion. Well, he thinks he is.

11 All right. This matter is before the
12 Committee and the Chair on a motion to dismiss all
13 count--well, I'm sorry--motion to dismiss Counts 3,
14 4, 5, 6 and 7 for lack of jurisdiction on the
15 ground that the conduct alleged was not committed
16 in Representative Wright's lawmaking capacity. The
17 matter has been briefed and argued and is now ripe
18 for disposition.

19 Number 2. Number 2, the argument by
20 Representative Wright is that Counts 3, 4, 5, 6,
21 and 7 involve conduct that deal with actions by
22 Representative Wright in his work with the
23 Community Health Foundation in Wilmington and not
24 directly in his lawmaking capacity, and therefore

1 heard--I'm sorry. Exception to my ruling is noted
2 by Representative Wright and Counsel. Does any
3 member of the Committee wish to overrule the ruling
4 of the Chair?

5 Seeing none, the next motion to be heard
6 is the motion to dismiss all counts on the grounds
7 that the creation of the House Select Committee and
8 its actions generally violate due process and equal
9 protection of the law. Dr. Joyner?

10 PROF. JOYNER: Mr. Chairman, we--this
11 motion deals with the actions and procedures, not
12 the creation of the House Select Committee, but
13 more particularly, with the procedures that are set
14 up to adjudicate this--this claim.

15 More specifically, we--we would object,
16 on looking at the Rules of the House Select
17 Committee adopted on December 18th and amended on
18 January the 9th by someone--and it's not clear who
19 adopted them or who amended them--but specifically
20 to Item 14, which, as I read it, imposes for the
21 first time in American history a requirement that a
22 person who is charged with an offense has the
23 burden of proving by a preponderance of the
24 evidence that he should be exonerated of the

1 charges. That provision flies in the face of the
2 due-process clauses of the federal Constitution,
3 the North Carolina Constitution, and every law and
4 procedure anywhere in this country that I'm aware
5 of. And again North Carolina has become the
6 unusual instrument to now require a sitting
7 legislator faced with a claim--that he has to come
8 before this body and prove his innocence by a
9 preponderance of the evidence rather than the
10 traditional legal standard that the--this
11 Committee, who serves now as the prosecutor, the
12 grand jury, and the jury, find it by clear and
13 convincing evidence that these allegations are
14 true.

15 So we would certainly think that--I mean,
16 not only are we having to go forward now before a
17 committee who is involved in the instigation of
18 these claims and the prosecution of these claims,
19 and then we'll decide whether clear and convincing
20 evidence exists to justify what they've already
21 decided, but now the impossible burden of requiring
22 the legislator to present evidence to prove that
23 he's not guilty--that's--that's just unheard of.

24 REP. STAM: Mr. Chairman?

1 protection of the innocent legislator. But if you
2 really think that's a real problem, I will move to
3 take it out.

4 PROF. JOYNER: Mr. Vice-chair, you--I
5 mean, you can do what you want. You're going to do
6 what you want to do, anyway. I'm saying that
7 this--these provisions are not supported by any
8 procedure in America, that a person accused of an
9 offense has the obligation of coming before anybody
10 anywhere, not even in church, and--to prove that
11 they're not guilty of what they've been charged
12 with. In other words, I don't see this as
13 something that's going to help somebody. I see
14 this as an unnecessary and illegal burden that this
15 legislature is imposing on a elected member of--of
16 this body.

17 THE CHAIR: Further questions by any
18 member of the Committee? Mr. Hart? I'll--I'll--
19 let me--

20 REP. STAM: Yeah.

21 THE CHAIR: --and then we'll get back to
22 it. Thanks. Mr. Hart?

23 MR. HART: Thank you, Mr. Chairman.
24 My reading of Rules 14 and 15 of the

1 THE CHAIR: Questions, Representative
2 Stam?

3 REP. STAM: Yes, I have a question.
4 Professor Joyner, is your objection to Subsection 3
5 of 14 and also to 15(1), the sentence at the bottom
6 of the page that carries over to the next page?

7 PROF. JOYNER: That's--that--that would
8 be it, yes.

9 REP. STAM: A couple of follow-up
10 questions, and I--I'm going to--

11 THE CHAIR: Follow-up?

12 REP. STAM: --tell you that that was my
13 idea. And I would be willing to take those
14 sentences out, and so move, as long as you
15 understand the consequence of that.

16 With those out of there--of course, he
17 has no burden to prove anything to anybody. Those
18 are in there so if a--if an accused legislator
19 actually wants to be exonerated and let that
20 exoneration be known, there's a way for that to
21 accomplish it. We could take that out, and then
22 there's no way that your client could ever say, if
23 it was dismissed prior to the hearing, "I was
24 innocent." That was put in there for the

1 Committee significantly differs from Mr. Joyner's.
2 In criminal court, a defendant can either be found
3 guilty beyond a reasonable doubt or found not
4 guilty. There is no exoneration. Although many
5 defendants leave court after being found not guilty
6 and claim to have been exonerated or found to be
7 innocent, there is no finding of innocence or
8 exoneration in a not-guilty verdict.

9 What the Committee has done in its rules
10 is clearly what Representative Stam has indicated,
11 and that is create a third possible verdict for the
12 Committee on each charge, that is, he is guilty by
13 clear and convincing evidence of the charge, he is
14 not--the charge is not proven, or the
15 representative is exonerated.

16 And there's no indication in the Rules
17 that the burden is on the representative to prove,
18 be it by a preponderance of the evidence; it's
19 simply if the Committee finds by a preponderance of
20 the evidence that--the representative has been
21 exonerated, it should so find.

22 So I don't find any violation of due
23 process. I've indicated so in--in the brief that
24 Mr. Peters and I presented to the Committee. And--

1 and I certainly see no due-process issue here. I
2 think it's fine--if the Committee chooses to leave
3 it, I don't see any problem in--in doing so. If
4 the Committee chooses to take it out because the
5 Representative is--is uncomfortable with it, I
6 think it will still be fine either way.

7 THE CHAIR: Thank you, Mr. Hart. Any
8 questions by any member of the Committee? If not,
9 Representative Stam is recognized. Representative,
10 do you wish to make a motion?

11 REP. STAM: I would, if he were the only
12 person these would apply to. But since these apply
13 to a hundred and sixty-nine other people who might
14 want the opportunity for an exoneration, I will not
15 make that motion unless Mister--Professor Joyner
16 specifically asks us to do that.

17 THE CHAIR: All right. And I will just
18 ask, for the record to be clear, are--Professor
19 Joyner, do you ask the Committee to remove from the
20 Rules those two sentences creating the exoneration
21 option?

22 PROF. JOYNER: Mister--Mr. Chairman, you
23 know--(pauses)--

24 MR. STAM: I'll withdraw the request if

1 the Chair.

2 I think, Dr. Joyner, you're entirely
3 accurate that *In Re: Winship* and the cases would
4 clearly provide that when someone is accused,
5 whether it's of a crime--well, let's just use the
6 criminal context, with *Winship*, that if they're
7 accused of a crime, due process would require that
8 the burden of proof is on the charging party to
9 prove beyond a reasonable doubt every element of
10 the crime.

11 That having been said, I think you're
12 fundamentally--fundamentally misreading this rule
13 that's in the House Rules, and I think Mr. Hart is
14 absolutely right that there is--there is--there is
15 no--it's simply void of any argument that could
16 reasonably be made, looking at these rules, that
17 there's a shifting of the burden.

18 But as a defense lawyer who's represented
19 criminal defendants in many, many cases, and as one
20 who represented Lesley Jean, who, as you know, was
21 a man imprisoned for eight and a half years for a
22 crime he did not commit, and who got out of prison
23 when the writ of *habeas corpus* issued, but--he got
24 out of prison because the case was dismissed by the

1 he doesn't want to--

2 PROF. JOYNER: Criminal--criminal--
3 criminal court is no different than any other
4 court. Civil court has the same procedure that if
5 a person can't prove their claim, if they can't
6 prove by a preponderance of the evidence in civil
7 court--in criminal court it's by proof beyond a
8 reasonable doubt--then the claim doesn't stand.

9 Now, it is--the U.S. Supreme Court, the
10 North Carolina Supreme Court have all said you
11 can't shift the burden on someone who is a
12 defendant, or respondent in this case, to come
13 forward to rebut or to prove their innocence. And
14 that's the only position that we're taking on this.

15 THE CHAIR: Then I understand--

16 PROF. JOYNER: And that is--

17 THE CHAIR: --the argument.

18 PROF. JOYNER: --and that is
19 unconstitutional as a violation of due process,
20 even if somebody magnanimously feels that it's a
21 gift. And it's not.

22 THE CHAIR: All right. Thank you. I
23 understand the arguments. I'm going to make a
24 comment as a member first, and then I'll rule as

1 district attorney whenever it issued, but he was
2 hardly exonerated. He was not guilty, but he was
3 not an innocent man in the eyes of the law. He, in
4 fact, spent the next eight and a half years trying
5 to prove his innocence in order to get his back pay
6 done through the military, in order to get his
7 record cleared, in order to be able to find a job,
8 because he was viewed as having gotten off because
9 the State failed to meet its burden of proof. But
10 he was not an exonerated man.

11 This provision was put in here
12 predominantly by the lawyers in the Committee, but
13 all of us voting on it, in an effort to make sure
14 that even if the Committee finds that it fails
15 to--to prove by clear and convincing evidence that
16 a representative or senator has committed a wrong,
17 that in order to make sure that if that
18 representative wanted more than simply being found
19 not guilty, if he wanted and could prove by
20 affirmative evidence that he was completely
21 innocent, that there was a mechanism for him to be
22 able to do that, or her, to fully clear their name
23 so that they wouldn't have to suffer any collateral
24 consequences--that is the purpose of the provision.

1 That's my comment as a sole, individual
2 legislator. That being said, it will follow and
3 come as no surprise my ruling on the motion.
4 The motion to dismiss--the matter--
5 Number 1. This matter is before the Committee and
6 the Committee Chair on a motion to dismiss all
7 counts on grounds that Rule 14 and Rule 15 of the
8 Rules of the House Select Committee investigating
9 Representative Wright violate due process of law.
10 This matter has been briefed by counsel and the
11 subject of oral argument and is ripe for
12 disposition.
13 Number 2. Rule Number 14 of the House
14 Rules states, and I quote, "After hearing evidence
15 on the substantive issues of the alleged unethical
16 or unlawful conduct by the accused legislator, the
17 Committee shall address the following issues:
18 Number 1, whether by clear and convincing evidence,
19 one or more of the charges against the accused
20 legislator is true; Number 2, if so, what action
21 will be taken by the Committee; and Number 3,
22 whether by the preponderance of the evidence, the
23 accused legislator should be exonerated of the
24 charges."

1 Next number. There is no shifting on the
2 burden of proof and, therefore, no violation of due
3 process of law.
4 Final finding. The particular
5 subparagraphs concerned and argued by Dr. Joyner
6 simply provide a further option to allow and
7 exonerate--to allow a legislator to seek full
8 exoneration beyond simply being found not guilty of
9 a charge because the Committee failed to meet its
10 burden of proof. In that sense, this simply adds
11 an additional layer, and a substantial one, of
12 protection for the legislator and the legislator's
13 representation. Accordingly, the motion is denied.
14 Exception to the motion ruling is noted.
15 Does any member of the Committee seek to overrule
16 the Chair? All right.
17 We're moving on to the ninth motion--only
18 a couple more to go--motion to dismiss all counts
19 on grounds the creation of the House Select
20 Committee and its actions generally violate
21 Article II, Section 20 of the North Carolina
22 Constitution. Dr. Joyner?
23 PROF. JOYNER: We will withdraw--
24 THE CHAIR: All right.

1 Rule 15 of the disposition--disposition
2 of cases--Rule 15 of the Rules of the House Select
3 Committee investigating Representative Wright,
4 entitled "Disposition of Cases," reads, in part, as
5 follows: "When the Committee has concluded its
6 inquiries into alleged violations, the Committee,
7 by majority vote of those present and voting, shall
8 do one of the following: Number 1, if the
9 Committee fails to find the alleged violations are
10 established by clear and convincing evidence, the
11 Committee shall report this to the House of
12 Representatives and the accused legislator." It
13 further reads, "If the Committee finds by
14 preponderance of the evidence the accused should be
15 exonerated of the charges, the Chair shall transmit
16 that finding to the accused legislator and the
17 House of Representatives."
18 Next number. The Rules clearly provide
19 that the burden of proof by clear and convincing
20 evidence to show that the accused legislator has
21 committed any unethical or unlawful conduct lies
22 with the Committee and its counsel. There is no
23 burden of proof placed on the charged
24 representative.

1 PROF. JOYNER: --the--
2 THE CHAIR: I'm sorry. If you--if you
3 can speak into the mike so the court reporter can--
4 PROF. JOYNER: We would withdraw any
5 other motions which are still pending, except the
6 motion to continue.
7 THE CHAIR: Okay. Then Motion Number 9
8 and Motion Number 10 are withdrawn. Motion Number
9 11 has already been ruled on in consolidation with
10 Motions Number 2 and 3.
11 PROF. JOYNER: Mr. Chairman, let me
12 just--
13 THE CHAIR: Go ahead, Dr. Joyner.
14 PROF. JOYNER: The substance of these two
15 have already been dealt with--
16 THE CHAIR: Okay.
17 PROF. JOYNER: --in essence, so there's
18 no point in just--
19 THE CHAIR: Rehash--
20 PROF. JOYNER: --beating a dead horse.
21 THE CHAIR: All right. That leaves us to
22 Motion Number 12, and that is the motion to
23 continue or hold in abeyance any hearing in this
24 matter where the failure to do so would possibly

1 prejudice Representative Wright's rights to a fair
2 criminal trial and prejudice the possible jury
3 pool. Dr. Joyner or Mr. Harris? All right.

4 MR. HARRIS: Mr. Chairman, members of the
5 Committee, I am Doug Harris. I'm the attorney--

6 THE CHAIR: Mr. Harris, we're having a
7 hard time, 'cause that mike's not picking you up.

8 MR. HARRIS: All right.

9 (DISCUSSION OFF RECORD)

10 MR. HARRIS: All right. Mr. Chairman,
11 members of the Committee, I'm Doug Harris. I'm the
12 attorney who's going to be trying the criminal
13 case. The criminal case will be tried about four
14 blocks south of where we sit right now, and it will
15 be--it will consist of jurors who have been
16 selected from this very county where you're holding
17 this hearing. And that is my--that is my concern
18 here.

19 I would like to cite a rather unusual
20 example as to why you don't want to do this at this
21 particular time. And that example is Dr. Richard
22 Kimball, he of the Harrison Ford movie *The*
23 *Fugitive*, the TV series, *et cetera*. Dr. Richard
24 Kimball, you'll remember, was falsely convicted

1 now.

2 And--and what happened was Dr. Sheppard
3 was convicted. And--and we now know that he didn't
4 do the crime. They--since there have been DNA
5 tests, it turns out he didn't do the crime. But
6 here's how it came out. This case went to the
7 United States Supreme Court, and F. Lee Bailey of
8 the O.J. Simpson case and many others--F. Lee
9 Bailey represented Dr. Sheppard, and he
10 successfully argued to the United States Supreme
11 Court that the jury pool had been fatally polluted
12 by--by--by the publicity, all the public
13 officials--all the public officials talking about
14 the case, all the public officials saying that he
15 was guilty, all the public officials saying that he
16 did the crime. By the time they finally had a jury
17 pool, there was no jury in the whole area that
18 could have possibly rendered a fair verdict.

19 And I respectfully say to you that that's
20 pretty much what you're doing here, because it's
21 been--has been said repeatedly here today these
22 counts are the same as the criminal counts down the
23 street. These counts that you're considering are
24 exactly the same as what I'm going to have to argue

1 by--by a jury, and it turned out the one-armed man
2 had really done it. But what a lot of people don't
3 realize is that Dr. Richard Kimball was, in fact,
4 based on an actual famous case, Dr. Sam Sheppard.

5 Both of them were doctors. Dr. Kimball
6 was a doctor in Chicago. The real doctor,
7 Dr. Sheppard, was a doctor in Ohio. Both of them
8 were accused of killing of their wife. Both of
9 them got convicted of killing their wife. But here
10 the reality diverges from the fiction.

11 In the fiction, you'll remember, the
12 one-armed man did it, and it was a big plot as to
13 why he did it, that sort of thing. In the real
14 case, the real Dr. Sam Sheppard, it was public
15 officials who caused the problem. Public officials
16 went out in the papers, and they said that
17 Dr. Kimball did it, Dr. Kimball obviously killed
18 his wife, Dr. Kimball was--was guilty, Doc--or
19 rather, Dr. Sheppard had--had really killed his
20 wife. This appeared on the front pages of paper,
21 even as Representative Wright is appearing on the
22 front page of the paper now. This appeared on
23 the--this appeared on the TV news, even as
24 Representative Wright is appearing on the TV news

1 to a jury a month, two months, three months down
2 the road. I'm going to have to find twelve
3 unbiased people who haven't made up their mind to
4 sit in that jury and decide whether it's true or
5 not true. And how am I going to do that with a
6 bunch of public officials down here at the
7 legislature saying my client's guilty?

8 Now, one of the first questions I ask
9 when I seat a jury pool--when I'm trying to pick
10 the jurors, I say, "Have you already made up your
11 mind on the case?" Well, none of you could
12 honestly say no, because you already have made up
13 your mind on the case. I don't mean that as a
14 criticism. I mean to say that you've already hold
15 a hear--you've already held a hearing in the
16 Legislative Ethics Committee, and you've already
17 concluded that there was probable cause to believe
18 that Representative Wright did something wrong.
19 In--in other words, you've formed an opinion on the
20 case, and that's fine. But that's not fine for a
21 jury.

22 And I think what Dr. Joyner was getting
23 at earlier when he talked about due-process
24 problems, it's a due-process problem when

1 somebody's already made up their mind and then they
2 decide to hear the facts of the case. That's a
3 due-process problem, because, after all, which one
4 of you would like to hear people were hearing your
5 case that already decided that you probably did it?

6 Now, I'd like to quote from what the
7 Chairman said earlier. He said, "Every institution
8 has concluded there is probable cause of the
9 existence of fraud." That's what the Chairman said
10 in this hearing just--just before lunch.

11 Well, you know, one of the institutions
12 he's talking about is the Legislative Ethics
13 Committee, of which you all are members. You all
14 have committed--you all have concluded that there's
15 probable cause to believe there's an existence of
16 fraud. And now you're getting ready to hold a
17 hearing as to whether or not there is fraud.

18 I respectfully suggest that what the--
19 what the Speaker of the House should have done,
20 rather than--rather than take the very same people
21 off the Committee that had already reached
22 conclusions meeting together with the Senate, and
23 just stripped away the senators and then composed
24 this Committee--what the Speaker should have done

1 to make a whole lot of public pronouncements, and,
2 indeed, the Chairman is already making public
3 pronouncements, that--that my client probably did
4 commit fraud; my client--which we vehemently deny,
5 by the way--and my client--my client probably did
6 commit violations of law, which we also vehemently
7 deny. And the problem is, you see, this is
8 polluting my jury pool.

9 I can't try a case like that. I can't go
10 down there and pick a fair and unbiased jury with
11 the legislature pounding the drum, saying, "He's
12 guilty. He's guilty. He's guilty. We"--you know,
13 "We've already made up our mind. Here's our
14 conclusion." You can see where I couldn't. You
15 wouldn't want to be in that position, either.

16 Now, it so happens that the Sam Sheppard
17 case I was talking about earlier is studied in
18 every law school in America. Professor Joyner and
19 his colleagues teach it. Every law school in
20 America studies how the public officials of Ohio
21 screwed up that case and made it impossible for Sam
22 Sheppard to get a fair trial, even though it turned
23 out he was innocent.

24 And, ladies and gentlemen, unless you

1 was composed a brand-new committee of legislators
2 who had not heard it, who had not reached
3 conclusions, and then held a hearing on these
4 facts, because, unfortunately, you folks have
5 polluted yourselves.

6 I know you didn't mean to. I know
7 you--all you did was listen, which is what you're
8 supposed to do. But you've obviously already
9 reached some conclusions when you say there's
10 probable cause.

11 In the--in the sheet that was passed out
12 to you that was prepared by your staff, you were
13 given the civil-law definition of probable cause.
14 And what it says is--and this is from your staff,
15 not from me--"a reasonable belief--"probable cause
16 is a reasonable belief in existence of facts on
17 which a claim is based and in the legal validity of
18 the claim itself."

19 And that means, I presume, that you have
20 already concluded, because you found probable
21 cause, that there already exists facts upon which a
22 claim is based, and there already is legal validity
23 in the claim itself. How else--how else could it
24 mean? And--and now--and now you're getting ready

1 want to be studied by every law school in America,
2 you ought to be cautious as to what you're doing
3 here, because how would you like every law school
4 in America to be studying the General Assembly
5 about a hearing it conducted just before a criminal
6 trial and how it polluted--how it polluted a trial
7 so that a fair trial could not be had in Wake
8 County on the criminal charges? How would you like
9 every law professor in the United States that
10 teaches Constitutional law talking about you the
11 way they've been talking about Sam Sheppard and the
12 way they've been talking the Ohio officials for the
13 last forty-five years. How would you like that?

14 And this is not a casual thing. This is
15 an important thing. I would suggest to you that we
16 are gradually melding together the three branches
17 of government here in an improper way that you, as
18 legislators, ought to respect. Here we have
19 members of the executive branch who also do
20 prosecutions, and who also do the same kind of work
21 as the district attorney in here in the legislature
22 helping the legislature prosecute one of its own,
23 where we've got a case going on in the judicial
24 branch in which Representative Wright is going to

1 have to stand up to criminal charges, and we're--
2 and we've--we've picked those charges out of there,
3 and we've stuck them in the legislative process.
4 And we've got all three of these things all mixed
5 in together now. Whatever happened to the balance
6 of power?

7 What would be the harm, after all, in
8 letting a jury decide this, letting it go to a jury
9 and letting twelve people who are unbiased, who
10 haven't made up their mind, decide this case for
11 better or worse? And then if you want to revisit
12 it after the jury, depending on what happens,
13 revisit it. There'll be time enough. After all,
14 these things come from 2001, 2002, 2003. You've
15 heard that. What would be the ultimate danger if
16 this is done--if you take your action, shall we
17 say, in July or August of 2008 instead of March of
18 2008? What would be the ultimate harm, as opposed
19 to the almost sure harm you will do to the criminal
20 process if you forge ahead now?

21 Because this will be headlines every day.
22 What you say will be quoted, just like what the
23 Chairman said today will be quoted. And--and in
24 the end, we'll have a jury pool that can't possibly

1 wouldn't all of you look like fools? Wouldn't all
2 of you be subject to embarrassment? Wouldn't all
3 of you be subject to charges you'd--you'd acted
4 prematurely and done something you should not have
5 done?

6 So what I'm asking here for is not for
7 you to say that Representative Wright did no wrong,
8 not for you to say you have no suspicions, not for
9 you to say you're going to sit on your hands and do
10 nothing. I'm asking for you to simply defer this
11 for a few months, long enough for me to try my
12 case. That's all I'm asking.

13 Thank you very much.

14 THE CHAIR: Questions for Mr. Harris by
15 members of the Committee? Representative Stam.

16 REP. STAM: Yes. Mr. Harris, I
17 appreciate your thoughts. This motion actually
18 interests me, maybe for different reasons. And
19 I've heard you and Professor Joyner say several
20 times that the Chair and I have made up our minds.
21 As I understand it, we found probable cause, which
22 is the same thing that the grand jury of Wake
23 County did, a group of twelve people.

24 MR. HARRIS: Uh-huh (yes).

1 consider this case, can't possibly give
2 Representative Wright a fair trial, which he's
3 entitled to under law.

4 So this is not--as some of the
5 hypotheticals have said, this is not a matter that
6 has not come to the attention of the courts. This
7 is not a matter that won't be dealt with if you
8 don't deal with it. This is a matter that is being
9 dealt with by--by no less than the Wake County
10 district attorney. Let him deal with it. Let the
11 Justice Department deal with it. Let the--let the
12 system of justice--let the courts deal with it.
13 Don't embroil yourself in it, because if you do,
14 you're going to create an impossible morass and
15 mess.

16 And, lastly, I want you to think, too,
17 about what would happen if your--if your decision
18 is contrary to the jury. We must consider the
19 possibility that you might vote that Representative
20 Wright is guilty of one or more of these things and
21 a jury might say that he's not guilty of one or
22 more of these things. Who would have the most
23 say-so? Surely the jury would have the last word
24 on who's guilty and who's not guilty. Then

1 REP. STAM: If the finding of probable
2 cause by a group of twelve people in Wake County
3 pollutes the jury pool, then obviously all
4 indictments pollute criminal trials, which is
5 nonsensical.

6 Are you aware that the clear-and-
7 convincing-evidence standard is higher than
8 probable cause?

9 MR. HARRIS: I would ask you if you're
10 aware that all grand jurors are disqualified from
11 sitting on the regular jury, because nobody could
12 reach their--nobody could make up their mind to a
13 degree that a grand jury makes up its mind and then
14 sit around and judge the case. So all of you would
15 be--if--if you sat as a grand jury, which you just
16 did--

17 REP. STAM: Let me--let me just--

18 MR. HARRIS: --all of you would be
19 disqualified.

20 REP. STAM: Let me ask you the question
21 again.

22 MR. HARRIS: Yes.

23 REP. STAM: Are you aware that the clear-
24 and-convincing standard is higher than the

1 probable-cause standard?
 2 MR. HARRIS: Certainly. I'm aware
 3 that--I'm aware that there's a number of different
 4 standards, among them, beyond a reasonable doubt--
 5 REP. STAM: Right.
 6 MR. HARRIS: --is the criminal standard.
 7 REP. STAM: And the second question, if I
 8 might, why should you not make this argument to the
 9 superior court, that that case be held in abeyance
 10 so that those proceedings don't pollute the
 11 deliberations of the House?
 12 MR. HARRIS: The--
 13 REP. STAM: Why--why should the--why
 14 should the superior-court action take precedence
 15 over the actions of the House of Representatives?
 16 MR. HARRIS: The statutes that you passed
 17 establish precedence. And precedence is the first
 18 case--the first case in order is--is the U.S.
 19 Supreme Court. The next case in order is the
 20 federal courts, on down the line. The next
 21 court--case in order is the North Carolina Supreme
 22 Court, the Court of Appeals. The next case in line
 23 is criminal superior. The next case in line is
 24 civil superior. You, sir--

1 Hight has scheduled the criminal trial for March
 2 the 3rd, the same day that we're scheduled for. Is
 3 it your understanding that that trial date is firm
 4 and that you will proceed either by plea or by
 5 trial, absent some extraordinary circumstance, on
 6 that date?
 7 MR. HARRIS: I--I wish to inform you that
 8 I have made a motion to continue that case off that
 9 date. And my reasons are that we are considering a
 10 large volume of evidence, you know, about eight
 11 thousand pages, and dozens of witnesses and things
 12 that the State had to consider over about a year
 13 and we've had about two months, I guess, now. And
 14 I have represented to the Court that we simply need
 15 more time. In truth, that applies in this hearing,
 16 as well, as Dr. Joyner alluded earlier. It's--it's
 17 an extraordinary volume of evidence and witnesses.
 18 I--I--I don't think that Dr. Joyner and
 19 myself--I don't think that Dr. Joyner and myself
 20 aided by the Dream Team out in California or any
 21 group of attor--attorneys could prepare properly
 22 this case in this short amount of time.
 23 THE CHAIR: Has the--has the State
 24 responded to that motion to continue yet?

1 REP. STAM: But we're not--
 2 MR. HARRIS: --you, sir--
 3 REP. STAM: Let me--
 4 MR. HARRIS: --are way on down the line--
 5 REP. STAM: The U.S. House is--
 6 MR. HARRIS: --in superiority.
 7 REP. STAM: The U.S. House is not in
 8 that--I mean, the North Carolina House is--those
 9 are court proceedings you're talking about. And
 10 I--you're talking about the Rules of Practice?
 11 MR. HARRIS: Well, this is surely a civil
 12 proceeding, and a civil proceeding is ranked below,
 13 by you, by--by the legislature, below all criminal
 14 proceedings, all.
 15 REP. STAM: All right.
 16 MR. HARRIS: Even if I were to be in
 17 North Carolina District Court today, and I also had
 18 to be here, my duty would be in the North Carolina
 19 District Court. So there is no question that--that
 20 Wake County Superior Court is superior to your
 21 proceedings here, and that's by the laws that you
 22 have passed.
 23 THE CHAIR: Let me ask a question, and
 24 this is a practical one. I understand that Judge

1 MR. HARRIS: They have not. I have not
 2 seen a formal response.
 3 THE CHAIR: Do you have that motion
 4 scheduled for argument?
 5 MR. HARRIS: Yes. It's scheduled on
 6 February 25th, along with some other motions.
 7 THE CHAIR: Is that your motions deadline
 8 date for--
 9 MR. HARRIS: That's correct. I've
 10 already filed that motion along with some motions
 11 to dismiss and some other motions.
 12 THE CHAIR: All right.
 13 MR. HARRIS: And that, along with
 14 Mr. Willoughby's motion to consolidate, are all on
 15 the 25th.
 16 THE CHAIR: If the criminal trial does go
 17 on--
 18 MR. HARRIS: Yes.
 19 THE CHAIR: --the 3rd, then that--and--
 20 and--and, obviously, if we're both scheduled on the
 21 3rd, that clearly--and I agree with your point--
 22 MR. HARRIS: Yes.
 23 THE CHAIR: --takes precedence, and you
 24 and--and Representative Wright would need to be in

1 the criminal trial.
 2 MR. HARRIS: That's right.
 3 THE CHAIR: That would effectively moot
 4 the issue we're facing if that happens. Correct?
 5 MR. HARRIS: That's true.
 6 THE CHAIR: All right. Thank you.
 7 MR. HARRIS: All right.
 8 THE CHAIR: All right. Mr. Hart?
 9 MR. HART: Mr. Chairman, I have spoken
 10 with Colon Willoughby, the district attorney of the
 11 10th Prosecutorial District. The--what--much of
 12 what Mr. Harris just said is what Colon Willoughby
 13 also told me. In fact, I believe it was--last
 14 Friday was the deadline for filing motions. I was
 15 not aware of what motions had been filed, but he
 16 told me that the motions will be heard on February
 17 25th before Judge Hight, who was also the judge who
 18 was set to try the case on March 3rd.
 19 Mr. Willoughby informed me last week that
 20 his intention is to proceed forward with trial on
 21 March 3rd, and will be urging the trial court to do
 22 so. He indicated to me also that he had provided
 23 discovery to Representative Wright back on the 1st
 24 of January, I believe, or just--right--right during

1 Chair and the Committee on a motion to continue and
 2 to hold in abeyance the ethics proceedings with
 3 regard to Representative Wright. The issue has
 4 been briefed and argued by counsel and is ready for
 5 disposition in large part today.
 6 Number 2. It is the Chair's
 7 understanding that the current criminal trial is
 8 scheduled by Superior Court Judge Hight for March
 9 3rd. Further, my understanding is that there are
 10 motions to be heard on February 25th in the Wake
 11 County Superior Court, with one of those motions
 12 having been filed by Representative Wright to
 13 continue the trial date due to the large volume of
 14 evidence in the case.
 15 Next numbered paragraph. The rights at
 16 issue in the ethics proceeding are complex. There
 17 are absolutely the rights of Representative Wright
 18 to a fair hearing and full due process of law.
 19 Likewise, there is the significant interest in the
 20 public to an assurance that all of the legislators
 21 in the House and the Senate are conducting the
 22 affairs of their office and are conducting their
 23 time in office in an ethical manner, that the
 24 perception of the public that any legislator may

1 that time period. And so they are--as far as the
 2 State--that is, the district attorney is concerned,
 3 he is--he is ready to proceed to trial on March
 4 3rd.
 5 I would say one thing that is--that I
 6 believe I disagree with Mr. Harris about, and that
 7 is that regardless what a jury does, this Committee
 8 still has valid charges before it. And even if a
 9 jury were to fail to find beyond a reasonable doubt
 10 that Representative Wright is guilty of the
 11 charges, that does not mean that this Committee
 12 could not find by clear and convincing evidence, a
 13 lesser burden, that--that Representative Wright is
 14 guilty of unethical conduct involving the same
 15 conduct alleged in--in the indictments.
 16 And so the--the fact that a jury were to
 17 find him not guilty either before or after this
 18 Committee takes--takes action is simply irrelevant.
 19 THE CHAIR: All right. Thank you.
 20 Questions for Mr. Hart from any member of the
 21 Committee? All right. I understand the motion
 22 and--and the position of the lawyers and the
 23 parties.
 24 All right. This matter is before the

1 be--or series of legislators may be unethical can
 2 very quickly destroy the confidence of the public
 3 in the institution of government. And that is a
 4 substantial right at issue in any ethics
 5 proceeding.
 6 Yet another interest are the interests of
 7 the constituents in Representative Wright's
 8 district to have a representative who does not have
 9 over his head ongoing ethics charges of which there
 10 is a question of whether or not he committed any
 11 violation so that they can have the full effort of
 12 that legislator to represent that district.
 13 All of these rights are at issue in the
 14 balancing--and I think that's what it is--the
 15 balancing of how to proceed in these cases.
 16 Next numbered paragraph. The history of
 17 this ethics proceeding is not one that has moved at
 18 anything other than a very deliberate rate of speed
 19 in order to protect all of the rights involved and
 20 most particularly and supremely that of
 21 Representative Wright. The ethics--the ethics
 22 proceedings began, as you alluded to, Mr. Harris,
 23 in the Legislative Ethics Committee, and the
 24 Legislative Ethics Committee determined--after

1 withholding any movement in the ethics case for a
2 number of months to allow the criminal prosecution
3 to make its determination of whether to proceed,
4 the Legislative Ethics Committee determined that
5 there was--there were grounds to refer this matter
6 to the House of Representatives for disciplinary
7 considerations in December of 2007, and withheld
8 judgment on one count that it retained jurisdiction
9 over.

10 This matter came to the House, and the
11 Speaker appointed this Committee in December of
12 2007. The Committee then met to establish its
13 rules in two thousand--December of 2007, and a
14 probable-cause hearing was scheduled and held on
15 January 9th, 2008.

16 The Rules that have been established by
17 the House Select Committee detail a time frame for
18 the exchange of witnesses, the exchange of a
19 summary of their testimony, the exchange of
20 documents, the subpoenaing of witnesses, and the
21 time to prepare for any hearing. Those rules are
22 consistent with or more generous in every respect
23 than nearly every set of state ethics rules that we
24 could find in the United States of America.

1 our own individual knowledge, the press that has
2 occurred in this area, which would be a minimum
3 showing required to even look at this motion in the
4 criminal context.

5 Finally, my concern on this is to agree
6 with this motion in a vacuum and to say essentially
7 that we will continue the ethics hearing, and then
8 to have the criminal case continued and not to have
9 any proceedings that try to get at what occurred
10 here in March on a matter that was first brought to
11 the attention of the State Board of Elections
12 almost a year ago and that has been pending in
13 multiple forums for the better part of that year,
14 creates a perverse policy to me, that the more
15 egregious the alleged misconduct, the more that it
16 verges on criminal conduct, the more control the
17 alleged actor has over the ethics process and its
18 timing.

19 That is, if we had no criminal charges
20 pending, there would be no argument that the House
21 could proceed to its ethics hearing.

22 The fact, however, that the conduct is
23 alleged to have criminal possibilities suggests in
24 your argument that the person who has a criminal

1 Next numbered paragraph. If the criminal
2 case is in trial or plea on March the 3rd, this
3 case--the motion will be granted to that extent,
4 and this case would be continued in the ethics
5 committee on a week-to-week basis to be rescheduled
6 on Monday, March the 10th, and again, if you were
7 still in trial or in plea on that date, the
8 following Monday.

9 If, however, the criminal trial is
10 continued or for matters unrelated does not take
11 place on March the 3rd and this issue is still
12 pending, the motion to continue the ethics hearing
13 on that date is denied. I believe that, number
14 one, the protection of the criminal case can be
15 assured, as it is in many cases with publicity, by
16 change of venue, by curative or limiting jury
17 instructions, by individual *voir dire*, and by
18 continuation which would have occurred, obviously,
19 by definition of the trial date.

20 There has been no evidence at all
21 presented to this Committee beyond argument and
22 pure conjecture and speculation that any holding by
23 this body would in any way affect the criminal
24 trial. We do not even have before us, other than

1 case pending therefore gets to delay in the ethics
2 process simply because the criminal charges are
3 pending, and therefore, the more dilatory tactics
4 that might be taken to extend out each process
5 circularly extends the other. I do not think--I
6 believe that that policy is as unsound in practice
7 as it would be unwise and unnecessary.

8 I believe that the balancing of the
9 rights that must occur here include not only the
10 rights of Representative Wright to a fair trial and
11 a fair hearing in this jurisdiction, but the rights
12 of the institution, the rights of the public, and
13 the rights of the constituents in Representative
14 Wright's district.

15 So because this matter has been pending
16 for many months, counsel could have been retained
17 many, many months ago. I feel for the amount of
18 work that has been done. I have been there. But I
19 am not going to continue this hearing unless
20 Representative Wright is in trial or in plea. But
21 one way or another, he will be one of those two
22 places on March the 3rd. The motion is denied.

23 Exception is noted. Does any member of
24 the Committee seek to overrule the decision of the

1 Chair?

2 REP. STAM: Mr. Chair?

3 THE CHAIR: Representative Wright--or

4 Representative Stam.

5 REP. STAM: I didn't know how you would

6 handle this, but I think you've hit exactly the

7 right resolution, and I have no motion.

8 THE CHAIR: All right. Thank you. All

9 right. That is, at this point, all the motions I

10 have pending at the Chair. Let me ask--and I'm

11 going to kind of circle--Mr. Peters, Mr. Hart--I

12 know we've got discovery matters that we've got to

13 deal with. Are there any other motions outside the

14 discovery pending that you're aware of?

15 MR. HART: No.

16 THE CHAIR: Professor--Dr. Joyner,

17 Mr. Harris, are there other motions besides the

18 discovery ones, which we're going to deal with

19 after a short recess, to get those resolved--are

20 there any other motions that I have neglected to

21 cover?

22 PROF. JOYNER: No, there's not--there are

23 no motions that you've neglected. We would make an

24 additional motion that--that--that the House

1 not making that motion now, is he? Or he--

2 THE CHAIR: No, I understood it to be a

3 motion.

4 REP. STAM: Oh. Well, I would like to

5 hear a response--

6 THE CHAIR: I'm sorry. Mr. Hart?

7 MR. HART: One thing that has occurred to

8 Mr. Peters and myself is that--is that this

9 Committee and this--and the Chair may not be the

10 appropriate person to address this motion to. It

11 may be that--that the motion can only be properly

12 addressed to Representative Hackney, the Speaker of

13 the House.

14 THE CHAIR: I think that the Chair is

15 going to address the motion today, and then I'm

16 going to refer it--the Committee's ruling by letter

17 to the Speaker to see if he is inclined to hear it

18 independently. But I think he would want at least

19 a ruling by us and a decision, and may choose under

20 the circumstances not to.

21 I think, again, ultimately any House

22 committee as appointed by the Speaker is under the

23 Speaker's direction, and the Speaker can certainly

24 decide to change and to listen to that motion and

1 appoint a different fact-finding committee to

2 review the factual allegations in this matter, in

3 the sense that those persons who have engaged in

4 the grand-jury process, those people who have

5 already reached conclusions regarding probable

6 cause are not impartial jurors to determine what

7 the facts are, particularly in the next phase of

8 this matter, or in the alternative, that--that

9 Representative Wright be allowed to make his claim

10 and present his evidence before the full House of

11 Representatives, since they are to be the ones that

12 will determine whether he is to be disciplined or

13 expelled from this body.

14 THE CHAIR: I understand the motion.

15 Questions by any member of the Committee to

16 Dr. Joyner? Mr. Hart? Mr. Peters? And since this

17 a new motion, do you need a moment to respond for

18 any reason?

19 MR. HART: No. No reason for a response.

20 I'll leave it up to the Committee to decide.

21 THE CHAIR: All right.

22 REP. STAM: Well, he said he--

23 THE CHAIR: Representative Stam.

24 REP. STAM: He said he will make a--he's

1 to come to a different result. But I'm going to go

2 ahead and rule on it, Mr. Hart.

3 MR. HART: In that case, I would like to

4 just respond briefly.

5 THE CHAIR: Yes, sir.

6 MR. HART: There have been a lot of

7 allegations thrown at the Committee by Mr. Joyner

8 and Mr. Harris today about the fairness issue. And

9 I think there have been mischaracterizations made

10 about the role of the Committee and what it has

11 done so far.

12 As special counsel, Mr. Peters and I have

13 been involved in--in this case all along, and we

14 have seen, as the Chair noted, that it--it has

15 proceeded at a very deliberate pace. Both the LEC

16 and the House Select Committee have done everything

17 possible to await the outcome of the SBI

18 investigation and the action by the district

19 attorney, have been very careful to make sure that

20 due-process provisions were put into the Rules, and

21 that time was appropriately set out to deal with

22 every aspect of the hearings before this Committee.

23 As--everything that has been done is--has

24 been afforded the same kind of protections as have

1 been afforded a criminal defendant in--in criminal
2 court, and we see no reason that this Committee
3 should not move forward.

4 As was noted earlier, the only thing that
5 this Committee has done is make a finding of
6 probable cause. This Committee has not reviewed
7 all of the evidence that will presented at the
8 hearing. It has simply made a preliminary
9 probable-cause determination.

10 THE CHAIR: All right. And--

11 PROF. JOYNER: Mr. Chairman, may I now
12 respond?

13 THE CHAIR: Yes, Dr. Joyner, you may.

14 PROF. JOYNER: I know it's been a while
15 since Mr. Hart's been in criminal court, so he may
16 have forgotten some of the procedure over there.

17 This--this Committee, this House Select
18 Committee is--has been in charge of the prosecution
19 of this matter, the Attorney General's staff is
20 assigned to this Committee to be the prosecutor.
21 Members of this Committee have served as the grand
22 jury to find probable cause. And there is simply
23 no way that they could have been engaged in these
24 roles without reaching some conclusion about the

1 making any type of presentation to the House of--to
2 the full House of Representatives as to whether any
3 disciplinary actions should be taken or
4 Representative Wright should be expelled. And that
5 is a clear violation of every rule of--that I know
6 of under the federal and the state Constitution.

7 Now, if you want to call it fair, you can
8 call it anything you want to. But the public will
9 see it is not fair.

10 THE CHAIR: Dr. Joyner, my question--and
11 I understand the eloquence of the argument. My
12 question is, do you have any evidence today that
13 you wish to present that you have any evidence that
14 any member of this Committee is biased, prejudiced,
15 or has otherwise made a final decision with respect
16 to your client and is impaired from doing so?

17 And my question is evidence. I'm not
18 talking about the fact that we may have heard
19 probable cause. I'm asking so that I know is there
20 a piece of evidence that you have that you want to
21 present that members of the Committee, individually
22 or combined, are prejudiced, biased, or otherwise
23 impaired in their judgment with respect to the
24 merits of this action?

1 probable guilt of--of Representative Wright.

2 Now, this same Committee that is
3 prosecuting it, that serves as grand jurors, will
4 now sit as petit jurors where they will then make a
5 finding of fact, a definitive finding of fact,
6 which can either include or exclude any information
7 that we provide or we present as evidence. And it
8 is that finding of fact which will go before the
9 full body for them to make a determination with any
10 recommendations which they made.

11 Now, Stevie Wonder can see that there is
12 a little problem with that. It is not a far
13 stretch to conclude that the skids are already
14 greased and the outcome--outcome of this matter is
15 predetermined.

16 THE CHAIR: Dr. Joyner--

17 PROF. JOYNER: And we--we would think
18 that the--fair--fairness would allow us, if nothing
19 else, to present our evidence before an impartial
20 body or to the full House of Representatives, since
21 the full House of Representatives will make a
22 decision about this matter upon recommendation from
23 this Committee. As the Rules are now established,
24 this--this side of the aisle is precluded from ever

1 PROF. JOYNER: Mr. Chairman, I've
2 presented the procedural history, the involvement
3 of members of this Committee in bringing us to
4 where we are now, and I think that that evidence
5 speaks for itself. I don't need to present
6 anything else.

7 THE CHAIR: That's not my question,
8 Dr. Joyner. My question--

9 PROF. JOYNER: Now, just--

10 THE CHAIR: --to you--no--no, sir. My
11 question is yes or no, do you have any evidence
12 that a member of the Committee is biased,
13 prejudiced, or substantially impaired--I understand
14 the legal argument. My question is whether there
15 is a piece of evidence, because if there is, we
16 need to consider that.

17 PROF. JOYNER: And I just said that the
18 fact that these members of this Committee,
19 including yourself, have sat through all of these
20 proceedings and listened to all of these
21 allegations and reached the conclusion--that that
22 is evidence in and of itself. No, we do not have
23 anything else to present, but I don't think we need
24 to present anything else.

1 THE CHAIR: All right. I appreciate
2 that.
3 MR. HARRIS: I'd like to speak to that,
4 Mr. Chairman, if I may.
5 THE CHAIR: Well, now, I'm trying to--oh,
6 Mr. Harris, I'm sorry. And then I'll get with
7 Mr. Hart.
8 MR. HARRIS: Oh, pardon me, Mr. Hart.
9 Mr. Chairman, I wanted to make it clear to all the
10 members that I am in--since I was the one quoted, I
11 am in no way, shape, or form impugning the
12 integrity or the good intentions of anyone on this
13 Committee. That's--I wouldn't want anyone to think
14 that that was anything that I was saying.
15 What I was saying was merely this, that
16 if you were now sitting in a jury box, potentially
17 to be selected in a jury, and you were asked the
18 question that every defense attorney asks, "Have
19 you reached some conclusions about this case? Do
20 you have some opinions about this case," all of
21 you, I presume, would have to say yes, and that
22 conclusion is that probably--just as the Chairman
23 said earlier, probably some fraud has been
24 committed here, probably there has been some

1 matter--and you are all members of it--and then
2 when it came time the Joint Legislative Committee
3 said they had no jurisdiction to go any further on
4 this, then what should have happened was instead of
5 selecting a subgroup of that committee, of which
6 you are, and all the very same members who had
7 already voted and already reached conclusions--
8 instead of selecting that subgroup, he should have
9 selected a brand-new group out of the House that
10 were unbiased, had not heard--had heard nothing and
11 had reached no conclusions. So that is the point
12 I'm making.
13 I hope no member of this Committee,
14 including the Chair, thinks that I'm suggesting
15 you're--that you are, you know, acting in some
16 unethical or improper way. And I mean it in no
17 improper way, but simply that all of you, including
18 the Chair, have obviously reached certain
19 conclusions. And the Chairman actually said so.
20 So that's where we are. Thank you.
21 THE CHAIR: Thank you, Mr. Harris.
22 Mr. Hart?
23 MR. HART: Thank you, Mr. Chairman.
24 First of all, I want to set the record straight on

1 wrongdoing here. In the words of the--Black's
2 legal dictionary, probably there is some foundation
3 of fact and some--some reason to believe that
4 this--this does exist. That doesn't render you a
5 bad person, any more than it renders a member of
6 a--of a grand jury a bad person. That is the grand
7 jury's honest opinion. That is your honest
8 opinion.
9 The question before you now is quite
10 different. It is whether having reached your
11 conclusions--your preliminary conclusions, could
12 you honestly reply that you don't have an opinion
13 on this matter. I presume you could not say that.
14 You would have to hold up your hand and say, "I'm
15 sorry, Your Honor, I actually do have some
16 conclusions." And at that point, the superior
17 court judge would say, "Well, thank you very much
18 for being so honest. You're excused for having an
19 opinion." And that's where we are.
20 The fault does not lie with this
21 Committee or any member. The fault lies--and I
22 mean it in no mean way, but the fault lies with
23 Speaker Hackney, because when he let the Joint
24 Legislative Committee on Ethics investigate this

1 something. Mr. Joyner has indicated that the
2 special--that the House Select Committee is
3 prosecuting Representative Wright. That's not my
4 understanding of the process. At the request of
5 the Committee, the Attorney General has assigned
6 Mr. Peters and myself to prosecute the matter for
7 the--for the House Select Committee.
8 And I want to also state for the record
9 that we are--have not been under your direction.
10 In fact, there are many--been many times where we
11 said we couldn't do some of the things that you
12 wanted to do by the times you wanted to do them.
13 We--we have been operating independently as special
14 counsel, and it's my understanding that we are the
15 ones who are prosecuting this case, not the
16 Committee.
17 Second of all, Mr. Harris' point about
18 jurors--there are many jurors who come into jury
19 box having formed opinions. That's not the issue.
20 The issue that the superior court judge must delve
21 into is whether or not jurors can set aside
22 opinions--any opinions that they have formed and
23 make a decision based on the facts presented in the
24 case. That's the ultimate determination. That's

1 what this Committee must do, and I believe that
2 this Committee can do that.

3 The procedure that's involved in the
4 hearings in this Committee is the same as--as it is
5 in the Judicial Standards Commission. The Judicial
6 Standards Commission takes complaints from the
7 public involving judges, makes a determination as
8 to whether there's some probable cause to proceed
9 with an investigation and charging, and then sits
10 as a investigatory and fact-finding body to make
11 decisions about whether or not facts have been
12 proved, then makes its recommendations to the North
13 Carolina Supreme Court. And the Supreme Court
14 either adopts the findings or makes new findings
15 and takes appropriate action, but it only does so
16 based on the recommendations of the Judicial
17 Standards Commission.

18 THE CHAIR: Thank you. All right. I
19 think I understand the arguments. The Chair is
20 ready to rule on the motion.

21 The motion that is now before the Chair
22 and the Committee is to request that a different
23 group of legislators be appointed to hear the
24 merits of the evidentiary hearing in this case or

1 that the process be bypassed and that the full
2 evidentiary hearing be presented to the full House
3 of Representatives. That is the motion, as I
4 understand it, and the position of Representative
5 Wright.

6 The response to the motion, now having
7 been argued by Mr. Hart, is that the Attorney
8 General's office, through the appointment of
9 Mr. Hart and Mr. Peters, has been asked to
10 prosecute the case, that the Committee function is
11 to be a fact-finder in this process and make its
12 determination of fact and recommendations to the
13 House, and third, that the question is not whether
14 or not any Committee member has an opinion, but
15 whether they can make a decision based on all of
16 the facts as presented at the hearing, such that
17 their judgment can be fair, impartial, and not
18 impaired by matters outside of the proceeding.

19 All right. The Chair denies the motion
20 for the following reasons. First, the Attorney
21 General's--Deputy Attorney General Mr. Hart is
22 correct: The role of this Committee, as set out in
23 the Rules, is a fact-finding and investigative role
24 that has multiple levels of fact-finding in order

1 to protect the charged representative; to ensure,
2 first, that no charge proceeds past a private
3 discussion if there is not probable cause; and
4 second, once probable cause may be determined, to
5 set in place an evidentiary hearing to look at all
6 of the evidence, much of which, of course, is not
7 presented necessarily at the probable-cause
8 hearing.

9 Second, the recommendations of the
10 Committee are simply that. The full transcript,
11 all of the evidence presented, all of the
12 documents, if there is a finding by the Committee
13 adverse in any manner to Representative Wright,
14 will go to the full House of Representatives. The
15 full House of Representatives makes the
16 determination in this case and is the judge and
17 jury in this case, not the fact-finding committee.

18 Third, this process mirrors the Judicial
19 Standards Commission and, in fact, was created to
20 effectively mirror the Judicial Standards
21 Commission, who acts in exactly the same role on
22 its recommendation to the North Carolina Supreme
23 Court.

24 Next, I know of no evidence, none has

1 been presented, and Representative Wright's counsel
2 concedes that they have no evidence that any member
3 of the Committee is biased, prejudiced, or
4 otherwise impaired, other than their concern that
5 the Committee members have already heard some
6 evidence of probable cause and formed the probable-
7 cause opinion at that stage of the proceedings.
8 That in and of itself is hardly insufficient--or
9 hardly sufficient to create a substantial
10 impairment of legislators hearing this matter.

11 Finally, this process of the Committee
12 fact-finding is mirrored in the process of at least
13 forty other states and the United States Congress.
14 It is not my understanding that any of those
15 states--and you have not and Representative Wright
16 has not pointed to any state or any other
17 institution where the fact-finding committee
18 changes simply because there's a probable-cause
19 first step before the final evidentiary
20 determination. If it is good enough in all of
21 those other states, in Congress, and during the
22 history of the United States, it is sufficient for
23 the process to be fair here in North Carolina.

24 And finally, a personal note in the--in

1 this: I understand fully the legal argument, and I
2 do not take it that you made any personal--I
3 understand completely. But I make this
4 observation. I have dealt now with these five
5 other members, and I have--and across partisan
6 bounds--there are three Republicans and three
7 Democrats who represent various geographic areas of
8 the state--and the goal here--and I cannot state it
9 enough--has been to create a process that is as
10 fair as it could possibly be to Representative
11 Wright, or to any charged representative, but to
12 Representative Wright, and to assure that this
13 Committee will act deliberately and fairly and
14 thoroughly in its decision-making, however long
15 that takes for us to do. The goal here is to
16 restore public confidence across the board in
17 whatever our decision and in the decision-making
18 process, and this Committee intends to fulfill that
19 responsibility.

20 The motion is denied. Exception is
21 noted.

22 Do the Chair's comments or ruling seek to
23 suggest to any member they wish to overrule the
24 Chair? There is none.

1 I'm going to suggest--just the way it breaks up in
2 terms of who's kind of got material, going to
3 ask--I guess the easiest thing is Bill and Alec, if
4 you're prepared to respond to Requests 1 through 4,
5 because I had previously directed Staff to be
6 prepared to respond to Requests 5 through 7, since
7 that material's really within their reach--so if
8 you would start by responding to requests and go
9 through them 1 through 4, please--that would be
10 helpful. Just--thanks.

11 MR. HART: I had previously talked with
12 Walker about this--

13 THE CHAIR: The discovery request is
14 attached to Representative Wright's response in
15 your--after--after the motion--after the motion to
16 continue in your notebook. Thank you. I'm sorry,
17 Mr. Hart. Go ahead.

18 MR. HART: Thank you, Mr. Chairman. I
19 had previously spoken with Walker Reagan about the
20 discovery request, and we had--had discussed that
21 Alec and I would be the best ones to talk about 1
22 through 4, and that the staff would really be more
23 appropriate for 5 through 7.

24 As I have informed this Committee before,

1 I will, however, refer this motion as
2 well as our finding immediately to the Speaker's
3 office, should he decide to act independently on
4 your motion. And I think that should be done.

5 All right. Now, I'm going to suggest
6 that we take about just a five-minute, stand-up-
7 and-get-something-to-drink break and come back. We
8 have the discovery request to deal with and a few
9 definite [phonetic] matters that we want to take up
10 on the discovery request to finish up today.

11 Thank you. We'll be back in five
12 minutes.

13
14 (TEN-MINUTE RECESS)
15

16 THE CHAIR: All right. We are back
17 in--in session, and I appreciate everyone coming
18 back quickly.

19 The remaining matter that we have for
20 this that I'm aware of, other than an announcement
21 of sort of the timelines at the end, is
22 consideration of the discovery requests. And just
23 so I'm clear, Dr. Joyner has filed the discovery
24 requests, and there are seven discovery requests.

1 this is an unusual situation for me in that
2 Representative Wright, Mr. Harris, and Professor
3 Joyner have more discovery material than--than I
4 have, and I actually ought to be here asking for
5 discovery from them. And I'd be happy to make
6 whatever provisions necessary to go and get their
7 seven thousand pages of documents and make the
8 copies at--at our expense. But they--they have
9 more than we do. I haven't talked to Mr. Harris
10 about this, but I have talked to Professor Joyner
11 on the phone about this.

12 As--as I informed the Committee on
13 January 9th, we do not have what the district
14 attorney of Wake County has. We do not have the
15 SBI investigation. We do not have what was turned
16 over to the defense.

17 What we do have--we--we have had an
18 opportunity to look at some of the interviews
19 contained in the SBI investigation. We do have
20 some documents that we requested and were turned
21 over to us. And certainly we will be providing any
22 documents that we intend to introduce at the
23 hearing. Even though they already have copies of
24 those, we will provide additional copies of--of

1 whatever we do have and intend to introduce.
2 The interviews, we do not have copies of.
3 They do. What we will be providing tomorrow is--my
4 understanding of the timeline--we will be mailing
5 to them and e-mailing each attorney a copy of our
6 witness list and a summary of what we understand
7 the testimony of that witness is likely to be. And
8 that's based, again, upon our reading of some
9 interviews and discussions with investigators and
10 discussions with Colon Willoughby. But we do not
11 have copies of those interviews, so we cannot
12 provide them to them. As I said, though, my
13 understanding is that all of that has been provided
14 to--to Representative Wright.

15 Through a newspaper account, I saw that
16 Mr. Harris said that he read those over January
17 1st. I can't remember what he said he was eating
18 and drinking at the time, but there was a comment
19 in the paper that he had had a day on January 1st
20 where he had been reviewing some seven thousand
21 pages of documents.

22 Again, we don't--we don't have interviews
23 to turn over. We do have copies of the same things
24 they do, that is, the Board of Elections report

1 counts.
2 MR. HART: Yes, sir. So far we have not
3 found any such information. And again, to the
4 extent that there may be some of that type
5 information in the SBI report that we have not
6 examined, we assume that they have that, and
7 so--so they--that would be available to them.

8 THE CHAIR: I understand.

9 MR. HART: But we--we do not have
10 anything at this point.

11 THE CHAIR: All right. And as to
12 Number 3, as to any--you have not interviewed any
13 individuals as Committee counsel that you've got
14 statements to turn over to Representative Wright's
15 counsel?

16 MR. HART: We have--we have not.

17 THE CHAIR: All right.

18 MR. HART: We have discussed the matter
19 with investigators. We have discussed it with
20 Mr. Willoughby. We have, again, read some
21 interview notes, but that's--those are the only
22 folks that we have--have spoken with.

23 THE CHAIR: All right. And Number 4, you
24 would certainly--again, to the extent that you had

1 that was included in the discovery that they
2 had--we also had the DHHS audit, which was part of
3 the discovery materials that were turned over to
4 them. And so they already have everything that we
5 have and more.

6 But we certainly will be providing a--a
7 witness list and summary of our witnesses tomorrow.
8 And we will provide them--I believe it's on--the
9 deadline is on the 22nd of February--we will be
10 providing them copies of any documents that we have
11 that we'll be introducing.

12 THE CHAIR: Just so I'm clear, then, for
13 Number 1 on the discovery request, that, I think,
14 tracks exactly what you're required to disclose
15 under the Committee rules. And so you will be
16 disclosing--

17 MR. HART: We will be complying with
18 that.

19 THE CHAIR: You will be complying with
20 Number 1. Number 2 also tracks essentially what is
21 in the Committee rules, and you would--and--and
22 would therefore be turning over to Representative
23 Wright any information that a reasonable person
24 might believe would exculpate him on any of the

1 any interviews or you had statements for anyone who
2 was going to be either testifying here or where the
3 statement could be in any way thought to be
4 exculpatory, you would have to turn that over. But
5 there have been none to this point; is that what I
6 understand?

7 MR. HART: Right. No question as to
8 anything exculpatory. The--my understanding of
9 Number 4 is that it actually exceeds the Rules,
10 that if--that is, if we should talk to a witness
11 and that witness simply gives us an oral statement
12 and we don't prepare a report, I don't believe we
13 have any obligation under the Rules to turn that
14 over. To the extent that there's anything
15 exculpatory, however, we certainly would do that.

16 THE CHAIR: All right. All right. Now
17 let me turn to Dr. Joyner and--and Mr. Harris.
18 You've obviously had conversation with Mr. Hart and
19 heard his responses. Is there anything that I need
20 to rule on on Numbers 1 through 4 that he hasn't
21 either replied to or that you have concerns about?

22 PROF. JOYNER: Well, let me just say
23 Mr. Hart's very generous in terms of what I've
24 received. I've not received--Mr. Harris has

1 received some information that's part of the
2 criminal case. I have not received that
3 information, nor have I reviewed it, so I'm trying
4 to get the information that has been--that serves
5 as the basis for these claims--the claims that have
6 been made in--before this body. And Mr. Hart has,
7 indeed, sent some information to me.

8 The exhibit--or the documents that was
9 just handed out today with the Exhibit 9 in it--and
10 I believe there was another document, as well--but
11 we would certainly want that to be a continuing
12 obligation on them to provide to me this
13 information that will be specifically used and
14 introduced in these proceedings to--to the extent
15 that--and I'm not hung up with what's going to be
16 presented in the criminal proceeding--

17 THE CHAIR: Right.

18 PROF. JOYNER: --you know, because they
19 may not be the same.

20 I just need to know and receive that
21 information that is--that serves as a basis for
22 these claims and that will be introduced in--in
23 these proceedings.

24 THE CHAIR: All right. I don't--

1 MR. HART: My response--

2 THE CHAIR: Mr. Hart?

3 MR. HART: --Mr. Chairman, is this.

4 And that is if they want to play some
5 kind of a Chinese wall game where Mr. Joyner says
6 he doesn't have what Mr. Harris has, then I say
7 that's not correct. The--the State of North
8 Carolina, through Mr. Willoughby, has served
9 Representative Wright with seven thousand pages of
10 documents of what's in an SBI report, the Board of
11 Elections, DHHS. If Mr. Joyner chooses not to
12 avail himself of that to prepare for this hearing,
13 I can't help that.

14 THE CHAIR: Well, I do agree that--that--
15 and I want to be understood. I mean, both of you
16 are Representative Wright's counsel. It's
17 Representative Wright that the obligation is owed
18 to to turn over the evidence, not to a specific
19 attorney, but to Representative Wright. You both
20 have functioned as his counsel here today.

21 I assume that when documents are sent to
22 Mr. Harris, that Mr. Harris will share them with
23 Dr. Joyner, and vice versa, since you are his
24 counsel across the board and certainly have

1 represented yourself in documents here and in the
2 proceedings today.

3 PROF. JOYNER: Mr. Chair--

4 THE CHAIR: So I'm at a--I do agree with
5 Mr. Hart on that point. Dr. Joyner?

6 PROF. JOYNER: Let me--let me--let me be
7 clear. There are items included in these protocol
8 for proceedings in terms of the discovery items
9 that we have requested, and we're asking that those
10 items be turned over, irrespective of what Colon
11 Willoughby has provided. That has nothing to do
12 with this. The--you know, Colon Willoughby is not
13 responding to the protocol for the House Select
14 Committee. We are asking for the documents that
15 buttress the claims here, not that buttress the
16 claims in--in criminal court.

17 THE CHAIR: Sure.

18 PROF. JOYNER: So those two things are
19 different. And so we--we're not trying to confuse
20 them or get them mixed up or play Chinese wall
21 games or anything like that. We're--if the
22 protocols say that we are entitled to receive it,
23 whether it's duplicatous [phonetic] or not, we
24 ought to receive it, and that's what we're asking

1 for.

2 THE CHAIR: Well, I--I understand. And
3 again, I'm going to reiterate--the Chair
4 understands that the--that the Rules--and I think,
5 Mr. Hart, you understand that the Chair intends for
6 the Rules to be explicitly complied with. But
7 the--that--that compliance occurs when the
8 documents, the witness list, the information, is
9 disclosed to Representative Wright through his
10 counsel. That is, the compliance is to
11 Representative Wright.

12 So if those documents--and I've ordered
13 from the beginning that they be--that things be
14 sent--for example, e-mailing documents to both of
15 you, so that there's not a--but if a set of
16 documents is handed to you, one will assume if it
17 is handed to you it is handed to Representative
18 Wright, and that secondly, that information that
19 you possess you possess as a team for
20 Representative Wright. We can't do it any other
21 way. You clearly both represent Representative
22 Wright.

23 Nonetheless, in terms of the substance of
24 what you're asking for, I don't disagree at all.

1 And I understand--and again, I'm going to ask if
2 there's anything to rule on, but I understand that
3 as to Number 1 and Number 2, those are tracking the
4 Committee rules and the requirements that you get
5 that information, regardless of whether you have it
6 from another source. Any document, statement, or
7 recorded evidence that this Committee's counsel
8 intends to introduce, you need to be notified of,
9 and will. Any exculpatory information that they
10 possess, they have a duty to turn it over to you in
11 that regard.

12 And Number 3, to the extent that they've
13 interviewed anyone--and they've indicated they've
14 not, so there's nothing at this point for me to
15 rule on. And Number 4, as to the copy of every
16 written or--statement--again, since there hasn't
17 been any, there is again nothing to rule on, but
18 again, to the extent it is information to be
19 presented, it is a witness to be presented, or it
20 is exculpatory, you are entitled to it. Your
21 client is entitled to it. And my understanding is
22 that that is the rules that Committee counsel
23 understand to be operating under. Am I correct?

24 MR. HART: That's correct.

1 THE CHAIR: All right. So again, is
2 there anything--given that, is there anything I
3 have to rule on or the Committee has to rule on
4 today on Numbers 1 through 4?

5 MR. HARRIS: Mr. Chairman--

6 THE CHAIR: Mr. Harris?

7 MR. HARRIS: --there is this point.

8 I heard several times Mr. Hart say
9 that--that he assumed that Mr. Willoughby had--had
10 given me certain things. And the difficulty in
11 that would--would come about if--if it turned out
12 that he assumed that and Mr. Willoughby hadn't.

13 And so I think what we're looking for
14 here is independent assurances from--from Mr. Hart
15 and from Mr. Peters that if they have come across
16 something that fits in these categories, that they
17 will supply it, because by its very nature,
18 different opinion--different attorneys have
19 different opinions. And it may be that Mr. Hart
20 will look at something or Mr. Peters will look at
21 something and he'll say, "Oh, that fits thus-and-
22 so," and maybe Mr. Willoughby didn't. And so--

23 THE CHAIR: I understand.

24 MR. HARRIS: It--it--I think we'd get

1 ourselves in a real mess here if--if we--if any of
2 us assumed that something's been given by
3 Mr. Willoughby when, in fact, it hasn't.

4 And so I'm--I--I don't know all the
5 gentlemen, but they have excellent reputations. I
6 know both of them do, and I'm not--I'm not looking
7 for any intentional withholding, but I am looking
8 for accidental withholding where they assume, just
9 as Mr. Hart has said, that Mr. Willoughby had given
10 it up. So I'd--I'd like the Chair to instruct both
11 of the Special Counsel that should they run across
12 things in preparing for this case, that fit these
13 categories that they provide it and not assume that
14 Mr. Willoughby has.

15 THE CHAIR: Well, and--and I think the
16 instruction does exist that to the extent that you
17 have information that meets the Committee rule
18 requirements with regard to witnesses, documents,
19 or exculpatory information that you view as
20 exculpatory, regardless of whether the district
21 attorney did, that that--that those all will be
22 turned over consistent with the timeline. And I'm
23 getting ready to set that timeline, as well, with
24 those instructions. Okay.

1 Now, as to Numbers--thank you. And as to
2 Numbers 5, 6, and 7, I think those are materials
3 that actually are better left to the Committee
4 counsel. And I asked them to prepare responses for
5 you, since they--we have that access at the General
6 Assembly better than Mr. Peters and Mr. Hart. So
7 I'm going to turn that response over to Mr. Reagan.

8 MR. REAGAN: Thank you, Mr. Chairman.
9 Yes, at your request, we have put together a packet
10 that we're prepared to give to Mr. Joyner and
11 Mr. Harris today. As to Item Number 5, I would
12 point out that there have been no rules of conduct
13 adopted by either the General Assembly or the House
14 or the Senate during the period of time 2001
15 through 2007. And this transmittal memo that we've
16 got prepared to go with this information today will
17 say that for them.

18 As to requests Number 6 and 7, it's a
19 fairly broad request, asking for any information
20 that any individual legislator has been given with
21 regards to ethics information. I would point out
22 that those are covered--many of those
23 communications may be covered by legislative
24 confidentiality as it relates to individual

1 legislators, and we're not allowed to disclose that
2 information unless the individual legislator
3 themselves waives that or in the event that a court
4 orders us to turn that over.

5 But what we are provided--able to provide
6 to them today would be all public documents that we
7 may have been able to identify that we can give to
8 them with regards to those specific questions. And
9 I think we've got a list of approximately twenty-
10 four items that are documents that we're prepared
11 to turn over today. Most of these are typical
12 documents that we've given to legislators in the
13 past, that we give as part of the ethics training.
14 They include the ethical principles and guidelines
15 that have been adopted by the LEC and the redacted
16 versions of advisory opinions that have been handed
17 out over the years since 1975-76, up to those that
18 have been handed out through 2007.

19 Anyway, Mr. Chairman, that's the
20 information we're prepared to turn over today.

21 THE CHAIR: All right. And if you would
22 at this point, would you please pass out the packet
23 to Representative Wright and his counsel? And if
24 we--do we have copies?--excuse me? If we could go

1 ahead and--okay. Let's go ahead and do that and
2 get those handed out, and then what I'm going to
3 ask you to do for a minute is look at the response
4 and make sure that it--it is what you are seeking,
5 so that if there's anything else that isn't on
6 there, we can resolve that as--at least as fast as
7 we can.

8 (DISCUSSION OF RECORD)

9 THE CHAIR: And I know you obviously
10 can't sit and look through all that material now,
11 but if you'll just look at the transmittal letter
12 for a moment, and--and make sure that that's
13 getting at the generic items that you wanted, and--
14 and so that we haven't missed anything.

15 PROF. JOYNER: Mr. Chairman, I understand
16 that--from Attorney Walker that the individual
17 opinion or advisory explanations provided to
18 individual legislators is not included--are not
19 included here because of confidentiality.

20 THE CHAIR: And under the requirement of
21 statute, that's right. The advisory opinion only
22 goes back to that legislator. And until it's
23 redacted, it is not published. We are in the
24 process of redacting now. The State Ethics

1 Commission has just finished redaction and has
2 posted on their Web site those opinions they issued
3 last year, and including some that we adopted. So
4 those are on Web site and available to the extent
5 they're redacted.

6 But there are--most of the advisory
7 opinions issued this year are in the process of
8 being redacted. They haven't issued, and therefore
9 they're not guidance to anyone except that
10 individual legislator until we get to that point.

11 PROF. JOYNER: Is--is there any way to
12 list out the categories of those opinions over the
13 time frame that we're requesting them?

14 THE CHAIR: Representative Stam? I'm
15 sorry.

16 REP. STAM: Or would it violate anything
17 if I were to inquire whether any of them have
18 anything to do with anything remotely related to
19 what Representative Wright is allegedly accused of
20 doing?

21 THE CHAIR: Well, let's--let's just--
22 first let me ask the predicate question that
23 Dr. Joyner asked. Would it violate the
24 confidentiality provision to give Representative

1 Wright the generic category of what advisory
2 opinions were on? And I--I'm just asking that--

3 MR. REAGAN: No, I don't think it would.
4 I think we can go through those--we have not done
5 that, but we can certainly give him a list of those
6 seven or eight that are waiting for redaction right
7 now by title, 'cause I think the title of the
8 opinion at this point is not identifying any
9 particular person. And to the extent it does, we
10 can redact that or the particular subject matter.

11 THE CHAIR: Then that's ordered, and
12 we'll do that.

13 All right. Anything else that--that's--
14 that you have a question about assessment a result
15 of the--the list?

16 PROF. JOYNER: No, that's all.

17 THE CHAIR: Thank you. Then that--that
18 resolves--and I appreciate the staff's work on
19 that. That resolves Numbers 5, 6, and 7 of the
20 discovery request. That does resolve the
21 consideration of the discovery requests today.

22 The next thing that we need to take up
23 for a moment is the announcement of timeline in
24 preparation for the evidentiary hearing. Although

1 we're holding it--the lawyers will discuss a little
2 bit afterwards some of the mechanics, but for
3 public purposes, the date of the evidentiary
4 hearing is scheduled--pending, again, being trumped
5 by the--by the criminal proceeding, for March 3rd,
6 and as needed, March 4th, 2008.

7 Based on that hearing date, under the
8 Committee Rules, Mr. Hart, Mr. Peters, you've been
9 asked to turn over to Representative Wright by
10 tomorrow a list of all witnesses the Committee's
11 Special Counsel will recommend that the Committee
12 hear from, together with a summary of their
13 expected testimony. Also, in accordance with the
14 Rules, I'm directing that you--and I've already
15 done that--that you provide Representative Wright a
16 copy of all documents you plan to offer at the
17 hearing no later than February 22nd.

18 In accordance, as well, with the Rules,
19 Representative Wright, you have already received
20 notice and are asked to turn over to the Committee
21 no later than February 22nd the list of witnesses
22 you would like to call to testify at the hearing.

23 In accordance with the Rules and statute,
24 the Committee will then have to approve the

1 witnesses that will be called to testify. And I
2 intend to do that--since we'll have to have another
3 meeting--but I intend to do that by teleconference
4 as opposed to having everybody have to reconvene
5 here and interrupt schedules. So we'll try to make
6 a convenient teleconference time, since that--that
7 may be--I don't know, but hopefully will be a
8 fairly formal matter to approve the witnesses. If
9 we have a problem, we'll deal with it on the phone.

10 The names of all witnesses that need to
11 be subpoenaed are to be turned over to the
12 Committee by counsel no later than February 22nd.
13 We have to do that to meet the requirements of law
14 and particularly the requirement that any witness
15 in the state's entitled to five days notice prior
16 to being compelled to testify.

17 So those are the guidelines, and they're
18 set out in the Rules, and they have already been
19 sent to you both by--by notice earlier, no changes
20 in any of that. All right.

21 PROF. JOYNER: Mr. Chairman?

22 THE CHAIR: Dr. Joyner.

23 PROF. JOYNER: We have--I would have a
24 problem with that. In some--in some--some part,

1 our ability to identify and determine or decide on
2 particular witnesses would have to be in response
3 to the witnesses that the Committee lists as
4 possible witnesses.

5 THE CHAIR: Uh-huh (yes).

6 PROF. JOYNER: Since we're not going to
7 get that until sometime after the 22nd--

8 THE CHAIR: No, sir. No, sir. The
9 witnesses--they must turn their witnesses over
10 tomorrow to you. You don't have to identify your
11 witnesses till ten days later, till the 22nd.

12 PROF. JOYNER: Okay. All right. All
13 right. I misunderstood the Chair.

14 THE CHAIR: All right. With that, I'm
15 going to ask the question with some trepidation:
16 Is there any further business to come before the
17 Committee from Mr. Harris or Dr. Joyner?

18 MR. HARRIS: No, not from me.

19 PROF. JOYNER: Mr. Chairman, I won't say
20 anything else.

21 THE CHAIR: Thank you. The Chair
22 appreciates that. Mr. Hart, Mr. Peters, anything
23 further? Mr. Reagan?

24 MR. REAGAN: No, sir, Mr. Chairman.

1 You're good.

2 THE CHAIR: All right. Thank you. I
3 appreciate everyone being here. This case was
4 scheduled for March the 3rd. And thank you all
5 very much. We're adjourned.

7 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 4:56 P.M.)

STATE OF NORTH CAROLINA

-205-

A L S O I N A T T E N D A N C E

COUNTY OF WAKE

C E R T I F I C A T E

I, Katherine M. Becker, a Notary Public in and for the State of North Carolina, duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that these proceedings were held before me at the time and place aforesaid, that all parties were present as hereinbefore stated, and that the record as set forth in the preceding Pages 2 through 204 represents a true and accurate transcription of the proceedings, to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand this the 14th day of February, 2008.

Notary Public
Notary Public No. 20023570191

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Amie Wright
FEB 25 2008
12:20pm

North Carolina House of Representatives

House Select Committee to Investigate Alleged Misconduct and Other Matters Included in Indictments Against Representative Thomas E. Wright

REPRESENTATIVE RICK GLAZIER, CHAIR
REPRESENTATIVE PAUL STAM, VICE-CHAIR
REPRESENTATIVE MARVIN LUCAS

REPRESENTATIVE BILL MCGEE
REPRESENTATIVE EDITH WARREN
REPRESENTATIVE LAURA WILEY

February 25, 2008

Rulings of the Chair on Representative Wright's Dispositive Motions

Representative Wright, by and through his legal counsel, filed and made various dispositive motions with the Committee in response to the Notice of Charges of Unethical Conduct by Representative Thomas E. Wright adopted by the Committee on January 9, 2008. Counsel for Representative Wright and Outside Legal Counsel for the Committee (Committee Counsel) were asked to and did file legal briefs with regard to most of the motions. Oral arguments on the motions were heard by the Chair and the Committee on February 11, 2008. After reviewing the briefs and hearing oral arguments, the Chair has ruled on all outstanding motions not otherwise consolidated or withdrawn by Representative Wright. This document sets out the Chair's findings, conclusions of law, and dispositions on all outstanding dispositive motions.

MOTION 1

MOTION TO DISMISS ALL COUNTS GENERALLY FOR LACK OF JURISDICTION

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to dismiss all counts pending before the Committee generally for lack of jurisdiction. The issue has been expertly briefed by attorneys for both sides and argued orally. The motion is ripe for disposition.
2. The issue is whether the Committee has jurisdiction to consider disciplinary action against Representative Wright on the eight counts pending before the Committee.
3. Representative Wright's argues that no constitutional provision or statute allows the General Assembly to discipline or expel a member. He argues that no inherent power of the General Assembly exists, and no explicit statutory or constitutional authority is available to authorize the General Assembly to proceed or to provide a basis for jurisdiction to act.

4. Representative Wright argues an inherent power can only flow from an express power, and since there is no express grant of such authority in the North Carolina Constitution or exercised by the General Assembly, no inherent authority can exist. He argues that in the absence of legislation, this Committee and the House of Representatives is without authority to discipline him.
5. Committee Counsel argues that the North Carolina Constitution, unlike the United States Constitution, is a limitation on the General Assembly's authority, not a grant of that authority, and therefore no specific constitutional power needs to exist to allow the General Assembly to exercise those implied or inherent powers necessary and proper to govern under the Constitution or statutes of the State. Specifically, Committee Counsel argues there is no constitutional provision or statute limiting jurisdiction in this matter.
6. The inherent authority of legislative bodies to discipline their members requires a review of the historical practice of the English Parliament, the practice of the common law in the United States, and the practice of this State previously.
7. The House of Commons, under the English parliamentary practice, always had the exclusive right to control its own proceedings, including the power to discipline its members. Criminal conduct and noncriminal conduct warranted expulsion. See Bowman and Bowman, Article I, Section 5: Congress' Power to Expel, 29 Syracuse Law Review 1072, 1073-76 (1978). No statute defined the circumstances in which expulsion was appropriate, and Parliament enacted no rules defining the acts which warranted expulsion. "The only limit to the exercise of the power to expel was Parliament's discretion." Id. at 1075. Several hundred members of Parliament were expelled in a 200-year period between 1581 and 1781. Members were expelled when they had been convicted of a crime or when their actions were viewed as criminal by the House of Commons, and specifically in the areas of corruption in office or bribery. See the cases of John Trevor, 1621, John Hungerford, 1621, Edward Lord Howard, 1632, John Ashburnham, 1667, Robert Walpole, 1712, Adam Cardonell, 1712, Thomas Vernon, 1721, and Robert Sutton, 1732. In addition, members of Parliament were expelled for conduct which was private in nature and which merely reflected upon the member's character as a whole, including private torts and fraudulent business practices. See the cases of John Lord Barrington, 1723, and John Griffin, 1642. The scope of Parliament's power to expel its members was not confined by statute or rule. Parliament recognized no substantive limit on that power.
8. Colonial legislatures had broad discretion to expel members as had the English Parliament. The colonial legislatures expelled for whatever they considered misconduct of sufficiently grave proportions, including at least one hundred persons who were expelled from legislatures in the Continental colonies. See M. Clarke, Parliamentary Privilege in the American Colonies, pg. 195, note 58 (1943). As was true in England, the basis of expulsion was not defined by statute or rule, and in practice, the grounds for expulsion ranged from commission of a crime to religious

- preference. Colonial legislatures adopted the parliamentary view of the power to expel as a matter within the absolute discretion of the legislative body without regard to freedom of opinion. See 29 Syracuse Law Review at 1083-85.
9. The colonial legislatures also exercised the power to expel members even though the power was not enumerated in their charters. The charters of Massachusetts and Virginia, for example, contain no reference to the power to expel, yet the legislatures of those colonies freely and repeatedly expelled offending members. See 3 F. Thorpe, Federal and State Constitutions 1827 (1909).
 10. Furthermore, the Framers of the U.S. Constitution clearly "accepted the traditional assumption of Parliament and the colonial legislatures that a legislature's inherent power to expel its own is wholly discretionary and that the determination of what conduct justifies imposition of this severe sanction is to be made by the legislature itself." 29 Syracuse Law Review at 1090. See also T. Cooley, The General Principles of Constitutional Law 55 (4th ed. 1931); McLaughlin, Congressional Self-Discipline: The Power to Expel, to Exclude and to Punish, 41 Fordham Law Review 43 (1972).
 11. The U.S. Congress has held that criminal conduct that has not yet led to conviction did not preclude expulsion or disciplinary action. Congress has assumed that the power to expel is not limited to punishing misconduct in office, and Congress has proceeded in a number of instances to discipline and censure members under the United States Constitution and its statutory powers. 29 Syracuse Law Review at 1100-1101.
 12. The practice in states that do not have a constitutional provision providing for disciplinary action for their members and do not have a two-thirds voting provision has been to discipline their members, including recently, censure in Hawaii in 1989 of a member, and in 1983, the resignation of a member in the State of New York following committee recommendations for disciplinary proceedings.
 13. In the most recent case available, Gray v. Gienapp, 727 NW 2nd 808 (2007) from the South Dakota Supreme Court, a state senator, who was facing disciplinary proceedings in the State applied for a writ of prohibition seeking to order the Senate to refrain from holding any hearings and disciplining the senator regarding alleged sexual misconduct with a Senate page. The Supreme Court of South Dakota declared, consistent with the exact argument made by Committee Counsel, that "[t]he South Dakota Constitution, unlike the Constitution of the United States, does not constitute a grant of a legislative power. Instead, our Constitution is but a limitation upon the legislative power, and the legislature may exercise that power in any manner not expressly or inferentially proscribed by the federal or state Constitutions. Thus, except as limited by the state or federal Constitutions, the legislative power of the state legislature is unlimited. What the representatives of the people have not been forbidden to do by the organic law, they may do." Gray, 727 SW 2nd at 813. In that case, the Supreme Court held the trial court had no jurisdiction to halt the legislative disciplinary process or any authority to preclude disclosure of that process.

14. In North Carolina there have been a number of members expelled from the House and the Senate. They are listed in the brief of Committee Counsel and include James Carter, 1757, Francis Brown, 1758, Hermon Husband, 1770, William Gilbert, 1779, Edward Clay, 1784, Henry Montfort, 1786, John Bonds, 1787, John Roberts, 1816, Robert Porter, 1835, and importantly, J. William Thorne, 1875, and a censure that occurred followed by expulsion of Josiah Turner in 1880, both following ratification of the 1868 Constitution.
15. In 1996, the North Carolina House of Representatives determined it had the capacity and jurisdiction to discipline one of its members when it censured Representative Ken Miller.
16. North Carolina practice makes clear the General Assembly has always considered, under any of our constitutions enacted, that the power exists for the House and the Senate to discipline its respective members, including the right to expel a legislator.
17. Decisions of the North Carolina Supreme Court establish "[a]n act of the General Assembly is legal unless the Constitution contains a prohibition against it." Plemmer v. Matthewson, 281 N.C. 722, 726, 190 SE 2d 207 (1972). See also In re Spivey, 345 N.C. 404, 413, 480 SE 2d 693, 698 (1997). This is consistent with Article I, Section 2 of the North Carolina Constitution which provides, in pertinent part, "[a] political power is vested in and derived from the people...."
18. Similarly, courts in other states have held that legislative bodies have implied and inherent authority to investigate and discipline members. E.g., French v. Senate, 146 Cal. 604, 606, 80 P2d 1031, 1032 (1905) and Hiss v. Bartlett, 69 Mass. 468, 473, 3 Gray 468, 473 (1855). See also Justice Joseph Story, Commentaries on the Constitution of the United States, Vol. II, Section 835 (1833); Cushing, The Law and Practice of Legislative Assemblies, Section 625, pages 250-51 (1874) ("[t]he power to expel a member is naturally and even necessarily incidental to all aggregate, and especially all legislative bodies; which without such power, could not exist honorably, and fulfill the object of their creation").
19. The General Assembly further acknowledged its inherent power to discipline its members in the enactment of Article 14 of Chapter 120 of the General Statutes, the Legislative Ethics Act, wherein G.S. 120-103.1(m), in spelling out the investigative authority of the Legislative Ethics Committee, the General Assembly specifically said "[a]ny action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or expel its members." Clearly the legislature understood when it first enacted the Legislative Ethics Act in 1975 that the right to discipline or expel its members was part of the process that existed under the law of the State of North Carolina. Moreover, G.S. 120-103.1(m) provides a statutory basis for allowing each house of the General Assembly to discipline or expel its members.

Conclusions of Law

1. An inherit power exists for the legislature to do all things that are reasonably necessary for the proper administration of justice.
2. Legislative bodies have the inherent authority to investigate and discipline their members, similar to the holdings in California, Massachusetts and South Dakota, decisions of Parliament, colonial legislatures, and as evidenced by the practice of the General Assembly and the passage of the Legislative Ethics Act.
3. The North Carolina House of Representatives has the inherent authority to investigate and discipline, including the right to expel from the body, one of its members for unethical, criminal or corrupt behavior.
4. Neither the North Carolina Constitution nor state statutes limit the authority of the House of Representatives to discipline its members consistent with the constitutional rights to due process.
5. G.S. 120-103.1(m) provides a statutory basis for allowing each house of the General Assembly to discipline or expel its members.

Disposition

Motion 1 to dismiss all counts generally for lack of jurisdiction is DENIED.

MOTION 2

MOTION TO DISMISS ALL COUNTS AS BARRED BY THE STATUTE OF LIMITATIONS, LACHES, AND THE DUE PROCESS PROHIBITION AGAINST THIS GENERAL ASSEMBLY INVESTIGATING AND ACTING ON CONDUCT THAT OCCURRED IN A PRIOR GENERAL ASSEMBLY

Findings

1. This matter is properly before the Chair and the Committee on three separate, yet intertwined motions by Representative Wright to dismiss all counts pending before the Committee generally on grounds the statute of limitations has run, the doctrine of laches precludes these proceedings, and the General Assembly is not constitutionally empowered to investigate, prosecute, and discipline a legislator for conduct committed while a member of a previous General Assembly. The issue has been expertly briefed by attorneys for both sides and argued orally. The motion is ripe for disposition.
2. The issue is whether the counts before the Committee are barred by the statute of limitation, laches, or constitutional grounds, and would therefore deprive the Committee or the House of Representatives of any jurisdiction to proceed.
3. Representative Wright argues that the General Assembly may not look back to conduct committed by a member during a previous General Assembly. He relies primarily on the Supreme Court's decision in Powell v. McCormack, 395 U.S. 486 (1969).

4. Committee Counsel argues that no State or federal statute of limitations applies that bars proceeding, that the doctrine of laches is not available as an equitable doctrine in this case, and that Powell is fully distinguishable and does not bar or control these proceedings.
5. Adam Clayton Powell had been regularly elected as a congressman from New York's 18th Congressional District and had been Chairman of the House Committee on Education and Labor. Powell, 395 U.S. at 495. Powell completed his service to the 89th Congress and was returning to be sworn for the 90th Congress following his re-election. *Id.* at 490. During the 89th Congress, claims arose regarding illegal salary payments to his wife and inappropriate use of congressional funds for travel by Powell's staff. *Id.* Based upon that alleged conduct, hearings were conducted in the 89th Congress to expel Powell, but they were not completed. Subsequently, there was an effort within the 90th Congress to prevent Powell from being sworn in. *Id.* at 491. That exclusion by the U.S. House of Representatives gave rise to the action in federal court that was then decided by the United States Supreme Court. *Id.* at 493.
6. Powell is distinguishable from this case for at least four reasons; first, it solely dealt with the issue of exclusion of a member in a subsequent session, not expulsion of a member in the present session in which the investigation arose, which is the issue in this case. Second, Powell dealt with an interpretation of the United States Constitution regarding Congress and congressional rules. It did not attempt to apply federal constitutional principles to state legislatures to interpret state law and state constitutional provisions. Third, the discussion in Powell regarding whether Congress' expulsion powers extend to conduct committed by a member during previous sessions interpreted authority granted under the rules of the United States House of Representatives, not state law or federal constitutional principles to be applied to state law, and was dicta in that the Court did not have to address that issue because the action before the Court was one of exclusion and not expulsion. Fourth, the conduct that is the subject of this Committee's investigation was not made public on any of the counts until after Representative Wright's re-election in 2006. Therefore, the first action that could be taken would have been by this General Assembly and action has been promptly taken in this session.
7. The electorate in Representative Wright's district has not had an opportunity to determine how it views the facts that are the subject of the alleged misconduct. Adam Clayton Powell's constituents knew of his misconduct and re-elected him. Representative Wright is not in that same position at this time. Therefore, Powell is fully distinguishable.
8. Many of the claims alleged in the counts are ones that have a continuing duty, such as a continuing duty to report campaign contributions and a continuing duty to correct erroneous campaign reports. If it is found by clear and convincing evidence that there has been a pattern-and-practice of not reporting campaign contributions, the failure to properly report would constitute continuing misconduct.
9. Count 1 alleges an active attempt to conduct a transaction where there was an understanding from the beginning that the money being sought was not legally available, would be going to an organization that did not

have legal viability, would be used for a purpose that it was not intended to be used, and was being solicited from a State official who had no authority to issue the letter.

10. For purposes of motions, the allegations found at the probable cause hearing are assumed to be true. Those allegations suggest that the conduct would constitute fraud and is conduct that, even with reasonable diligence, would not have been known sooner by this House of Representatives.
11. No statute of limitations has been cited nor argued by Representative Wright and the Chair finds none exist under the North Carolina Constitution or statute which would bar this proceeding.
12. The doctrine of laches is an equitable defense that precludes an action if a party is meaningfully prejudiced from defending against the action because of the significant passage of time. The goal of the doctrine is to discourage stale claims.
13. Representative Wright has not shown that he has been prejudiced by any lost witness, lost document, expired witness, or faded memory.
14. Disciplinary actions have occurred in a number of states, and previously in North Carolina, against legislators for acts committed during prior sessions or before taking office. E.g., Alzo Riddick (reprimand by Florida House in 1997 for 6 years of violations of financial disclosure laws); Frederick Lippman (admonishment by Florida House in 1991 for failure to supervise staff of a committee, violating statute prohibiting outside employment of a full time staff, and improper behavior with a House staff member from 1983-86); Arnold Ragas (reprimand by Georgia House in 2000 for 4 years of failure to file mandatory campaign finance reports indicating personal wealth and campaign contributions and ignoring fines by the State Ethics Committee); Monte Gerald (expelled from Michigan House in 1978 for embezzling funds from a legal client before becoming a legislator); Speaker Gene Chandler (censured by the New Hampshire House in 2005 for 7 years of soliciting gifts from individuals with business before the legislature, using public position to obtain gifts, and failing to report gifts); Benjamin McCulloch (expelled from North Carolina Senate in 1786 for previous fraud in disbursement of army accounts); John Roberts (expelled from North Carolina Senate in 1816 for forgery and fraud committed during the War of 1812).

Conclusions of Law

1. Statutes of limitations are statutory creations that superimpose a time limit on the privilege to litigate or act. Representative Wright has not identified in his brief or oral argument any statute of limitations under the State or federal Constitution or State law that bars this action, and the Chair concludes none exist that would prohibit this action.
2. The doctrine of laches is an affirmative defense in the civil law that bars proceeding if an unreasonable delay in prosecuting a claim unduly prejudices the opposing party in the case. See generally Larsen v. Sedberry, 54 N.C. App. 166, 167 (1968).

3. The moving party always has the burden to establish that laches exists.
4. Laches is a doctrine that mandates balancing of equitable circumstances and requires that the asserter of the doctrine come to the doctrine with clean hands.
5. Laches requires that the party asserting the doctrine show that the party is prejudiced in that witnesses no longer exist, memories have faded, documents are lost, or the party is unable to fairly defend himself or herself against the claim.
6. The doctrine of laches is not applicable to this matter since Representative Wright has not argued or proven prejudice.
7. In addition, allegations of fraud and a failure to disclose contributions as required by law, would bar as an equitable matter the doctrine of laches, particularly where there is no evidence of prejudice.
8. If conduct by a member in a prior General Assembly is known, not concealed, and with reasonable diligence could and should have been found, there may exist potential constitutional issues in a subsequent General Assembly going back and taking action on that conduct.
9. However, in a case where conduct is concealed or not disclosed when the law required full disclosure, and that is the genesis of the crime or the charge, then neither the federal nor State Constitution would prohibit this General Assembly from acting once it has made efforts with reasonable diligence to know and to proceed promptly. This patently is the case before the Committee.
10. Finally, Powell is fully distinguishable from this action on the grounds set forth above.

Disposition

Motion 2 to dismiss all counts on grounds that the statute of limitations has run, laches, and this General Assembly is not constitutionally empowered to investigate, prosecute, and discipline a legislator for conduct committed while a member of a previous General Assembly is DENIED.

MOTION 4

MOTION TO DISMISS COUNT 1 AS NOT ALLEGING CRIMINAL OR UNETHICAL CONDUCT

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to dismiss Count 1 as not alleging criminal or unethical conduct. The issue has been expertly briefed by attorneys for both sides and argued orally. The motion is ripe for disposition.
2. Representative Wright argues that the allegations in Count 1 and Count 2 overlap and are duplicative. Count 1 charges Representative Wright acted unethically by requesting a false letter from a State employee to assist Representative Wright obtaining a private bank loan for an alleged

community foundation in Wilmington. Count 2 alleges use of the letter by Representative Wright to obtain the loan from the bank for one hundred fifty thousand dollars (\$150,000), which was then converted to personal use and not for the Community Health Foundation. Representative Wright argues that a letter sought by a representative which contains untruthful information from a state employee, even if known to be false by the legislator, may not constitute a criminal violation or unethical conduct. Representative Wright also argues that Counts 1 and 2 should be merged into a single count.

3. Committee Counsel does not argue that Count 1 alleges a crime, but instead alleges unethical conduct in that Representative Wright improperly solicited a letter falsely stating that a State agency would commit one hundred and fifty thousand dollars (\$150,000) to a project knowing that the letter contained false information in that the State agency director had informed Representative Wright it had no jurisdictional basis to commit the funds nor any funds to so commit.
4. Count 1 alleges the fraudulent solicitation of the letter from DHHS, while Count 2, which is criminal in nature, alleges that the letter was then used to obtain a loan by false pretenses. Counts 1 and 2 allege two entirely separate and distinct acts, in that Count 2 did not have to occur as a result of Count 1, but that independently the letter was then allegedly used to obtain the one hundred and fifty thousand dollars (\$150,000) from the bank. The counts as written do not overlap and are not duplicative.
5. Count 1, if proven by clear and convincing evidence, would constitute unethical and fraudulent conduct. Count 2, if proven, constitutes an independent unethical act - obtaining property by false pretenses from the bank. No factual or legal basis exists to merge the counts.

Conclusions of Law

1. Counts 1 and 2 each allege independent acts, stand on their own merits independently, and are not duplicative.

Disposition

Motion 4 to dismiss Count 1 as not alleging criminal or unethical conduct, is DENIED.

MOTION 5

MOTION TO DISMISS COUNT 7, AS AMENDED, AS VAGUE, OVERBROAD, AND A VIOLATION OF DUE PROCESS OF LAW AND THE STATE CONSTITUTION

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to dismiss Count 7 as vague, overbroad, and a violation of due process of law and the North Carolina Constitution. The issue has been expertly briefed by attorneys for both sides and argued orally. The motion is ripe for disposition.
2. In response to Representative Wright's original motion, the Committee amended Count 7 to identify the specific campaign contributions that were allegedly not reported properly. The parties were asked to argue the motion in light of the amended Count.
3. The issue is (1) whether Count 7, as originally drafted, was vague, overbroad, and provided insufficient notice to Representative Wright regarding what he allegedly violated and (2) that once Count 7 was amended to include approximately 395 specific allegations of a failure to report, as set forth in Exhibit 9 at the probable-cause hearing, that the amended count created an exceptional burden on the defense to investigate 395 specific, independent violations for which there was no significant prior notice.
4. Representative Wright argues that Count 7, as amended, creates an impossible burden because it requires him to defend against 395 specific items for which he just received notice.
5. Committee Counsel argues that although Representative Wright and his counsel were not present at the January 9, 2008 probable-cause hearing, they were invited to attend and received all materials that were presented, including Exhibit 9. Committee Counsel also contends that Exhibit 9 was provided to Representative Wright in discovery by the district attorney prosecuting the pending criminal charges against Representative Wright as that document is the subject of one of the indictments that has been pending against Representative Wright for some substantial period of time. Finally, Committee Counsel argues that even if one of the 395 contributions was unreported, it would meet the language of Count 7.
6. As to the issue of vagueness, that issue was resolved by the amendment to Count 7, which now specifically limits that Count and the evidence related to it to the matters alleged with specificity and particularity in Exhibit 9. Exhibit 9 contains the last name and first name of the alleged contributor, the bank account where the contribution was found, the amount of the check, the deposit date of the check, and the date it should have been reported but allegedly did not appear as a reported contribution by Representative Wright.
7. As to the issue of notice, Exhibit 9 contains information fully available for many months to Representative Wright. Representative Wright could

have accessed this information by simply looking at his personal and campaign accounts and the campaign contribution reports he filed. There is no independent evidence contained in the Count or in Exhibit 9. Exhibit 9 is a work product that should make it easier, rather than more difficult, to defend against the allegations.

8. The information contained in Exhibit 9 in its pure form was available from the Board of Elections hearings process which Representative Wright was able to attend in May of 2007.
9. The information contained in Exhibit 9 was presented in an open hearing on January 9, 2008. Representative Wright and his counsel were invited to the hearing, but chose not to attend. In addition, Counsel to Representative Wright was informed that they would be given copies of all of the material introduced at the January 9th probable cause hearing.
10. On January 14, 2008, at 3:38 P.M., an e-mail was sent to Representative Wright at his legislative email address, and his legal counsel, Irving Joyner at ijoyner@nccu.edu, and Douglas Harris at dharris@triad.rr.com. This email indicated that Committee staff did not have electronic access to Exhibits 1-11. However, hard copies of these exhibits, along with hard copies of all the other materials distributed at the probable cause hearing, were mailed to Representative Wright, Dr. Joyner, and Mr. Harris on the afternoon of January 14, 2008.
11. The information contained in Exhibit 9 and in Count 7 is the subject of a criminal count in the Wake County Superior Court for which Representative Wright stands trial. Count 7 almost identically mirrors the criminal count, and therefore, the information is not new information to Representative Wright and his counsel, since that information would have been contained within the discovery disclosed by the district attorney's office.
12. There should be no confusion over what the one hundred and eighty-five thousand dollars (\$185,000) refers to in the Count and to which checks it applies. Any argument to the contrary is simply not credible.
13. Committee Counsel's argument that even if one of the 395 contributions was unreported, it would meet the language of Count 7 is not consistent with the language in the Count. The Committee drafted Count 7 in an effort to be totally consistent with due process of law for Representative Wright and to not engage in a parsing of single counts. Count 7 specifically says that the Count is violated only if Representative Wright did improperly, fraudulently, and unethically engage in a "pattern of conduct." A "pattern of conduct" suggests that there must be a showing of continuity and pervasiveness.

Conclusions of Law

1. The amended count is not vague and is not overbroad. To the contrary, the count is now concise, particularized, and methodical in its presentation of information on each alleged unreported contribution. It does not violate due process of law or any State constitutional provision.

2. Proceeding on Court 7 as amended does not violate due process or the State Constitution because Representative Wright had adequate notice of the information contained in Exhibit 9, now incorporated into Court 7.

Disposition

Motion 5 to dismiss Count 7, as amended, as vague, overbroad, and a violation of due process of law and the State Constitution is DENIED.

MOTION 7

MOTION TO DISMISS COUNTS 3, 4, 5, 6 AND 7 FOR LACK OF JURISDICTION ON GROUNDS THE CONDUCT ALLEGED WAS NOT COMMITTED IN REPRESENTATIVE WRIGHT'S LAWMAKING CAPACITY

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to dismiss Counts 3, 4, 5, 6 and 7 for lack of jurisdiction on grounds the conduct alleged was not committed in Representative Wright's lawmaking capacity. The issue has been expertly briefed by attorneys on both sides and argued orally. The motion is now ripe for disposition.
2. Representative Wright argues that Counts 3, 4, 5, 6, and 7 involve conduct by Representative Wright in his work with the Community Health Foundation in Wilmington and not directly in his lawmaking capacity. Representative Wright argues that these counts exceed the scope of the Committee's jurisdiction.
3. Committee Counsel argues that the Committee has the inherent authority to investigate alleged misconduct by a legislator regardless of whether the misconduct occurred in the legislator's official capacity.
4. Based on precedents established by the English Parliament, in the American colonies, in Congress, as well as in other states, in every jurisdiction that has engaged in any discussion of the issue of legislative misconduct, legislators have been disciplined by legislatures for private misconduct, fraud, corruption and criminal misconduct unrelated to their office. Legislative discipline is not limited to actions committed in the lawmaking capacity. See cases collected in 29 Syracuse Law Review 1071 (1978) and the dozens of cases collated by staff counsel Kory Goldsmith, particularly from the states of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, Pennsylvania, Tennessee and Utah that were disclosed to the Committee and counsel showing disciplinary actions, including expulsion, for the categories of misconduct set forth above. A copy of the Goldsmith charts are incorporated by reference to this ruling and attached to these final rulings as Exhibit A.

Conclusions of Law

1. The House of Representatives can discipline a member of the body for conduct unrelated to the member's office or position.

Disposition

Motion 7 to dismiss counts 3, 4, 5, 6 and 7 for lack of jurisdiction on grounds the conduct alleged was not committed in Representative Wright's lawmaking capacity is DENIED.

MOTION 8

MOTION TO DISMISS ALL COUNTS ON GROUNDS THAT THE COMMITTEE AND ITS ACTIONS GENERALLY VIOLATE DUE PROCESS AND EQUAL PROTECTION

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to dismiss all counts on grounds that the Committee and its actions generally violate due process and equal protection. The issue has been expertly briefed by attorneys for both sides and argued orally. The motion is ripe for disposition.
2. The issue is whether the Committee should dismiss all counts on grounds that Rules 14 and 15 of the rules of the Committee violate due process of law.
3. Representative Wright argues that Rules 14 and 15 impermissibly require him to prove his innocence by a preponderance of the evidence.
4. Committee Counsel argues that Rules 14 and 15 do not shift the burden to Representative Wright or force him to prove his innocence by a preponderance of the evidence. Committee Counsel contends that Rules 14 and 15 simply create a third possible disposition allowing Representative Wright to be exonerated of the charges. The three possible dispositions are: (1) the Committee fails to find the alleged violations are established by clear and convincing evidence, (2) the Committee finds the alleged violations are established by clear and convincing evidence, or (3) the Committee finds by a preponderance of the evidence that the accused legislator should be exonerated of the charges.
5. Rule 14 of the Committee's rules, entitled "**Division of Issues**" states: "After hearing evidence on the substantive issues of the alleged unethical or unlawful conduct by the accused legislator, the Committee shall address the following issues: (1) Whether, by clear and convincing evidence, one or more of the charges against the accused legislator is true; (2) If so, what action will be taken by the Committee; (3) Whether by the preponderance of the evidence, the accused legislator should be exonerated of the charges."

6. Rule 15 of the Committee's rules, entitled "**Disposition of Cases**" states in part: "When the Committee has concluded its inquiries into alleged violations, the Committee, by majority vote of those present and voting, shall do one of the following: If the Committee fails to find the alleged violations are established by clear and convincing evidence, the Committee shall report this to the House of Representatives and the accused legislator." It further states, "If the Committee finds by a preponderance of the evidence that the accused legislator should be exonerated of the charges, the chair shall transmit the finding in writing to the accused legislator and the House of Representatives." Finally, Rule 15 provides that if the Committee finds that the alleged violations are established by clear and convincing evidence, the Committee shall do one or both of the following: (1) refer possible criminal violations to the Attorney General for investigation and to the district attorney for possible prosecution or (2) refer the matter to the House of Representatives for appropriate actions, which may include admonishment, censure, or expulsion.

Conclusions of Law

1. Committee Counsel, at the direction of the Chair, has the burden of proving to the Committee clear and convincing evidence exists that an accused legislator has committed any unlawful or unethical conduct.
2. The Rules of the Committee place no burden of proof on an accused legislator to prove the legislator's innocence.
3. There is no shifting of the burden of proof to Representative Wright and, therefore, no violation of due process of law.
4. The rules provide that the accused legislator may be fully exonerated in addition to simply being found not guilty of a charge because the Committee Counsel failed to meet their burden of proof. This option provides an additional and substantive protection for Representative Wright.

Disposition

Motion 8 to dismiss all counts on grounds that the creation of the Committee and its actions generally violate due process of law and equal protection is **DENIED**.

MOTION 12

MOTION TO CONTINUE OR HOLD IN ABEYANCE ANY HEARING ON THIS MATTER WHERE THE FAILURE TO DO SO WOULD POSSIBLY PREJUDICE REPRESENTATIVE WRIGHT'S RIGHTS TO A FAIR CRIMINAL TRIAL AND PREJUDICE THE POSSIBLE JURY POOL

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to continue or hold in abeyance any hearing on this matter where the failure to do so would possibly prejudice Representative Wright's rights to a fair criminal trial and prejudice the possible jury pool. The issue has not been briefed but has been argued orally. The motion is ripe for disposition.
2. The criminal trial on the six felony counts pending against Representative Wright is scheduled to be heard in Wake County Superior Court beginning on March 3, 2008.
3. A hearing on pending motions in the criminal proceedings against Representative Wright is scheduled in Wake County Superior Court before Judge Hight on February 25, 2008. Included in Representative Wright's motions is a motion to continue the criminal trial to a later date due to the large volume of evidence in the case.
4. The rights at issue in the House ethics proceeding are complex. There are the rights of Representative Wright to a fair hearing and full due process of law in both this proceeding and the criminal proceeding. There is the significant interest of the public to an assurance that all of the legislators in the House and the Senate are conducting the affairs of their offices and their time in office in an ethical manner. The perception of the public that any legislator, or a group of legislators, may be unethical can very quickly destroy the confidence of the public in the institution of government. That is a substantial right at issue in any ethics proceeding.
5. Another interest is the interest of the constituents in Representative Wright's district to have a representative who does not have pending ongoing ethics charges, of which there is a question of whether or not the representative committed any ethical violation, so that the constituents can have the full effort of that legislator to represent that district.
6. This ethics proceeding has moved at a very deliberate pace to protect the rights of all involved, and most particularly and supremely, those of Representative Wright. The ethics proceedings began in the Legislative Ethics Committee. The Legislative Ethics Committee withheld any action in the ethics case for a number of months to allow the criminal investigation and prosecution to make its determination of whether to proceed. The Legislative Ethics Committee determined there were grounds to refer this matter to the House of Representatives for disciplinary considerations and to withhold judgment on one count over which it retained jurisdiction. This matter came to the House, and the Speaker appointed this Committee in December, 2007. The Committee

- met to establish its rules on December 18, 2007, and a probable cause hearing was held on January 9, 2008. Representative Wright was provided a detailed list of the charges against him and a full opportunity to file a written response and prepare for any evidentiary hearing. The rules that have been established by the Committee detail a reasonable time frame for the exchange of witnesses, the exchange of a summary of their testimony, the exchange of documents, the subpoenaing of witnesses, and the time to prepare for any hearing. At the hearing, Representative Wright is assured the right to testify, present evidence, cross examine any witnesses against him and fully defend the charges. Those rules are consistent with or more generous in every respect than nearly every set of state ethics rules that were identified in the United States.
7. No evidence has been presented to this Committee beyond argument, pure conjecture, and speculation that any holding by this body would in any way affect the criminal trial.
 8. Granting this motion at this time, in a vacuum, not knowing if the criminal case will be heard on March 3, 2008, would support an absurd result. Because this matter was first brought to the attention of the State Board of Elections almost a year ago and has been pending in multiple forums for the better part of that year, to grant this motion at this time supports a perverse policy that the more egregious the alleged misconduct and the more the conduct verges on criminal conduct, the more control the accused legislator has over the ethics process and its timing. If there were no criminal charges pending, there would be no argument that the House could proceed to its ethics hearing. To allow the mere existence of pending criminal charges to delay the ethics proceedings would foster a policy that would be as unsound in practice as it would be unwise and unnecessary.

Conclusions of Law

1. Protections from the adverse effects of pretrial publicity in Representative Wright's criminal case can be addressed as they are in any other case with publicity by a change of venue, curative or limiting jury instructions, individual *voir dire*, or by continuation of the trial date.
2. Representative Wright has not shown that these alternatives would be ineffectual and there has been no showing of likely prejudice to trigger any of these possible remedies.
3. The Committee must consider the rights of Representative Wright to a fair trial and a fair hearing in this jurisdiction, the rights of the institution, the rights of the public, and the rights of the constituents in Representative Wright's district as detailed above.
4. On balance, these rights strongly militate in favor of the March 3 hearing date or, if the criminal trial occurs that week, conduct of the ethics hearing the week thereafter.

Disposition

Motion 12 to continue or hold in abeyance any hearing on this matter where the failure to do so would possibly prejudice Representative Wright's rights to a fair criminal trial and prejudice the possible jury pool is denied in part and granted in part as follows:

1. If the criminal case pending against Representative Wright is in trial or for plea on March 3, 2008, this motion will be granted to the extent that this matter will be continued on a week-to-week basis, to be rescheduled on Monday, March 10, 2008, and again, if the matter is still in trial or in plea on that date, continued to the following Monday, March 17, 2008.
2. If the criminal trial is continued or does not take place on March 3, 2008, the evidentiary hearing will be held as scheduled beginning March 3, 2008 at 11 a.m.

MOTION 13

MOTION TO REQUEST THE HOUSE APPOINT A DIFFERENT FACT-FINDING COMMITTEE OR, IN THE ALTERNATIVE, THAT REPRESENTATIVE WRIGHT BE ABLE TO PRESENT HIS CASE BEFORE THE FULL HOUSE OF REPRESENTATIVES

Findings

1. This matter is properly before the Chair and the Committee on motion by Representative Wright to request the House appoint a different fact-finding committee, or in the alternative, that Representative Wright be allowed to present his case before the full House of Representatives. The issue was raised orally at the hearing on February 11, 2008. This issue has not been briefed by the parties, but has been argued orally. The motion is ripe for disposition.
2. The role of this Committee, as set out in its authorization, the statutes, and the rules adopted by the Committee, is a fact-finding and investigative role that has multiple levels of fact-finding to protect Representative Wright. First, the Committee must determine if probable cause exists to ensure that no charge proceeds past a mere accusation if there is not probable cause. Second, once probable cause is determined, the Committee must conduct an evidentiary hearing to look at all of the evidence, much of which is not necessarily presented at the probable cause hearing.
3. The full transcript of the Committee's proceedings, all of the evidence presented before the Committee, all documents offered into evidence, and all findings and recommendations by the Committee adverse in any manner to Representative Wright will go to the full House of Representatives for its consideration.
4. This process mirrors the Judicial Standards Commission and was created to effectively mirror the Judicial Standards Commission process, which acts in exactly the same role on its recommendation to the North Carolina Supreme Court.

5. No evidence has been presented, and Representative Wright's counsel concedes that he has no evidence to show, that any member of the Committee is biased, prejudiced, or otherwise substantially impaired in their ability to fairly hear the evidence in this matter, other than the fact that Committee members have already heard some evidence of probable cause, and formed the probable cause opinion at that stage of the proceedings.
6. This process of the Committee fact-finding mirrors the process of at least forty other states and the United States Congress. Representative Wright has not presented evidence showing that other states created new fact-finding committees simply because the original committee found probable cause before the final evidentiary determination.

Conclusions of Law

1. The House sits in judgment of the qualifications of its members and as such sits as the ultimate judge and jury in this matter.
2. The Committee is a duly authorized committee of the House of Representatives appointed by the Speaker of the House. The Committee is duly authorized under statute and is authorized to conduct an investigation into the conduct of Representative Wright and to report to the House of Representatives its findings and recommendations.
3. The authority of the Committee is limited to making findings and recommendations.
4. Hearing evidence sufficient to find probable cause of unethical conduct is insufficient to create a substantial impairment of Committee members and, in and of itself, will not prevent the Committee from conducting a fair hearing of sworn testimony that will serve as a basis for making a determination of whether there exists convinced by clear and convincing evidence that unethical conduct was committed by Representative Wright.

Disposition

Motion 13 to request the House appoint a different fact-finding committee or, in the alternative, that Representative Wright be allowed to present his case before the full House of Representatives is **DENIED**. Notwithstanding the denial of the motion, it is directed that a copy of this finding be referred to the Speaker for his consideration as to whether to act independently on the motion.

Issued this the 25th day of February, 2008.

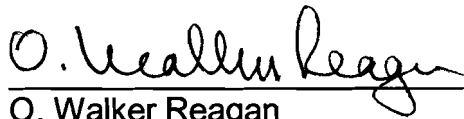


Representative Rick Glazier, Chair
House Select Committee to Investigate Alleged Misconduct and Other Matters
Included in Indictments against Representative Thomas E. Wright

CERTIFICATE OF SERVICE

The Attorney whose signature appears below certifies that a copy of the attached Rulings of the Chair on Representative Wright's Dispositive Motions was duly served upon Representative Thomas E. Wright, and his attorneys, Irving Joyner and Douglas Harris, by depositing a copy of same in the United States mail, first class postage prepaid and addressed to Representative Thomas E. Wright, 322 S. 17th Street, Wilmington, NC 28401, Irving Joyner, Attorney at Law, P.O. Box 374, Cary, NC 27512-0374, and Douglas Harris, Attorney at Law, 1698 Natchez Trace, Greensboro, NC 27455.

This the 25th day of February, 2008.

A handwritten signature in black ink, appearing to read "O. Walker Reagan", written over a horizontal line.

O. Walker Reagan
Committee Co-counsel
300 N. Salisbury Street, Suite 200
Raleigh, NC 27603