House Calendar No. 1

105TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 105–1

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

R E P O R T

OF THE

SELECT COMMITTEE ON ETHICS

JANUARY 17, 1997.—Referred to the House Calendar and ordered to be printed

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

House Calendar No. 1

105TH CONGRESS, *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 105–1

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

R E P O R T

OF THE

SELECT COMMITTEE ON ETHICS

JANUARY 17, 1997.—Referred to the House Calendar and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

37–210 WASHINGTON : 1997

LETTER OF TRANSMITTAL

CONGRESS OF THE UNITED STATES,
Washington, DC, January 17, 1997.

Hon. ROBIN CARLE,
Clerk, House of Representatives,
Washington, DC.

DEAR MADAM CLERK: Pursuant to clause 4(e)(3) of Rule 10, and by direction of the Select Committee on Ethics, I herewith submit the attached report, "In the Matter of Representative Newt Gingrich."

Sincerely,

NANCY L. JOHNSON,
Chairman.

CONTENTS

	Page
I. INTRODUCTION	1
A. Procedural Background	1
B. Investigative Process	3
C. Summary of the Subcommittee's Factual Findings	4
1. AOW/ACTV	4
2. Renewing American Civilization	5
3. Failure to Seek Legal Advice	7
4. Mr. Gingrich's Statements to the Committee	8
D. Statement of Alleged Violation	9
II. SUMMARY OF FACTS PERTAINING TO AMERICAN CITIZENS TELEVISION	9
A. GOPAC	9
B. American Opportunities Workshop/American Citizens Television	11
1. Background	11
2. Planning and Purpose for AOW/ACTV	13
3. Letters Describing Partisan, Political Nature of AOW/ACTV	16
4. AOW/ACTV in Mr. Gingrich's Congressional District	18
5. GOPAC's Connection to ALOF and ACTV	19
6. GOPAC Funding of ALOF and ACTV	20
III. SUMMARY OF FACTS PERTAINING TO "RENEWING AMERICAN CIVILIZATION"	22
A. Genesis of the Renewing American Civilization Movement and Course	22
B. Role of the Course in the Movement	24
C. GOPAC and Renewing American Civilization	30
1. GOPAC's Adoption of the Renewing American Civilization Theme	30
2. GOPAC'S Inability To Fund Its Political Projects in 1992 and 1993	31
3. GOPAC's Involvement in the Development, Funding, and Management of the Renewing American Civilization Course	32
a. GOPAC Personnel	32
b. Involvement of GOPAC Charter Members in Course Design	35
c. Letters sent by GOPAC	35
D. "Replacing the Welfare State with an Opportunity Society" as a Political Tool	38
E. Renewing American Civilization House Working Group	44
F. Marketing of the Course	46
G. Kennesaw State College's Role in the Course	51
H. Reinhardt College's Role in the Course	53
I. End of Renewing American Civilization Course	55
IV. ETHICS COMMITTEE APPROVAL OF COURSE	55
V. LEGAL ADVICE SOUGHT AND RECEIVED	58
VI. SUMMARY OF THE REPORT OF THE SUBCOMMITTEE'S EXPERT	63
A. Introduction	63
B. Qualifications of the Subcommittee's Expert	63
C. Summary of the Expert's Conclusions	64
1. The American Citizens Television Program	65
a. Private Benefit Prohibition	65
b. Campaign Intervention Prohibition	66
2. The Renewing American Civilization Course	67
a. Private Benefit Prohibition	67
b. Campaign Intervention Prohibition	69
D. Advice Ms. Roady Would Have Given	70
VII. SUMMARY OF CONCLUSIONS OF MR. GINGRICH'S TAX COUNSEL	70

Page

A. Introduction 70
B. Qualifications of Mr. Gingrich's Tax Counsel 70
C. Summary of Conclusions of Mr. Gingrich's Tax Counsel 71
1. Private Benefit Prohibition 72
2. Campaign Intervention Prohibition 75
D. Advice Mr. Holden Would Have Given 76
VIII. Summary of Facts Pertaining to Statements Made to the Committee 77
A. Background 77
B. Statements Made by Mr. Gingrich to the Committee, Directly or Through Counsel 78
1. Mr. Gingrich's December 8, 1994 Letter to the Committee 78
2. March 27, 1995 Letter of Mr. Gingrich's Attorney to the Committee 79
C. Subcommittee's Inquiry Into Statements Made to the Committee . 80
D. Creation of the December 8, 1994 and March 27, 1995 Letters 81
1. Creation of the December 8, 1994 Letter 82
2. Bases for Statements in the December 8, 1994 Letter 85
3. Creation of the March 27, 1995 Letter 87
4. Bases for Statements in the March 27, 1995 Letter 89
IX. Analysis and Conclusion 89
A. Tax Issues 89
B. Statements Made to the Committee 90
C. Statement of Alleged Violation 91
1. Deliberations on the Tax Counts 92
2. Deliberations Concerning the Letters 92
3. Discussions with Mr. Gingrich's Counsel and Recommended Sanctions 93
D. Post-December 21, 1996 Activity 96
X. Summary of Facts Pertaining to Use of Unofficial Resources 96
XI. Availability of Documents to Internal Revenue Service 97
Appendix 99

Index to Appendix

Summary of Law Pertaining to Organizations Exempt From Federal Income Tax Under Section 501(c)(3) of the Internal Revenue Code

A. Introduction 99
B. The Organizational Test and the Operational Test 99
1. Organizational Test 99
2. Operational Test 100
a. "Educational" Organizations May Qualify for Exemption Under Section 501(c)(3) 101
b. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Benefit" Prohibition 102
c. To Satisfy the Operational Test, an Organization Must Not Be an "Action" Organization 110
(i) If an Organization Participates in a Political Campaign, It Is an Action Organization Not Entitled to Exemption Under Section 501(c)(3) 110
(a) The Prohibition is "Absolute" 113
(b) Section 501(c)(3) Organizations May Not Establish or Support a PAC 115
(c) "Express Advocacy" Is Not Required, and Issue Advocacy Is Prohibited if Used To Convey Support for or Opposition to a Candidate 115
(d) Educational Activities May Constitute Participation or Intervention 116
(e) Nonpartisan Activities May Constitute Prohibited Political Campaign Participation 118
(f) The IRS Has Found Violations of the Prohibition on Political Campaign Participation When an Activity Could Affect or Was Intended To Affect Voters' Preferences 118
(ii) If a Substantial Part of an Organization's Activities Is Attempting To Influence Legislation, or Its Primary Goal Can Only Be Accomplished Through Legislation, It Is an "Action" Organization 121

Page

B. The Organizational Test and the Operational Test—Continued
2. Operational Test—Continued
c. To Satisfy the Operational Test, an Organization Must Not Be an "Action" Organization—Continued
(ii) If a Substantial Part of an Organization's Activities Is Attempting To Influence Legislation, or Its Primary Goal Can Only Be Accomplished Through Legislation, It Is an "Action" Organization—Continued
(a) Definition of "Legislation" 122
(b) Definition of "Attempting To Influence Legislation" 122
(c) Definition of "Substantial" 124
(d) Circumstances Under Which an Organization's "objectives can be achieved only through the passage of legislation" 125
d. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Inurement" Prohibition 126
Exhibits 129

House Calendar No. 1

105TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 105–1

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

JANUARY 17, 1997.—Referred to the House Calendar and ordered to be printed

Mrs. JOHNSON from the Select Committee on Ethics, submitted the following

REPORT

I. INTRODUCTION

A. Procedural Background

On September 7, 1994, a complaint was filed with the Committee on Standards of Official Conduct ("Committee") against Representative Newt Gingrich by Ben Jones, Mr. Gingrich's opponent in his 1994 campaign for re-election. The complaint centered on a course taught by Mr. Gingrich called "Renewing American Civilization." Among other things, the complaint alleged that Mr. Gingrich had used his congressional staff to work on the course in violation of House Rules. The complaint also alleged that Mr. Gingrich had created a college course under the sponsorship of 501(c)(3) organizations in order "to meet certain political, not educational, objectives" and, therefore, caused a violation of section 501(c)(3) of the Internal Revenue Code to occur. In partial support of the allegation that the course was a partisan, political project, the complaint alleged that the course was under the control of GOPAC, a political action committee of which Mr. Gingrich was the General Chairman.

Mr. Gingrich responded to this complaint in letters dated October 4, 1994, and December 8, 1994, but the matter was not resolved before the end of the 103rd Congress. On January 26, 1995, Representative David Bonior filed an amended version of the complaint originally filed by Mr. Jones. It restated the allegations concerning the misuse of tax-exempt organizations and contained additional allegations. Mr. Gingrich responded to that complaint in a letter from his counsel dated March 27, 1995.

On December 6, 1995, the Committee voted to initiate a Preliminary Inquiry into the allegations concerning the misuse of tax-exempt organizations. The Committee appointed an Investigative

Subcommittee ("Subcommittee") and instructed it to: determine if there is reason to believe that Representative Gingrich's activities in relation to the college course "Renewing American Civilization" were in violation of section 501(c)(3) or whether any foundation qualified under section 501(c)(3), with respect to the course, violated its status with the knowledge and approval of Representative Gingrich * * *.

The Committee also resolved to appoint a Special Counsel to assist in the Preliminary Inquiry. On December 22, 1995, the Committee appointed James M. Cole, a partner in the law firm of Bryan Cave LLP, as the Special Counsel. Mr. Cole's contract was signed January 3, 1996, and he began his work.

On September 26, 1996, the Subcommittee announced that, in light of certain facts discovered during the Preliminary Inquiry, the investigation was being expanded to include the following additional areas:

(1) Whether Representative Gingrich provided accurate, reliable, and complete information concerning the course entitled "Renewing American Civilization," GOPAC's relationship to the course entitled "Renewing American Civilization," or the Progress and Freedom Foundation in the course of communicating with the Committee, directly or through counsel (House Rule 43, Cl. 1);

(2) Whether Representative Gingrich's relationship with the Progress and Freedom Foundation, including but not limited to his involvement with the course entitled "Renewing American Civilization," violated the foundation's status under 501(c)(3) of the Internal Revenue Code and related regulations (House Rule 43, Cl. 1);

(3) Whether Representative Gingrich's use of the personnel and facilities of the Progress and Freedom Foundation constituted a use of unofficial resources for official purposes (House Rule 45); and

(4) Whether Representative Gingrich's activities on behalf of the Abraham Lincoln Opportunity Foundation violated its status under 501(c)(3) of the Internal Revenue Code and related regulations or whether the Abraham Lincoln Opportunity Foundation violated its status with the knowledge and approval of Representative Gingrich (House Rule 43, Cl. 1).

As discussed below, the Subcommittee issued a Statement of Alleged Violation with respect to the initial allegation pertaining to Renewing American Civilization and also with respect to items 1 and 4 above. The Subcommittee did not find any violations of House Rules in regard to the issues set forth in items 2 and 3 above. The Subcommittee, however, decided to recommend that the full Committee make available to the IRS documents produced during the Preliminary Inquiry for use in its ongoing inquiries of 501(c)(3) organizations. In regard to item 3 above, the Subcommittee decided to issue some advice to Members concerning the proper use of outside consultants for official purposes.

On January 7, 1997, the House conveyed the matter of Representative Newt Gingrich to the Select Committee on Ethics by its adoption of clause 4(e)(3) of rule X, as contained in House Resolution 5.

On January 17, 1997, the Select Committee on Ethics held a sanction hearing in the matter pursuant to committee rule 20. Following the sanction hearing, the Select Committee ordered a report

to the House, by a roll call vote of 7–1, recommending that Representative Gingrich be reprimanded and ordered to reimburse the House for some of the costs of the investigation in the amount of $300,000. The following Members voted aye: Mrs. Johnson of Connecticut, Mr. Goss, Mr. Schiff, Mr. Cardin, Ms. Pelosi, Mr. Borski, and Mr. Sawyer. The following Member voted no: Mr. Smith of Texas.

The adoption of this report by the House shall constitute such a reprimand and order of reimbursement. Accordingly, the Select Committee recommends that the House adopt a resolution in the following form.

HOUSE RESOLUTION —

Resolved, That the House adopt the report of the Select Committee on Ethics dated January 17, 1997, In the Matter of Representative Newt Gingrich.

Statement Pursuant to Clause 2(l)(3)(A) of Rule XI

No oversight findings are considered pertinent.

B. Investigative Process

The investigation of this matter began on January 3, 1996, and lasted through December 12, 1996. In the course of the investigation, approximately 90 subpoenas or requests for documents were issued, approximately 150,000 pages of documents were reviewed, and approximately 70 people were interviewed. Most of the interviews were conducted by Mr. Cole outside the presence of the Subcommittee. A court reporter transcribed the interviews and the transcripts were made available to the Members of the Subcommittee. Some of the interviews were conducted before the Members of the Subcommittee primarily to explore the issue of whether Mr. Gingrich had provided the Committee, directly or through counsel, inaccurate, unreliable, or incomplete information.

During the Preliminary Inquiry, Mr. Cole interviewed Mr. Gingrich twice and Mr. Gingrich appeared before the Subcommittee twice. Several draft discussion documents, with notebooks of exhibits, were prepared for the Subcommittee in order to brief the Members on the findings and status of the Preliminary Inquiry. After receiving the discussion documents, the Subcommittee met to discuss the legal and factual questions at issue.

In most investigations, people who were involved in the events under investigation are interviewed and asked to describe the events. This practice has some risk with respect to the reliability of the evidence gathered because, for example, memories fade and can change when a matter becomes controversial and subject to an investigation. One advantage the Subcommittee had in this investigation was the availability of a vast body of documentation from multiple sources that had been created contemporaneously with the events under investigation. A number of documents central to the analysis of the matter, in fact, had been written by Mr. Gingrich. Thus, the documents provided a unique, contemporaneous view of people's purposes, motivations, and intentions with respect to the facts at issue. This Report relies heavily, but not exclusively, on an

analysis of those documents to describe the acts, as well as Mr. Gingrich's purpose, motivations, and intentions.

As the Report proceeds through the facts, there is discussion of conservative and Republican political philosophy. The Committee and the Special Counsel, however, do not take any positions with respect to the validity of this or any other political philosophy, nor do they take any positions with respect to the desirability of the dissemination of this or any other political philosophy. Mr. Gingrich's political philosophy and its dissemination is discussed only insofar as it is necessary to examine the issues in this matter.

C. Summary of the Subcommittee's Factual Findings

The Subcommittee found that in regard to two projects, Mr. Gingrich engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan, political goals. The Subcommittee also found that Mr. Gingrich provided the Committee with material information about one of those projects that was inaccurate, incomplete, and unreliable.

1. AOW/ACTV

The first project was a television program called the American Opportunities Workshop ("AOW"). It took place in May 1990. The idea for this project came from Mr. Gingrich and he was principally responsible for developing its message. AOW involved broadcasting a television program on the subject of various governmental issues. Mr. Gingrich hoped that this program would help create a "citizens' movement." Workshops were set up throughout the country where people could gather to watch the program and be recruited for the citizens' movement. While the program was educational, the citizens' movement was also considered a tool to recruit non-voters and people who were apolitical to the Republican Party. The program was deliberately free of any references to Republicans or partisan politics because Mr. Gingrich believed such references would dissuade the target audience of non-voters from becoming involved.

AOW started out as a project of GOPAC, a political action committee dedicated to, among other things, achieving Republican control of the United States House of Representatives. Its methods for accomplishing this goal included the development and articulation of a political message and the dissemination of that message as widely as possible. One such avenue of dissemination was AOW. The program, however, consumed a substantial portion of GOPAC's revenues. Because of the expense, Mr. Gingrich and others at GOPAC decided to transfer the project to a 501(c)(3) organization in order to attract tax-deductible funding. The 501(c)(3) organization chosen was the Abraham Lincoln Opportunity Foundation ("ALOF"). ALOF was dormant at the time and was revived to sponsor AOW's successor, American Citizens' Television ("ACTV"). ALOF operated out of GOPAC's offices. Virtually all its officers and employers were simultaneously GOPAC officers or employees. ACTV had the same educational aspects and partisan, political goals as AOW. The principal difference between the two was that ACTV used approximately $260,000 in tax-deductible contributions to fund its operations. ACTV broadcast three television programs

in 1990 and then ceased operations. The last program was funded by a 501(c)(4) organization because the show's content was deemed to be too political for a 501(c)(3) organization.

2. RENEWING AMERICAN CIVILIZATION

The second project utilizing 501(c)(3) organizations involved a college course taught by Mr. Gingrich called Renewing American Civilization. Mr. Gingrich developed the course as a subset to and tool of a larger political and cultural movement also called Renewing American Civilization. The goal of this movement, as stated by Mr. Gingrich, was the replacement of the "welfare state" with an "opportunity society." A primary means of achieving this goal was the development of the movement's message and the dissemination of that message as widely as possible. Mr. Gingrich intended that a "Republican majority" would be the heart of the movement and that the movement would "professionalize" House Republicans. A method for achieving these goals was to use the movement's message to "attract voters, resources, and candidates." According to Mr. Gingrich, the course was, among other things, a primary and essential means to develop and disseminate the message of the movement.

The core message of the movement and the course was that the welfare state had failed, that it could not be repaired but had to be replaced, and that it had to be replaced with an opportunity society based on what Mr. Gingrich called the "Five Pillars of American Civilization." These were: (1) personal strength; (2) entrepreneurial free enterprise; (3) the spirit of invention; (4) quality as defined by Edwards Deming; and (5) the lessons of American history. The message also concentrated on three substantive areas. These were: (1) jobs and economic growth; (2) health; and (3) saving the inner city.

This message was also Mr. Gingrich's main campaign theme in 1993 and 1994 and Mr. Gingrich sought to have Republican candidates adopt the Renewing American Civilization message in their campaigns. In the context of political campaigns, Mr. Gingrich used the term "welfare state" as a negative label for Democrats and the term "opportunity society" as a positive label for Republicans.

As General Chairman of GOPAC, Mr. Gingrich decided that GOPAC would use Renewing American Civilization as its political message and theme during 1993–1994. GOPAC, however, was having financial difficulties and could not afford to disseminate its political messages as it had in past years. GOPAC had a number of roles in regard to the course. For example, GOPAC personnel helped develop, manage, promote, and raise funds for the course. GOPAC Charter Members helped develop the idea to teach the course as a means for communicating GOPAC's message. GOPAC Charter Members at Charter Meetings helped develop the content of the course. GOPAC was "better off" as a result of the nationwide dissemination of the Renewing American Civilization message via the course in that the message GOPAC had adopted and determined to be the one that would help it achieve its goals was broadcast widely and at no cost to GOPAC.

The course was taught at Kennesaw State College ("KSC") in 1993 and at Reinhardt College in 1994 and 1995. Each course con-

sisted of ten lectures and each lecture consisted of approximately four hours of classroom instruction, for a total of forty hours. Mr. Gingrich taught twenty hours of each course and his co-teacher, or occasionally a guest lecturer, taught twenty hours. Students from each of the colleges as well as people who were not students attended the lectures. Mr. Gingrich's 20-hour portion of the course was taped and distributed to remote sites, referred to as "site hosts," via satellite, videotape and cable television. As with AOW/ACTV, Renewing American Civilization involved setting up workshops around the country where people could gather to watch the course. While the course was educational, Mr. Gingrich intended that the workshops would be, among other things, a recruiting tool for GOPAC and the Republican Party.

The major costs for the Renewing American Civilization course were for dissemination of the lectures. This expense was primarily paid for by tax-deductible contributions made to the 501(c)(3) organizations that sponsored the course. Over the three years the course was broadcast, approximately $1.2 million was spent on the project. The Kennesaw State College Foundation ("KSCF") sponsored the course the first year. All funds raised were turned over to KSCF and dedicated exclusively for the use of the Renewing American Civilization course.[1] KSCF did not, however, manage the course and its role was limited to depositing donations into its bank account and paying bills from that account that were presented to it by the Dean of the KSC Business School. KSCF contracted with the Washington Policy Group, Inc. ("WPG") to manage and raise funds for the course's development, production and distribution. Jeffrey Eisenach, GOPAC's Executive Director from June 1991 to June 1993 was the president and sole owner of WPG. WPG and Mr. Eisenach played similar roles with respect to AOW/ACTV.

When the contract between WPG and KSCF ended in the fall of 1993, the Progress and Freedom Foundation ("PFF") assumed the role WPG had with the course at the same rate of compensation. Mr. Eisenach was PFF's founder and president. Shortly after PFF took over the management of the course, the Georgia Board of Regents passed a resolution prohibiting any elected official from teaching at a Georgia state educational institution. This was the culmination of a controversy that had arisen around the course at KSC. A group of KSC faculty had objected to the course being taught on the campus because of a belief that it was an effort to use the college to disseminate a political message. Because of the Board of Regent's decision and the controversy, it was decided that the course would be moved to a private college.

The course was moved to Reinhardt for the 1994 and 1995 sessions. While there, PFF assumed full responsibility for the course. PFF no longer received payments to run the course but, instead, took in all contributions to the course and paid all the bills, including paying Reinhardt for the use of the college's video production facilities. All funds for the course were raised by and expended by PFF under its tax-exempt status.

[1] As general management and support fees, KSCF kept 2.5% of any money raised and KSC's Business School kept 7.5% of any money raised.

3. FAILURE TO SEEK LEGAL ADVICE

Under the Internal Revenue Code, a 501(c)(3) organization must be operated exclusively for exempt purposes. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Conferring a benefit on private interests is a non-exempt purpose. Under the Internal Revenue Code, a 501(c)(3) organization is also prohibited from intervening in a political campaign or providing any support to a political action committee. These prohibitions reflect congressional concerns that taxpayer funds not be used to subsidize political activity.

During the Preliminary Inquiry, the Subcommittee consulted with an expert in the law of tax-exempt organizations and read materials on the subject. Mr. Gingrich's activities on behalf of AOW/ACTV and Renewing American Civilization, as well as the activities of others on behalf of those projects done with Mr. Gingrich's knowledge and approval, were reviewed by the expert. The expert concluded that those activities violated the status of the organizations under section 501(c)(3) in that, among other things, those activities were intended to confer more than insubstantial benefits on GOPAC, Mr. Gingrich, and Republican entities and candidates, and provided support to GOPAC.

At Mr. Gingrich's request, the Subcommittee also heard from tax counsel retained by Mr. Gingrich for the purposes of the Preliminary Inquiry. While that counsel is an experienced tax attorney with a sterling reputation, he has less experience in dealing with tax-exempt organizations law than does the expert retained by the Subcommittee. According to Mr. Gingrich's tax counsel, the type of activity involved in the AOW/ACTV and Renewing American Civilization projects would not violate the status of the relevant organizations under section 501(c)(3). He opined that once it was determined that an activity was "educational," as defined by the IRS, and did not have the effect of benefiting a private interest, it did not violate the private benefit prohibition. In the view of Mr. Gingrich's tax counsel, motivation on the part of an organization's principals and agents is irrelevant. Further, he opined that a 501(c)(3) organization does not violate the private benefit prohibition or political campaign prohibition through close association with or support of a political action committee unless it specifically calls for the election or defeat of an identifiable political candidate.

Both the Subcommittee's tax expert and Mr. Gingrich's tax counsel, however, agreed that had Mr. Gingrich sought their advice before embarking on activities of the type involved in AOW/ACTV and the Renewing American Civilization course, each of them would have advised Mr. Gingrich not to use a 501(c)(3) organization as he had in regard to those activities. The Subcommittee's tax expert said that doing so would violate 501(c)(3). During his appearance before the Subcommittee, Mr. Gingrich's tax counsel said that he would not have recommended the use of 501(c)(3) organizations to sponsor the course because the combination of politics and 501(c)(3) organizations is an "explosive mix" almost certain to draw the attention of the IRS.

Based on the evidence, it was clear that Mr. Gingrich intended that the AOW/ACTV and Renewing American Civilization projects have substantial partisan, political purposes. In addition, he was aware that political activities in the context of 501(c)(3) organizations were problematic. Prior to embarking on these projects, Mr. Gingrich had been involved with another organization that had direct experience with the private benefit prohibition in a political context, the American Campaign Academy. In a 1989 Tax Court opinion issued less than a year before Mr. Gingrich set the AOW/ACTV project into motion, the Academy was denied its exemption under 501(c)(3) because, although educational, it conferred an impermissible private benefit on Republican candidates and entities. Close associates of Mr. Gingrich were principals in the American Campaign Academy, Mr. Gingrich taught at the Academy, and Mr. Gingrich had been briefed at the time on the tax controversy surrounding the Academy. In addition, Mr. Gingrich stated publicly that he was taking a very aggressive approach to the use of 501(c)(3) organizations in regard to, at least, the Renewing American Civilization course.

Taking into account Mr. Gingrich's background, experience, and sophistication with respect to tax-exempt organizations, and his status as a Member of Congress obligated to maintain high ethical standards, the Subcommittee concluded that Mr. Gingrich should have known to seek appropriate legal advice to ensure that his conduct in regard to the AOW/ACTV and Renewing American Civilization projects was in compliance with 501(c)(3). Had he sought and followed such advice—after having set out all the relevant facts, circumstances, plans, and goals described above—501(c)(3) organizations would not have been used to sponsor Mr. Gingrich's ACTV and Renewing American Civilization projects.

4. MR. GINGRICH'S STATEMENTS TO THE COMMITTEE

In responding to the complaints filed against him concerning the Renewing American Civilization course, Mr. Gingrich submitted several letters to the Committee. His first letter, dated October 4, 1994, did not address the tax issues raised in Mr. Jones' complaint, but rather responded to the part of the complaint concerning unofficial use of official resources. In it Mr. Gingrich stated that GOPAC, among other organizations, paid people to work on the course. After this response, the Committee wrote Mr. Gingrich and asked him specifically to address issues related to whether the course had a partisan, political aspect to it and, if so, whether it was appropriate for a 501(c)(3) organization to be used to sponsor the course. The Committee also specifically asked whether GOPAC had any relationship to the course. Mr. Gingrich's letter in response, dated December 8, 1994, was prepared by his attorney, but it was read, approved, and signed by Mr. Gingrich. It stated that the course had no partisan, political aspects to it, that his motivation for teaching the course was not political, and that GOPAC neither was involved in nor received any benefit from any aspect of the course. In his testimony before the Subcommittee, Mr. Gingrich admitted that these statements were not true.

When the amended complaint was filed with the Committee in January 1995, Mr. Gingrich's attorney responded to the complaint

on behalf of Mr. Gingrich in a letter dated March 27, 1995. His attorney addressed all the issues in the amended complaint, including the issues related to the Renewing American Civilization course. The letter was signed by Mr. Gingrich's attorney, but Mr. Gingrich reviewed and approved it prior to its being delivered to the Committee. In an interview with Mr. Cole, Mr. Gingrich stated that if he had seen anything inaccurate in the letter he would have instructed his attorney to correct it. Similar to the December 8, 1994 letter, the March 27, 1995 letter stated that the course had no partisan, political aspects to it, that Mr. Gingrich's motivation for teaching the course was not political, and that GOPAC had no involvement in nor received any benefit from any aspect of the course. In his testimony before the Subcommittee Mr. Gingrich admitted that these statements were not true.

The goal of the letters was to have the complaints dismissed. Of the people involved in drafting or editing the letters, or reviewing them for accuracy, only Mr. Gingrich had personal knowledge of the facts contained in the letters regarding the course. The facts in the letters that were inaccurate, incomplete, and unreliable were material to the Committee's determination on how to proceed with the tax questions contained in the complaints.

D. Statement of Alleged Violation

On December 21, 1996, the Subcommittee issued a Statement of Alleged Violation stating that Mr. Gingrich had engaged in conduct that did not reflect creditably on the House of Representatives in that by failing to seek and follow legal advice, Mr. Gingrich failed to take appropriate steps to ensure that activities with respect to the AOW/ACTV project and the Renewing American Civilization project were in accordance with section 501(c)(3); and that on or about December 8, 1994, and on or about March 27, 1995, information was transmitted to the Committee by and on behalf of Mr. Gingrich that was material to matters under consideration by the Committee, which information, as Mr. Gingrich should have known, was inaccurate, incomplete, and unreliable.

On December 21, 1996, Mr. Gingrich filed an answer with the Subcommittee admitting to this violation of House Rules.

The following is a summary of the findings of the Preliminary Inquiry relevant to the facts as set forth in the Statement of Alleged Violation.

II. Summary of Facts Pertaining to American Citizens Television

A. GOPAC

GOPAC was a political action committee organized under Section 527 of the Internal Revenue Code. As such, contributions to GOPAC were not tax-deductible.[2] GOPAC's goal was to attract peo-

[2] See September 6, 1996 letter from the tax counsel Mr. Gingrich hired during the Preliminary Inquiry, James Holden, at page 41: "Contributions made to organizations described in section 501(c)(3) qualify generally as charitable deductions under section 170(c)(2). In contrast, contributions made to section 501(c)(4) and section 527 organizations do not qualify as charitable deductions. For this reason, exempt organizations that are described in section 501(c)(3) enjoy the sub-

Continued

ple to the Republican party, develop a "farm team" of Republican state and local public officials who might one day run for Congress and, ultimately, create a Republican majority in the United States House of Representatives. (12/7/96 Callaway Tr. 9; 7/12/96 Eisenach Tr. 21; 7/17/96 Gingrich Tr. 17–20).[3] GOPAC did not undertake any projects that were not directed toward achieving that goal. (7/18/96 Gingrich Tr. 362; 12/7/96 Callaway Tr. 33).

GOPAC's mission was defined as follows:

> GOPAC's mission for the 1990's is to create and disseminate the doctrine which defines a caring, humanitarian reform Republican Party in such a way as to elect candidates, capture the United States House of Representatives and become a governing majority at every level of Government.

(Ex. 1, GOPAC3 137). This aspect of GOPAC's activities was further explained in a draft document from November 1989:

> As important as the creation of new doctrine is its *dissemination.* During the 1980s GOPAC and Newt Gingrich have led the way in applying new technology, from C–SPAN to video tapes, to disseminate information to Republican candidates and political activists.
>
> * * * * * * *
>
> But the Mission Statement demands that we do much more. To create the level of change needed to become a majority, the new Republican doctrine must be communicated to a broader audience, with greater frequency, in a more usable form. GOPAC needs a bigger "microphone." (emphasis in the original).

(Ex. 2, 283). GOPAC continued to support this approach to achieving its goals in subsequent years. For example, as stated in its Report to Shareholders dated April 26, 1993:

> While both "message" and "mechanism" are important, GOPAC's comparative advantage lies in developing new ideas—i.e. in the "message" part of the equation. GOPAC will thus continue to focus its efforts on developing and communicating our values in a way voters can understand and support.

(Ex. 3, Eisenach 2539).

From approximately 1986 through 1995, Mr. Gingrich served as the General Chairman of GOPAC. (7/17/96 Gingrich Tr. 15). In this role he came up with the ideas GOPAC used for its political messages and themes, as well as its vision, strategy, and direction. (7/17/96 Gingrich Tr. 20; 7/15/96 Gaylord Tr. 21–22; 6/26/96 Hanser Tr. 81; 7/12/96 Eisenach Tr. 22–23; 7/3/96 Rogers Tr. 54–56; 6/27/96 Nelson Tr. 22–23; 12/7/96 Callaway Tr. 6, 9).

---

stantial advantage of being able to attract donations that are deductible on the tax returns of contributors."

[3] Citations containing a "Tr." indicate the page of the transcript from a witness's interview. The date of the interview is also provided in the citation.

B. American Opportunities Workshop/American Citizens Television

1. BACKGROUND

In early 1990, GOPAC embarked on a project to produce a television program called the American Opportunities Workshop ("AOW"). The idea for this project came from Mr. Gingrich and he was very involved in developing the message it used. (12/7/96 Callaway Tr. 11, 12, 14; 7/12/96 Eisenach Tr. 16; 12/5/96 Eisenach Tr. 10; 12/9/96 Riddle Tr. 14; 12/9/96 Gingrich Tr. 12).[4] AOW was broadcast on May 19, 1990, on the Family Channel and was hosted by Mr. Gingrich. (Ex. 4, GOPAC3 181).

One of the purposes of the program was to build a citizens' movement that would communicate the principles of Entrepreneurial Free Enterprise, Basic American Values, and Technological Progress. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14). These principles were called the "Triangle of American Success." (Ex. 4, GOPAC3 181). AOW consisted of workshops set up throughout the country where activists could gather to watch the broadcast and, in the words of those responsible for AOW, help build a citizens' movement and increase citizen involvement. (12/7/96 Callaway Tr. 14, 15; 12/9/96 Riddle Tr. 12, 13). Approximately 600 workshop cites were established where approximately 20,000 people watched the program. (Ex. 6, Eisenach 0359). The target group for the program was non-voters. (Ex. 7, WGC2–01025).

As stated by GOPAC's then-Executive Director, Kay Riddle, the purpose of creating the citizens' movement and attempting to increase citizen involvement was to get people to solve their own community problems and not look to the federal government for help. (12/9/96 Riddle Tr. 13). Ms. Riddle went on to say, "Another product of that would be, of course, if we got people interested * * *, we hoped and believed that eventually they would vote Republican." (12/9/96 Riddle Tr. 13). "[W]e [at GOPAC] truly believed that the more we could involve people and educate people, the more likely we were to have people vote Republican." (12/9/96 Riddle Tr. 14–15). Similarly, Mr. Callaway characterized the message of AOW as follows:

> But I think, fundamentally * * * it was a message that Republican principles are sound principles, that everything does not need to be done by government, that you can do better by trusting individuals to act for themselves than you can by having government tell individuals what they must do, that a smaller government is frequently better than a larger government, that it is better to reduce taxes than raise taxes. I think it is Republican kinds of issues.

(12/7/96 Callaway Tr. 12–13).

Producing AOW was very expensive. (12/7/96 Callaway Tr. 16; 6/14/96 Callaway Tr. 21–22). It cost over $500,000 and consumed approximately 62% of GOPAC's budget for the first half of 1990. (Ex. 8, 1273). It was envisioned that the project would continue beyond May 19, 1990 (12/5/96 Eisenach Tr. 46; Ex. 4, GOPAC3 181)

[4] The Committee's Special Counsel, James Cole, interviewed Mr. Gingrich on July 17, 1996; July 18, 1996; and December 9, 1996. Mr. Gingrich appeared before the Investigative Subcommittee to give testimony on November 13, 1996, and December 10, 1996.

and prior to its airing, Mr. Gingrich, Mr. Callaway and others decided to have the project's follow-on activities transferred to a 501(c)(3) organization. (Ex. 9, Eisenach 3909; 12/5/96 Eisenach Tr. 49; 12/7/96 Callaway Tr. 80). The organization chosen was the Abraham Lincoln Opportunity Foundation ("ALOF"). The project was transferred to ALOF so that it could be funded with tax-deductible money. (12/9/96 Riddle Tr. 19).

ALOF was established in 1984 in Colorado by Mr. Callaway to fund programs for inner city youth. (6/14/96 Callaway Tr. 26). It had been inactive for some time prior to 1990 and was revived for the purpose of taking over the successor activities of AOW. (12/7/96 Callaway Tr. 84). Under ALOF the project became know as American Citizens' Television ("ACTV"). Mr. Callaway was the President of ALOF and Kay Riddle was the Secretary. Mr. Callaway was also GOPAC's Chairman and Ms. Riddle was also GOPAC's Executive Director. ALOF hired some GOPAC employees on a full-time basis, used other GOPAC employees and consultants on a part-time basis, and used GOPAC offices and facilities. (12/7/96 Callaway Tr. 7, 11, 13, 14, 73–75).

ACTV was designed to continue AOW's work of building a citizens' movement based on the "Triangle of American Success" and had the same goals as AOW. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14; 12/9/96 Riddle Tr. 16; 12/9/96 Gingrich Tr. 8). In order to ensure a smooth transition, materials concerning ACTV were given to all AOW participants on May 19, 1990. (Ex. 6, Eisenach 0361).

ACTV produced three television programs in 1990—one on July 21 which discussed the use of local access cable television for activist movements; one on September 29 which discussed educational choice;[5] and one on October 27 which was about Taxpayers' Action Day. The last program was primarily the responsibility of the Council for Citizens Against Government Waste ("CCAGW"), a 501(c)(4) organization. This was due to the fact that the content of the program was deemed to be inappropriate for ALOF to sponsor as a 501(c)(3) organization. (Ex. 10, FAM 0024). While CCAGW paid for all of the out-of-pocket expenses (e.g., production expense and broadcast time), ALOF still provided support through its staff. (Ex. 11, Eisenach 4254; 12/5/96 Eisenach Tr. 5, 67). Each program was broadcast on the Family Channel.

In setting up ACTV it was understood that Mr. Gingrich would maintain his involvement and control over the programs. (Ex. 12, WGC2–01337). While some say that he was not very involved when it became ACTV, (e.g., 12/7/96 Callaway Tr. 14), there is evidence that his involvement continued. Mr. Gingrich hosted the first ACTV program. Mr. Gingrich also introduced and closed the second program in September. The host was Pete DuPont, but Mr. Gingrich was featured for a significant portion of the program. While the last program in October was paid for primarily by CCAGW, Mr. Gingrich approved its use on ACTV. (Ex. 11, Eisenach 4254).

Both AOW and ACTV were described to the public as non-partisan. (Ex. 6, Eisenach 0361). Much of the documentation that was either internal to GOPAC or sent to its supporters, however, indi-

[5] A 1989 draft GOPAC document indicates that one of GOPAC's projects designed to "create and disseminate the new Republican doctrine for the 1990's" would be the Education Choice Coalition. (Ex. 2, 284).

cates a partisan, political purpose. While GOPAC, as a political action committee, could freely engage in partisan, political activity, ALOF, as a 501(c)(3) organization could not. Because ACTV was described as a continuation of the activities of AOW (12/7/96 Callaway Tr. 13–15; 12/5/96 Eisenach Tr. 8; Ex. 5, FAM 0011), documents were reviewed during the Preliminary Inquiry relating to both projects to determine what the goals were for the two projects.

GOPAC contracted with an organization called the Washington Policy Group ("WPG") to manage AOW. (7/12/96 Eisenach Tr. 298). Jeffrey Eisenach was president and sole owner of WPG and the project coordinator for AOW. (7/12/96 Eisenach Tr. 298). Mr. Eisenach was also responsible for managing ALOF's ACTV programs. (12/7/96 Callaway Tr. 16). WPG was essentially Mr. Eisenach's "personal consulting firm" and usually had two or three employees. (7/12/96 Eisenach Tr. 9). WPG used GOPAC office space and equipment as part of its compensation. (11/14/96 Eisenach Tr. 60). In addition to its work on AOW and ACTV, WPG had a consulting contract with GOPAC from January 1989 through September 1993. (7/12/96 Eisenach Tr. 9, 10, 298). Through WPG's contract with GOPAC, Mr. Eisenach "provided research assistance and advice to Mr. Gingrich, strategic advice to GOPAC and worked on some specific projects, focus groups and so forth, for GOPAC." (7/12/96 Eisenach Tr. 9). Mr. Eisenach was also the Executive Director of GOPAC from June 1991 to June 1993. (7/12/96 Eisenach Tr. 8).

2. PLANNING AND PURPOSE FOR AOW/ACTV

A document entitled "Key Factors in a House GOP Majority" appears to be one of the earliest documents pertaining to the purpose of AOW and ACTV. A typed version and a handwritten version of the document were produced during the Preliminary Inquiry. The handwritten version is in Mr. Gingrich's handwriting. In it he wrote:

> 1. The fact that 50% of all potential voters are currently outside politics (non-voters) creates the possibility that a new appeal might alter the current balance of political power by bringing in a vast number of new voters.
>
> * * * * * * *
>
> 3. It is possible to articulate a vision of "an America that can be" which is appealing to most Americans, reflects the broad values of a governing conservatism (basic American values, entrepreneurial Free Enterprise and Technological progress), and is very difficult for the Democrats to co-opt because of their ideology and their interest groups.
>
> 4. It is more powerful and more effective to develop a reform movement parallel to the official Republican Party because:
>
> * * * * * * *
>
> b. the non-voters who are non-political or anti-political will accept a movement more rapidly than they will accept an established party;
>
> * * * * * * *

> 5. As much as possible, the House Republican Party, the Bush Administration, Senate Republicans, incumbent Republicans across the country, the NRCC, RNC, SRCC and the conservative movement should be briefed on movement developments; conflict within this broad group should be minimized and coordination maximized.
>
> 6. The objective measurable goal is the maximum growth of news coverage of our vision and ideas, the maximum recruitment of new candidates, voters and resources, and the maximum electoral success in winning seats from the most local office to the White House and then using those victories to implement the values of a governing conservatism and to create the best America that can be.

(Ex. 13, Eisenach 4838–4839 (typed version) and Eisenach 4832–4834 (handwritten version)).

When asked about AOW and ACTV, Mr. Gingrich said he had very little recollection of the projects. He said he was distracted by other events at the time such as his re-election efforts, legislative issues, and becoming Republican Whip. (12/9/96 Gingrich Tr. 19, 39, 43). He said he had no recollection of the "Key Factors in a House GOP Majority" document, did not know if it related to AOW or ACTV, and did not know the purpose for which it was written. (12/9/96 Gingrich Tr. 31). An analysis of other documents, however, shows its relationship to the AOW/ACTV projects. Mr. Callaway said in his interview that the goals set forth in the "Key Factors in a House GOP Majority" document were the same as those for AOW and ACTV. (12/7/96 Callaway Tr. 37–38).

As stated above, AOW was targeted to non-voters. (Ex. 7, WGC2–01025). The "Key Factors in a House GOP Majority" document notes that non-voters are the ones to appeal to in order to change the balance of power. AOW/ACTV based the citizens' movement on the "Triangle of American Success" which was made up of basic American values, entrepreneurial free enterprise, and technological progress. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14). The "Key Factors in a House GOP Majority" document indicates that it will use those same three principles to appeal to non-voters. AOW/ACTV was focused on building a non-partisan citizens' movement. (Ex. 6, Eisenach 0358–0359; Ex. 5, FAM 0011). In the "Key Factors in a House GOP Majority" document, Mr. Gingrich states that "[i]t is more powerful and more effective to develop a reform movement parallel to the official Republican Party because . . . the non-voters who are non-political or anti-political will accept a movement more rapidly than they will accept an established party." (Ex. 13, Eisenach 4838 and Eisenach 4832).

In a congressional briefing Mr. Gingrich gave concerning AOW on March 30, 1990, he described AOW/ACTV as follows:

> It is our goal to define our position as a caring humanitarian reform party applying the triangle of American success and applying common sense focused on success and opportunities to explain in general terms for the whole fall campaign, and again some Democrats will pick up the language and this is open to everybody, this is a free country, we think on balance it is vastly more advantageous to us

> than it is to the left since they are the party of big city machines, they are the party of the unions, they're much more tied to the bureaucratic welfare state.

(Ex. 15, WGC2 06081, pp. 17–18). The "Key Factors in a House GOP Majority" document notes that the message of the citizens' movement is designed not to be useful for Democrats because it will be "very difficult for [them] to co-opt [the ideas] because of their ideology and their interest groups." (Ex. 13, Eisenach 4838 and 4832–4833).

At the congressional briefing, Mr. Gingrich spoke of a focus group that was commissioned to assist in the AOW/ACTV effort. He described it as "the largest focus group project ever undertaken by the Republican Party." (Ex. 14, WGC2 06081, p. 8). He said it concentrated on non-voters under 40 years of age (Ex. 14, WGC2 06081, p. 8) and tested negative language like "the bureaucratic welfare state" and positive language like the "Triangle of American Success," "Entrepreneurial Free Enterprise," "Technological Progress and Innovation," and "Basic American Values." (Ex. 14, WGC2 06081, pp. 10–11).

Near the end of the briefing Mr. Gingrich explained the reasons for having the program labeled as non-partisan:

> Lastly I was going to make the point one of the reasons we are reaching out and we really urge people to be non-partisan and be wide open. But we have two reasons. First, there are a lot of former Democrats. Andy Ireland, Ronald Reagan, Phil Gramm, Jean Kirkpatrick, Connie Mack, you go down the list, a surprising list of people who looked at both sides and decided we were right. That we were more open, we were moving in the right direction.
>
> But second, most young people under 40 are not politicized. The minute you politicize this and you make it narrow and you make it partisan—you lose them.

(Ex. 14, WGC2 06081, pp. 23–24).

The focus group Mr. Gingrich referred to was commissioned by GOPAC in early 1990. It was performed by Market Strategies, Inc. The July 10, 1990 report on the results of the focus group described the project as follows:

> This research project is part of an overall effort to build a new governing majority in the United States formed around conservative principles. Historically, building a new majority has involved three essential tasks: activating a group of non-participating citizens to support an existing party (or form a new party), constructing a theory or explanation of what is right and wrong in society with which the non-participating citizens agree, and developing the right language (political rhetoric) to communicate that theory to the non-participating citizens. This project is the first of several research projects to be sponsored by GOPAC to help achieve these three tasks in this decade.

(Ex. 15, MSI 0030). The report then describes the specific language it tested as follows:

> The theory's explanation of what is wrong in society was put in terms of "the bureaucratic welfare state" and the "values of the left." The theory's explanation of what is good in society was put in terms of "technological progress," "entrepreneurial free enterprise," and "basic American values" which were summarized as "the Triangle of American Success."

(Ex. 15, MSI 0030).

In describing the target group for building the new governing majority, the report states:

> The potential for a new governing majority exists because of the large and growing numbers of non-participating citizens in our political system.
>
> * * * * * * *
>
> Consequently, a major premise for the research project is that younger citizens are the right target group for a new majority strategy and that a political theory and language needs to be effective with them if it is to be effective at all. Supporting this premise is an additional opportunity (to their not voting now) about younger voters—they are already predisposed to vote Republican.

(Ex. 15, MSI 0031–0032).

3. LETTERS DESCRIBING PARTISAN, POLITICAL NATURE OF AOW/ACTV

A number of GOPAC letters also indicate the purpose behind AOW/ACTV. Some are signed, some are not, but the ones that are not signed were apparently in GOPAC's files for some years, indicating that they were probably sent out. For example, in a signed letter dated February 21, 1990, to members of GOPAC's Executive Finance Committee, Mr. Callaway wrote that:

> The next two years are absolutely critical to all that we hope to accomplish. Our May 19 project [AOW] will go a long way toward helping Republicans set an agenda and persuading Americans to realign with us.

(Ex. 16, GOPAC3 484). A copy of this letter was sent to Mr. Gingrich. Written across the top of his copy, in his handwriting, is "Newt 2/20/90." (Ex. 16, WGC2–03992). According to Mr. Gingrich this probably meant he had seen the letter (12/9/96 Gingrich Tr. 36–37); however, he did not recall the content of this letter during an interview with Mr. Cole. (12/9/96 Gingrich Tr. 35).

An unsigned letter, apparently prepared for Mr. Callaway's signature,[6] dated March 7, 1990, states:

> Our May 19th American Opportunities Workshop is the single most exciting project I've ever undertaken. I consider this program critical to our efforts to become a Republican majority.
>
> * * * * * * *

[6] According to Mr. Callaway this letter may have been sent out, but he did not have a specific recollection of it. (12/7/96 Callaway Tr. 49).

> In order to encourage Americans to vote—and vote Republican—so that we may enact our policies of opportunity, we must reach them with our vision of hope.
>
> It is time for our message and program, now proven among those in the trenches, to be shared with the Americans who are not motivated by our current government to go to the polls or get involved.
>
> * * * * * * *
>
> The American Opportunities Workshop is GOPAC's answer to teaching and empowering the American people. We hope that the citizen movement launched by this project will be the key to a future of Republican governance.

(Ex. 17, 425–426).

A March 16, 1990 GOPAC letter over Mr. Gingrich's name discusses the purpose behind AOW.

> Through the use of satellite hook-ups, not only can we reach new groups of voters not traditionally associated with our Party, but we'll be able to give them our message straight, without it being filtered and misinterpreted by liberal elements in the media.
>
> * * * * * * *
>
> Because I believe it has such great potential for helping President Bush, our candidates and our Party, I told Bo to move ahead with planning the workshop.
>
> * * * * * * *
>
> I truly believe that our Party and our President stand on the verge of a tremendous success this year, and that this workshop can be a great election year boost to us.

(Ex. 18, 2782–2783). Mr. Gingrich did not recall this document. When asked whether AOW was intended to be an election year boost, he said that it may have been, but he also thought it was idea oriented. (12/9/96 Gingrich Tr. 39–40).

In an unsigned letter addressed to Mr. Thorton Stearns, apparently written for Mr. Callaway's signature,[7] the AOW project and its purpose were described as follows:

> With more than 600 workshop sites across the country, 30,000 participants, and extensive media coverage, AOW was a significant success on its own terms. However, the real reason GOPAC took on AOW was to explore an innovative new mechanism for creating and motivating the new Republican majority of the 1990s.

(Ex. 19, GOPAC3 467).

In a letter over Mr. Gingrich's name dated June 21, 1990, AOW and ACTV are explicitly tied together in an effort to achieve the same goal of building the Republican Party and trying to have an impact on political campaigns. The letter states:

---

[7] According to Mr. Callaway this letter may have been sent out, but he again did not have a specific recollection of it. (12/7/96 Callaway Tr. 58).

> These are exciting times at GOPAC and we have been quite busy lately. I am excited about [the] progress of the "American Citizens' Television" project, which will carry the torch of citizen activism begun by our American Opportunities Workshop on May 19th. We mobilized thousands of people across the nation at the grass roots level who as a result of AOW, are now dedicated GOPAC activists. We are making great strides in continuing to recruit activists all across America to become involved with the Republican party. Our efforts are literally snowballing into the activist movement we need to win in '92.

(Ex. 20, GOPAC3 224). Mr. Gingrich said that the signature on the letter was not his. (12/9/96 Gingrich Tr. 40). Mr. Gingrich said that the above statement did not reflect the purpose of AOW or ACTV. (12/9/96 Gingrich Tr. 41).

Finally, an August 27, 1990 memorandum from Mr. Callaway to Mr. Gingrich and Jim Tilton[8] gives insight to the goals of the AOW/ACTV projects. (Ex. 21, Eisenach 3950–3959). The memorandum discusses a meeting the three men had five days earlier. Based on the memorandum, the main topic focused on how GOPAC should proceed in the future. The problems addressed in the meeting concerned the fact that AOW/ACTV had diverted too much money and attention from traditional GOPAC efforts. This caused erosion in support from GOPAC members. The three men decided to try one more ACTV program on September 29, 1990. If additional funding was not available beyond that point, the project would not be continued. They decided that it needed to be "a very strong program that is controversial enough to stir up our Charter members and other constituents." (Ex. 21, Eisenach 3951). The show that was chosen was on educational choice, which was a specific GOPAC project.

The memorandum recounted that Mr. Gingrich had reviewed all the options set forth and concluded the following:

> Newt then stated firmly that he feels we need to go back to basics for now through 1992. That the only special projects for 1992 should be 1992 election oriented projects. Newt has now concluded that you can't really affect 1992 elections indirectly—we must do it directly through political programs.

(Ex. 21, Eisenach 3950).[9] Mr. Callaway said that this paragraph could have been referring to ACTV, but he did not have a clear recollection. (12/5/96 Callaway Tr. 62).

4. AOW/ACTV IN MR. GINGRICH'S CONGRESSIONAL DISTRICT

While AOW/ACTV was supposed to be non-partisan, two memoranda indicate that there was some effort to ensure that workshops were set up in Mr. Gingrich's congressional district. In a memorandum to Mr. Callaway, dated February 8, 1990, Mr. Eisenach wrote:

---

[8] Jim Tilton was an unpaid senior advisor to GOPAC. He was an attorney and a close friend of Mr. Gingrich. (12/10/96 Gingrich Tr. 10, 11, 56, 57).

[9] A GOPAC statement of "Revenue and Expenses" attached to this memorandum shows a single line item for "AOW/ACTV." (Ex. 21, Eisenach 3957).

> An area for immediate attention is "targets of opportunity"—e.g. Georgia's 6th District, Colorado, and the D.C. area. We need to identify resources to ensure that we maximize our returns in these three areas, and other specific target areas we might add later. In particular, we need to put very high on our agenda the task of identifying a 6th District Coordinator.

(Ex. 22, Eisenach 3811). Similarly, in a March 30, 1990 memorandum from Mr. Gingrich to Joe Gaylord and Mary Brown, the following is written:

> The GOPAC print-out shows only one very tentative (Clay Davis) site in my district. Time is getting short for finding sites and GOPAC needs to have the hosts identified as soon as possible to get materials to them to make the workshops a success.
>
> Please make this a high priority.

(Ex. 23, GOPAC3 460). Mr. Gingrich did not recall this memorandum and said that there was an effort to target the 6th District—his congressional district—"only in the sense that we hosted [AOW] from there." (12/9/96 Gingrich Tr. 19).

5. GOPAC'S CONNECTION TO ALOF AND ACTV

As has been previously discussed, ACTV was a continuation of AOW and ALOF used GOPAC's offices and facilities. In his interview, Mr. Callaway stated a number of times that GOPAC was separate from ALOF. (12/7/96 Callaway Tr. 64, 65–66, 68–69, 73). A number of documents, however, from 1990 indicate that ALOF and ACTV had significant connections to GOPAC.

In a June 26, 1990 memorandum to Mr. Callaway, Mr. Eisenach recounts a discussion the two men had that morning with Mr. Gingrich. During that discussion, Mr. Gingrich gave them a handout that "identified three GOPAC/ALOF zones: 1. Local Elections, 2. Planning/R&D, 3. Movement." (Ex. 24, Eisenach 4039). The memorandum goes on to discuss how GOPAC and ALOF will relate to each other.

During the Preliminary Inquiry GOPAC produced copies of its "Confidential Masterfile Reports" that were used to keep track of contributors. Under the section entitled "Giving History" the 1990 reports list two entities: GOPAC and ALOF. (Ex. 25, GOPAC3 0510). Attached to these reports are copies of correspondence from both GOPAC and ALOF to contributors. (Ex. 25, GOPAC3 0511–0515).

An August 13, 1990 memorandum from Mr. Callaway to Mr. Gingrich lists the three broad things GOPAC does. The third one listed is "Projects such as ACTV, AOW and focus groups." (Ex. 26, Eisenach 4251).[10]

GOPAC's Report to Charter Members dated November 11, 1990, includes a section on Community Activism. (Ex. 4, GOPAC3 180–188). In that section it discusses AOW and ACTV. While it states that ACTV is "legally no longer a GOPAC project," it goes on to dis-

[10] According to Mr. Callaway, the listing of ACTV was a "bad choice of words." (12/7/96 Callaway Tr. 70).

cuss ACTV in terms which indicate that it continued to be treated as a GOPAC project. For example it states that "Our mission is to establish ACTV as a new, interactive information network." (Ex. 4, GOPAC3 181). The Charter Member Report is worded in a manner that indicates ACTV was considered a GOPAC project. For example, it uses phrases like "Our goal" with ACTV, "Our next ACTV program," and "Our program was hosted by * * *." (Ex. 4, GOPAC3 181–182). At the end of the report under the heading "Getting Out the Message," there is a chart showing the AOW and ACTV programs. It then lists how many workshops were set up for each program and what the estimated attendance was for these workshops. (Ex. 4, GOPAC3 183).

6. GOPAC FUNDING OF ALOF AND ACTV [11]

When ALOF began to operate in June 1990 it had less than $500 in its bank account. (Ex. 27, CNB 006). It obtained a loan for $25,000 from the Central Bank of Denver in late June and received some direct contributions. These came from a foundation associated with Mr. Callaway, the Family Channel, and at least one other GOPAC supporter. (Ex. 28, ALOF 0050). In addition, GOPAC loaned ALOF $45,000 in 1990, and $29,500 in early 1991 to pay for production expenses. The total of loans from GOPAC to ALOF was $74,500. (Ex. 35, ALOF 0030).

ALOF's last program was broadcast in October 1990. In 1991 and 1992 it did not engage in any activities. In 1991, Citizens Against Government Waste contributed $37,000 to ALOF and Mr. Callaway's foundation contributed $10,000. (Ex. 28, ALOF 0090). The total, $47,000, was given to GOPAC to be applied to the debt. (Ex. 37, CNB 0426, CNB 0428, CNB 0430, CNB 0432). After the $47,000 payment, ALOF owed GOPAC $27,500. (Ex. 28, ALOF 0064).[12]

In late 1991 and 1992, ALOF received contributions from a number of GOPAC supporters totalling $80,000. (Ex. 28, ALOF 0078). $70,000 of that amount was given to GOPAC. GOPAC's then-Executive Director, Mr. Eisenach, was involved in soliciting a number of these donations.

On February 27, 1992, Mr. Eisenach wrote to R. Randolph Richardson to ask him to become a Charter Member of GOPAC. In order to be a Charter Member, a person must contribute at least $10,000. In the letter Mr. Eisenach states:

> With respect to foundation funds, it is of course not appropriate for GOPAC to accept 501(c)(3) money. However, Bo Callaway does have a foundation, the Abraham Lincoln Opportunity Foundation (ALOF), which owes GOPAC a substantial sum of money. You might consider a contribution to ALOF, which would enable it to pay down its

[11] There is no evidence that Mr. Gingrich had any significant involvement with this level of the financial aspects of the operations of ALOF. However, because these facts form part of the basis for a recommendation by the Subcommittee that the relevant materials gathered during the preliminary inquiry be made available to the Internal Revenue Service, the matter is set forth in some detail.

[12] The original debt from GOPAC listed on ALOF's tax returns was for $45,247. This is not supported by the checks from GOPAC to ALOF which only reflect $45,000. This additional $247 continued to be listed for the remaining years and was reflected in the ultimate forgiveness of a portion of this debt in 1993. It is not clear what the $247 represents.

> GOPAC debt, and thus be of enormous help in our efforts to change the Congress in 1992.

(Ex. 29, Eisenach 4652). Mr. Richardson's foundation, the Grace Jones Richardson Trust, wrote a $25,000 check to ALOF on April 14, 1992, and ALOF wrote a $25,000 check to GOPAC on April 23, 1992. (Ex. 38, CNB 0449, CNB 0445).

On March 16, 1992, Mr. Eisenach wrote a memorandum to June Weiss, GOPAC's Finance Director, concerning Mr. Callaway's Charter Member dues. The memorandum states:

> Bo has offered us a choice of (1) $10,000 from him or (2) $20,000 from ALOF. I indicated to him on the phone today I would tend to go for $20,000 over $10,000—in part, frankly, because I think we ought to go ahead and get the ALOF loan repaid and be done with it, as opposed to having it hanging around for another year.

(Ex. 30, Eisenach 3725). On March 23, 1992, Mr. Callaway's foundation donated $20,000 to ALOF. (Ex. 39, CNB 0443). On the same day, ALOF wrote a check to GOPAC for $20,000. (Ex. 39, CNB 0447). A letter was sent to Mr. Callaway on ALOF stationery thanking him for the contribution. It was signed by numerous members of GOPAC's staff. (Ex. 31, GOPAC2 0012).

Two other GOPAC Charter Members made contributions to ALOF which were immediately turned over to GOPAC. (Ex. 40, CNB 0217, CNB 0439, CNB 0441, CNB 0459). Handwritten notes relating to one of them indicates that a tax-deductible option for his contribution to GOPAC was discussed before the contribution to ALOF was made. (Ex. 32, GOPAC2 2424–2426).

As of 1993 ALOF had relocated its offices to Colorado. Its Colorado accountant was preparing the tax return for 1992 and saw the payments to GOPAC. In November she wrote to Kay Riddle, ALOF's Secretary, and asked for invoices from GOPAC to ALOF to support these payments. (Ex. 33, Newbill 0119). In December, Ms. Riddle wrote to GOPAC's accountant asking for those invoices. (Ex. 34, ALOF 0028). Several days later the accountant provided Ms. Riddle with a summary memorandum and a number of invoices. (Ex. 35, ALOF 0029–0030, ALOF 0027–0028, GOPAC3 0811). Some were undated. Some were dated in 1991. All concerned activities which were stated to have taken place in 1990 and there is no evidence that the invoices were written contemporaneously with the events for which they billed.[13]

The invoices, along with the previously mentioned loans, totaled $160,537.70. This consisted of rent ($12,718.08), postage and office supplies ($8,455.08), services of staff and consultants ($64,864.54), and the loans ($74,500).[14] (Ex. 35, ALOF 0029, ALOF 0027, ALOF

[13] Because of her assertion of a Constitutional privilege, the Subcommittee was unable to interview the accountant for GOPAC and ALOF.

[14] In the tax return for ALOF for 1990, Part VII asks, among other things, whether ALOF had any transactions with a political action committee involving loans, shared facilities, equipment, or paid employees. Even though GOPAC was a political action committee the return answers "no" to all those questions. (Ex. 28, ALOF 0056). The accountant for ALOF, who was also the accountant for GOPAC, said that she had answered those questions in the negative based on her belief that these questions specifically excluded any transactions with political action committees. (10/31/96 Gilbert Tr. 18-20). She did not discuss this reading of the tax return with anyone at ALOF, but she did fill the form out in this way and they signed it without any ques-

Continued

0026, GOPAC3 0811). The time for the staff was apportioned to reflect the percentage of their work spent on ALOF business. Some of the consultants listed, however, did not keep any records reflecting the percentage of time they spent on specific projects and did not recall doing any work for ALOF. (12/2/96 Hanser Tr. 25; 12/5/96 Mahe Tr. 31). Records of one consultant did record the time he spent on ALOF business, but it was substantially less than the time listed in the invoice. (Ex. 35, ALOF 0029; Ex. 36, WGC2–01378–01379, Eisenach 4276–4277, Eisenach 4302–4303). According to Ms. Riddle, she did not attempt to apportion time based on the actual hours spent by these people on ALOF business. Instead, she said she determined the percentages before any of the people had done any work based on her best guess of the time they would spend. (12/9/96 Riddle Tr. 69–70).

Of the total amount listed on the invoices of $160,537.70, ALOF paid GOPAC $117,000 between 1991 and 1992. (Ex. 35, ALOF 0029). This left a balance of $43,537.70, which, according to ALOF's 1993 tax return, was forgiven by GOPAC. (Ex. 28, ALOF 0089).[15]

According to Kathleen Taylor, a current employee of the Speaker's Office and the former Political Services Director for GOPAC, the lessons learned from AOW and ACTV were used for the Renewing American Civilization course discussed below. (6/28/96 Taylor Tr. 45). Those lessons were "[h]ow to get workshops sites, how to disseminate information, [and] mass-marketing the ideas." (6/28/96 Taylor Tr. 45). In the same vein, a letter from Mr. Eisenach to Mr. Mescon containing the terms and conditions under which WPG would manage the Renewing American Civilization course states:

> Among our most significant project management undertakings was the 1990 "American Opportunities Workshop" and its successor, American Citizens' Television. Both of these projects bear significant similarities to the project you have asked us to get involved with, "Renewing American Civilization." Thus, we enter this undertaking with both enthusiasm and a full understanding of the enormity and complexity of the undertaking.

(Ex. 41, Mescon 0651).

III. Summary of Facts Pertaining to "Renewing American Civilization"

A. Genesis of the Renewing American Civilization Movement and Course

In his interview with the Special Counsel, Mr. Gingrich said the idea for the course was first developed while he was meeting with Owen Roberts, a GOPAC Charter Member and advisor, for two days in December 1992. (7/17/96 Gingrich Tr. 11–12, 23–24; 7/15/96 Gaylord Tr. 23–24; Ex. 42, GOPAC2 2492). Mr. Gingrich wrote out notes at this meeting and they were distributed to some of his advisors. (Ex. 42, HAN 02103–02125; 6/26/96 Hanser Tr. 28;

---

tions. (10/31/96 Gilbert Tr. 21). This same error occurred in the tax return for 1991. (Ex. 28, ALOF 0069).

[15] The amount listed on the Return was $43,785. As referred to earlier, it is unclear what the $247 difference represents.

7/15/96 Gaylord Tr. 24–25; 7/12/96 Eisenach Tr. 108–109).[16] A review of those notes indicates that the topic of discussion at this meeting centered mostly on a political movement. The notes contain limited references to a course and those are in the context of a means to communicate the message of the movement.

The movement was to develop a message and then disseminate and teach that message. (Ex. 42, HAN 02109). One of the important aspects of the movement was the creation of "disseminating groups and [a] system of communication and education." (Ex. 42, HAN 02109). It also sought to "professionalize" the House Republicans by using the "message to attract voters, resources and candidates" and develop a "mechanism for winning seats." (Ex. 42, HAN 02110). The ultimate goal of the movement was to replace the welfare state with an opportunity society, and all efforts had to be exclusively directed to that goal. (Ex. 42, HAN 02119). Ultimately, it was envisioned that "a Republican majority [would be] the heart of the American Movement * * *". (Ex. 42, HAN 02117).[17] Mr. Gingrich's role in this movement was to be the "advocate of civilization," the "definer of civilization," the "teacher of the rules of civilization," the "arouser of those who form civilization," the "organizer of the pro-civilization activists," and the "leader (possibly) of the civilizing forces." (Ex. 42, HAN 02104). In doing this, he intended to "retain a primary focus on elected political power as the central arena and fulcrum by which a free people debate their future and govern themselves." (Ex. 42, HAN 02104). The support systems for this movement included GOPAC, some Republican international organizations, and possibly a foundation. (Ex. 42, HAN 02121). There was substantial discussion of how to disseminate the message of the movement. (Ex. 42, HAN 02109, 02110, 02111). Some of the methods discussed for this dissemination included, "Possibly a series of courses with audio and videotape followons"/"Possibly a textbook (plus audio, video, computer) series"/"Campus (intellectual) appearances on 'the histories' Gingrich the Historian applying the lessons of history to public life." (Ex. 2, HAN 02118). One of the tasks listed for 1993 is "Design vision and its communication and communicate it with modification after feedback." (Ex. 2, HAN 02120). According to Mr. Gingrich, the course was to be a subset of the movement and was to be a primary and essential means for developing and disseminating the message of the movement. (7/17/96 Gingrich Tr. 42, 58; 11/13/96 Gingrich Tr. 126–127).

Another description of the Renewing American Civilization movement is found in notes of a speech Mr. Gingrich gave on January

---

[16] Among the people who received copies of the notes were Mr. Hanser, Mr. Gaylord and Mr. Eisenach. In a subsequent memorandum to Gay Gaines and Lisa Nelson, as Ms. Gaines and Ms. Nelson were about to take over the management of GOPAC in October 1993, Mr. Gingrich described the roles each of the three men played in his life as follows:

> 1. Joe Gaylord is empowered to supervise my activities, set my schedule, advise me on all aspects of my life and career. He is my chief counselor and one of my closest friends. * * *
>
> 2. Steven Hanser is my chief ideas adviser, close personal friend of twenty years, and chief language thinker. * * *
>
> * * * * * * *
>
> 4. Jeff Eisenach is our senior intellectual leader and an entrepreneur with great talent and determination. * * *

Ex. 43, GDC 11551, 11553).

[17] Mr. Gingrich said that he intended the movement to be international in scope. Until some point in 1995, however, its scope was only national. (7/17/96 Gingrich Tr. 33).

23, 1993, to the National Review Institute. (Ex. 44, PFF 14473–14477, PFF 38279–38288).[18] In those notes, Mr. Gingrich wrote that "our generation's rendezvous with history is to launch a movement to renew American civilization." (Ex. 44, PFF 14474). He noted that a majority of Americans favor renewing American civilization and that "[w]e are ready to launch a 21st century conservatism that will renew American civilization, transform America from a welfare state into an opportunity society and create a conservative governing majority." (Ex. 44, PFF 14475). Mr. Gingrich then goes on to describe the five pillars of American civilization and the three areas where the movement needs to offer solutions.[19] He then wrote that if they develop solutions for those three areas they "will decisively trump the left. At that point either Clinton will adopt our solutions or the country will fire the president who subsidizes decay and blocks progress." (Ex. 44, PFF 14476). The notes end with the following:

> We must renew American civilization by studying these principles, networking success stories, applying these success stories to develop programs that will lead to dramatic progress, and then communicating these principles and these opportunities so the American people have a clear choice between progress, renewal, prosperity, safety and freedom within America [sic] civilization versus decay, decline, economic weakness, violent crime and bureaucratic dominance led by a multicultural elite.
>
> Given that choice, our movement for renewing American civilization will not just win the White House in 1996, we will elect people at all levels dedicated to constructive proposals.

(Ex. 44, PFF 14477). (Emphasis in the original).[20]

In a draft document entitled "Renewing American Civilization Vision Statement," written by Mr. Gingrich and dated March 19, 1993, he again described the movement in partisan terms and emphasized that it needed to communicate the vision of renewing American civilization on very large scale. (Ex. 46, WGC 00163–00171, WGC 00172–00191). He wrote that renewing American civilization will require "a new party system so we can defeat the Democratic machine and transform American society into a more productive, responsible, safe country by replacing the welfare state with an opportunity society." (Ex. 46, WGC 00163).

B. Role of the Course in the Movement

Mr. Gingrich was asked about the role of the course in the movement. He said that the course was "the only way actually to develop and send * * * out" the message of the movement. (7/17/96

[18] This appears to be the earliest example of Mr. Gingrich speaking about the Renewing American Civilization movement. A draft of this document in Mr. Gingrich's handwriting is attached to the typed version of the notes.

[19] Although not mentioned in this speech, those five pillars and three areas are each separate lectures in what became the course.

[20] Two days later Mr. Gingrich delivered a Special Order on the House floor concerning Renewing American Civilization. In this speech he described a movement to renew American civilization, but did not mention the course. He did discuss the five pillars of American civilization and the three areas where solutions needed to be developed. (Ex. 45, LIP 00036–00045).

Gingrich Tr. 42). In a later interview, he modified this statement to say that the course was "clearly the primary and dominant method; it was not the only way one could have done it. But I think it was essential to do it, to have the course." (11/13/96 Gingrich Tr. 126–127).

The earliest known documentary reference to the course in the context of the movement is in an agenda for a meeting held on February 15, 1993, at GOPAC's offices. The meeting had two agenda items: "I. General Planning/Renewing American Civilization" and "II. Political/GOPAC Issues." (Ex. 47, JR–0000645–0000647). Under the first category, one topic listed is "American Civilization Class/Uplink." (Ex. 47, JR–0000645). Under the second category two of the items listed are "GOPAC Political Plan & Schedule" and "Charter Meeting Agenda." (Ex. 47, JR–0000645).[21] Attached to the agenda for this meeting is a "Mission Statement" written by Mr. Gingrich which applied to the overall Renewing American Civilization movement, including the course. (7/12/96 Eisenach Tr. 248–249; 7/17/96 Gingrich Tr. 145–146). It states:

> We will develop a movement to renew American civilization using the 5 pillars of 21st Century Freedom so people understand freedom and progress is possible and their practical, daily lives can be far better.* As people become convinced American civilization must and can be renewed and the 5 pillars will improve their lives we will encourage them and help them to network together and independently, autonomously initiate improvements wherever they want. However, we will focus on economic growth, health, and saving the inner city as the first three key areas to improve. Our emphasis will be on reshaping law and government to facilitate improvement in all of [A]merican society. We will emphasize elections, candidates and politics as vehicles for change and the news media as a primary vehicle for communications. To the degree Democrats agree with our goals we will work with them but our emphasis is on the Republican Party as the primary vehicle for renewing American civilization.
>
> *Renewing American Civilization must be communicated as an intellectual-cultural message with governmental-political consequences. (footnote in original)

(Ex. 47, JR–0000646).

In February 1993, Mr. Gingrich first approached Mr. Mescon about teaching the course at KSC. (Ex. 48, Mescon 0278; 6/13/96 Mescon Tr. 26–27). Mr. Gingrich had talked to Dr. Mescon in October or November 1992 about the general subject of teaching, but there was no mention of the Renewing American Civilization course at that time. (6/13/96 Mescon Tr. 12–14). The early discussions with Mr. Mescon included the fact that Mr. Gingrich intended to have the Renewing American Civilization course disseminated

[21] It is not clear whether the meeting was exclusively a GOPAC meeting, but at least part of the agenda explicitly concerned GOPAC projects. As will be discussed later, GOPAC's political plan for 1993 centered on Renewing American Civilization. As also discussed below, GOPAC's April 1993 Charter Meeting was called "Renewing American Civilization" and employed breakout sessions for Charter Members to critique and improve individual components of the course on Renewing American Civilization. (7/17/96 Gingrich Tr. 69–70; 7/12/96 Eisenach Tr. 144–146; 7/15/96 Gaylord Tr. 46).

through a satellite uplink system. (Ex. 49, Mescon 0664; 6/13/96 Mescon Tr. 29–30).

Shortly before this discussion with Mr. Mescon, in late January 1993, Mr. Gingrich met with a group of GOPAC Charter Members. In a letter written some months later to GOPAC Charter Members, Mr. Gingrich described the meeting as follows:

> During our meeting in January, a number of Charter Members were kind enough to take part in a planning session on "Renewing American Civilization." That session not only affected the substance of what the message was to be, but also how best the new message of positive solutions could be disseminated to this nation's decision makers—elected officials, civic and business leaders, the media and individual voters. In addition to my present avenues of communication I decided to add an avenue close to my heart, that being teaching. I have agreed with Kennesaw State College, * * * to teach "Renewing American Civilization" as a for-credit class four times during the next four years.
>
> Importantly, we made the decision to have the class available as a "teleseminar" to students all across the country, reaching college campuses, businesses, civic organizations, and individuals through a live "uplink," video tapes and audio tapes. Our hope is to have at least 50,000 individuals taking the class this fall and to have trained 200,000 knowledgeable citizen activists by 1996 who will support the principles and goals we have set.

(Ex. 50, Kohler 137–138).[22] During an interview with the Special Counsel, Mr. Gingrich said he doubted that he had written this letter and said that the remark in the letter that the Charter Members' comments played a large role in developing the course "exaggerates the role of GOPAC." The letter was written to "flatter" the Charter Members. (11/13/96 Gingrich Tr. 129–130).

In a March 29, 1993 memorandum, Mr. Gingrich specifically connects the course with the political goals of the movement. The memorandum is entitled "Renewing American Civilization as a defining concept" and is directed to "Various Gingrich Staffs."[23] The original draft of the memorandum is in Mr. Gingrich's handwriting. (Ex. 51, GDC 08891–08892, GDC 10236–10238). In the memorandum, Mr. Gingrich wrote:

> I believe the vision of renewing American civilization will allow us to orient and focus our activities for a long time to come.
>
> At every level from the national focus of the Whip office to the 6th district of Georgia focus of the Congressional office to the national political education efforts of GOPAC

[22] The letter goes on to state that: [L]et me emphasize very strongly that the "Renewing American Civilization" project is *not* being carried out under the auspices of GOPAC, but rather by Kennesaw State College and the Kennesaw State College Foundation. We will not be relying on GOPAC staff to support the class, and I am not asking you for financial support.
(Ex. 50, Kohler 138) (emphasis in the original).

[23] At the top of this memorandum is a handwritten notation (not Mr. Gingrich's) stating: "Tuesday 4 p.m. GOPAC Mtg." (Ex. 51, GDC 08891).

> and the re-election efforts of FONG[24] we should be able to use the ideas, language and concepts of renewing American civilization.

(Ex. 51, GDC 08891).

In the memorandum, he describes a process for the dissemination of the message of Renewing American Civilization to virtually every person he talks to. This dissemination includes a copy of the Special Order speech and a one-page outline of the course. He then goes on to describe the role of the course in this process:

> The course is only one in a series of strategies designed to implement a strategy of renewing American civilization.

(Ex. 51, GDC 08891). Another strategy involving the course is:

> Getting Republican activists committed to renewing American civilization, to setting up workshops built around the course, and to opening the party up to every citizen who wants to renew American civilization.

(Ex. 51, GDC 08892).[25] Jana Rogers, the Site Host Coordinator for the course in 1993, was shown a copy of this memorandum and said she had seen it in the course of her work at GOPAC. (7/3/96 Rogers Tr. 64). She said that this represented what she was doing in her job with the course. (7/3/96 Rogers Tr. 67–69). Steve Hanser, a paid GOPAC consultant and someone who worked on the course, also said that the contents of the memorandum were consistent with the strategy related to the movement. (6/28/96 Hanser Tr. 42–45).

The most direct description of the role of the course in relation to the movement to renew American civilization is set out in a document which Mr. Gingrich indicates he wrote. (7/17/96 Gingrich Tr. 162–163). The document has a fax stamp date of May 13, 1993 and indicates it is from the Republican Whip's Office. (Ex. 52, GDC 10639–10649). The document has three parts to it. The first is entitled "Renewing America Vision" (Ex. 52, GDC 10639–10643); the second is entitled "Renewing America Strategies" (Ex. 52, GDC 10644–10646); and the third is entitled "Renewing American Civilization Our Goal." (Ex. 52, GDC 10647–10649). Mr. Gingrich said that the third part was actually a separate document. (7/17/96 Gingrich Tr. 162–164). While all three parts are labeled "draft," the document was distributed to a number of Mr. Gingrich's staff members and associates, including Mr. Hanser, Ms. Prochnow, Ms. Rogers, Mr. Gaylord, Mr. Eisenach, and Allan Lipsett (a press secretary). Each of the recipients of the document have described it as an accurate description of the Renewing American Civilization movement. (6/28/96 Hanser Tr. 48, 53; 7/10/96 Prochnow Tr. 70–71; 7/3/96 Rogers Tr. 71–75; 7/15/96 Gaylord Tr. 66–67; 7/12/96 Eisenach Tr. 148–149, 272–275; Lipsett Tr. 30–31).[26] In the first section, Mr. Gingrich wrote:

---

[24] "FONG" stands for Mr. Gingrich's campaign organization, "Friends of Newt Gingrich."

[25] The "party" referred to in the quote is the Republican Party. (11/13/96 Gingrich Tr. 80).

[26] Mr. Eisenach apparently sent a copy of this to a GOPAC supporter in preparation for a meeting in May of 1993. (7/12/96 Eisenach Tr. 146–149). In the accompanying letter, Mr. Eisenach said: "The enclosed materials provide some background for our discussions, which I expect will begin with a review of the Vision, Strategies and Goals of our efforts to Renew Amer-

Continued

> The challenge to us is to be positive, to be specific, to be intellectually serious, and to be able to communicate in clear language a clear vision of the American people and why it is possible to create that America in our generation.
>
> Once the American people understand what they can have they will insist that their politicians abolish the welfare state which is crippling them, their children, and their country and that they replace it with an opportunity society based on historically proven principles that we see working all around us.

(Ex. 52, GDC 10643).

In the second portion of the document, Mr. Gingrich describes how the vision of renewing America will be accomplished. He lists thirteen separate efforts that fall into categories of communication of the ideas in clear language, educating people in the principles of replacing the welfare state with an opportunity society, and recruiting public officials and activists to implement the doctrines of renewing American civilization. (Ex. 52, GDC 10644–10646).

In the third section, Mr. Gingrich explicitly connects the course to the movement. First he starts out with three propositions that form the core of the course: (1) a refrain he refers to as the "four can'ts;"[27] (2) the welfare state has failed; and (3) the welfare state must be replaced because it cannot be repaired. (Ex. 52, GDC 10647; *see also* Ex. 54, PFF 18361, 18365–18367). He then described the goal of the movement:

> Our overall goal is to develop a blueprint for renewing America by replacing the welfare state, recruit, discover, arouse and network together 200,000 activists including candidates for elected office at all levels, and arouse enough volunteers and contributors to win a sweeping victory in 1996 and then actually implement our victory in the first three months of 1997.
>
> Our specific goals are to:
>
> 1. By April 1996 have a thorough, practical blueprint for replacing the welfare state that can be understood and supported by voters and activists.
>
> We will teach a course on Renewing American civilization on ten Saturday mornings this fall and make it available by satellite, by audio and video tape and by computer to interested activists across the country. A month will then be spent redesigning the course based on feedback and better ideas. Then the course will be retaught in Winter Quarter 1994. It will then be rethought and redesigned for nine months of critical reevaluation based on active working groups actually applying ideas across the country the course will be taught for one final time in Winter Quarter 1996.

---

ican Civilization. The class Newt is teaching at Kennesaw State College this Fall is central to that effort, and GOPAC and the newly created Progress & Freedom Foundation both play important roles as well. (Ex. 13, GOPAC2 2337)."

[27] This refrain goes as follows: "You cannot maintain a civilization with twelve-year-olds having babies, fifteen-year-olds shooting each other, seventeen-year-olds dying of AIDS, and eighteen-year-olds getting diplomas they can't read."

> 2. Have created a movement and momentum which require the national press corps to actually study the material in order to report the phenomenon thus infecting them with new ideas, new language and new perspectives.
>
> 3. Have a cadre of at least 200,000 people committed to the general ideas so they are creating an echo effect on talk radio and in letters to the editor and most of our candidates and campaigns reflect the concepts of renewing America.
>
> Replacing the welfare state will require about 200,000 activists (willing to learn now [sic] to replace the welfare state, to run for office and to actually replace the welfare state once in office) and about six million supporters (willing to write checks, put up yard signs, or do a half day's volunteer work).

(Ex. 52, GDC 10647–10649). The "sweeping victory" referred to above is by Republicans. (11/13/96 Gingrich Tr. 86). The reference to "our candidates" above is to Republican candidates. (11/13/96 Gingrich Tr. 90). According to Mr. Gingrich, Mr. Gaylord, and Mr. Eisenach, the three goals set forth above were to be accomplished by the course. (7/17/96 Gingrich Tr. 174–179; 7/15/96 Gaylord Tr. 66–67; 7/12/96 Eisenach Tr. 225; Ex. 55, GOPAC2 2419; Ex. 56, GOPAC2 2172–2173; Ex. 57, Mescon 0626).

In various descriptions of the course, Mr. Gingrich stated that his intention was to teach it over a four-year period. After each teaching of the course he intended to have it reviewed and improved. The ultimate goal was to have a final product developed by April of 1996. (7/17/96 Gingrich Tr. 109; Ex. 56, GOPAC2 2170). An explanation of this goal is found in a three-page document, in Mr. Gingrich's handwriting, entitled "End State April 1996." (Ex. 58, PFF 20107–20109). Mr. Gingrich said he wrote this document early in the process of developing the movement and described it as a statement of where he hoped to be by April 1996 in regard to the movement and the course. (7/17/96 Gingrich Tr. 108–115). On the first page he wrote that the 200,000 plus activists will have a common language and general vision of renewing America, and a commitment to replacing the welfare state. In addition, "[v]irtually all Republican incumbents and candidates [will] have the common language and goals." (Ex. 58, PFF 20107). On the second page he wrote that the "Republican platform will clearly be shaped by the vision, language, goals and analysis of renewing America." (Ex. 58, PFF 20108). In addition, virtually all Republican Presidential candidates will broadly agree on that vision, language, goals and analysis. (Ex. 58, PFF 20108). The Clinton administration and the Democratic Party will be measured by the vision, principles and goals of renewing America and there will be virtual agreement that the welfare state has failed. (Ex. 58, PFF 20108). On the last page Mr. Gingrich wrote a timeline for the course running from September of 1993 through March of 1996. At the point on the timeline where November 1994 appears, he wrote the word "Election." (Ex. 58, PFF 20109). When Mr. Hanser was asked about this document he said that the vision, language, and concepts of the Renewing American Civilization movement discussed in the document were

being developed in the course. (6/28/96 Hanser Tr. 53). He went on to say that "End State" was "an application of those ideas to a specific political end, which is one of the purposes, remember, for the course." (6/28/96 Hanser Tr. 54). There was an appreciation that this would be primarily a Republican endeavor. (6/28/96 Hanser Tr. 30).

C. GOPAC and Renewing American Civilization

As discussed above, GOPAC was a political action committee dedicated to, among other things, achieving Republican control of the United States House of Representatives. (11/13/96 Gingrich Tr. 169; 7/3/96 Rogers Tr. 38–40). One of the methods it used was the creation of a political message and the dissemination of that message. (7/12/96 Eisenach Tr. 18–19; 6/28/96 Hanser Tr. 13–14; 7/3/96 Rogers Tr. 36). The tool principally used by GOPAC to disseminate its message was audiotapes and videotapes. These were sent to Republican activists, elected officials, potential candidates, and the public. The ultimate purpose of this effort was to help Republicans win elections. (6/27/96 Nelson Tr. 21–22; 7/15/96 Gaylord Tr. 37, 39; 7/3/96 Rogers Tr. 35–36).

1. GOPAC'S ADOPTION OF THE RENEWING AMERICAN CIVILIZATION THEME

At least as of late January 1993, Mr. Gingrich and Mr. Eisenach had decided that GOPAC's political message for 1993 and 1994 would be "Renewing American Civilization."[28] (Ex. 59, PFF 37584–37590; 11/13/96 Gingrich Tr. 157; 7/17/96 Gingrich Tr. 61–62, 74; 7/15/96 Gaylord Tr. 35–36, 42–43; 7/3/96 Rogers Tr. 35, 54–56; 6/28/96 Taylor Tr. 26; 6/27/96 Nelson Tr. 34, 46). As described in a February 1993 memorandum over Mr. Gingrich's name to GOPAC Charter Members:

> GOPAC's core mission—to provide the ideas and the message for Republicans to win at the grass roots—is now more important than ever, and we have important plans for 1993 and for the 1993–1994 cycle. The final enclosure is a memorandum from Jeff Eisenach outlining our 1993 program which I encourage you to review carefully and, again, let me know what you think.

(Ex. 60, PFF 37569). The attached memorandum, dated February 1, 1993, is from Mr. Eisenach to Mr. Gingrich and references their recent discussions concerning GOPAC's political program for 1993. (Ex. 59, PFF 37584–37590). It then lists five different programs. The fourth one states:

> (4) *Message Development/"Renewing American Civilization"—focus group project designed to test and improve the "Renewing American Civilization" message in preparation for its use in 1993 legislative campaigns and 1994 Congressional races.*

[28] As mentioned above, the earliest mention of the Renewing American Civilization course was in February 1993. (Ex. 47, JR–0000646).

(Ex. 59, PFF 37584) (emphasis in original). Of the other four programs listed, three relate directly to the use of the Renewing American Civilization message. The fourth—the "'Tory (Franchise) Model' R & D"—was not done. (7/12/96 Eisenach Tr. 188). This same political program was also listed in two separate GOPAC documents dated April 26, 1993. One is entitled "1993 GOPAC POLITICAL PROGRAM" (Ex. 61, PP001187–00193) and the other is the "GOPAC Report to Shareholders." (Ex. 62, Eisenach 2536–2545). The first page of the Report to Shareholders states:

> The challenge facing Republicans, however, is an awesome one: We must build a governing majority, founded on basic principles, that is prepared to do what we failed to do during the last 12 years: Replace the Welfare State with an Opportunity Society and demonstrate that our ideas are the key to progress, freedom and the Renewal of American Civilization.

(Ex. 62, Eisenach 2536).

In describing the political programs, these documents provide status reports that indicate that the Renewing American Civilization message is at the center of each project. Under "Off-Year State Legislative Races (New Jersey, Virginia)" the project is described as "Newt speaking at and teaching training seminar for candidates at [a June 5, 1993] Virginia Republican Convention." (Ex. 61, PP001187; Ex. 62, Eisenach 2540).[29] As discussed below, that speech and training session centered on the Renewing American Civilization message. Under "Ongoing Political Activities" the first aspect of the project is described as sending tapes and establishing a training module on Renewing American Civilization and health care. (Ex. 61, PP001187; Ex. 62, Eisenach 2540). Under "Curriculum Update and Expansion" the project is described as the production of new training tapes based on Mr. Gingrich's session at the Virginia Republican Convention. (Ex. 61, PP01189; Ex. 62, Eisenach 2541).[30]

2. GOPAC'S INABILITY TO FUND ITS POLITICAL PROJECTS IN 1992 AND 1993

At the end of 1992, GOPAC was at least $250,000 short of its target income (Ex. 65, PFF 38054) and financial problems lasted throughout 1993. (7/15/96 Gaylord Tr. 71–72). Because of these financial shortfalls, GOPAC had to curtail its political projects, particularly the tape program described above. (Ex. 65, PFF 38054–38060; Ex. 66, WGC 07428; 7/15/96 Gaylord Tr. 71–72, 76). For example, according to Mr. Gaylord, GOPAC usually sent out eight tapes a year; however, in 1993, it only sent out two. (7/15/96 Gay-

[29] It is not clear whether any work was done in New Jersey because that state had a Republican legislature and did not need GOPAC's help. (7/15/96 Gaylord Tr. 42).

[30] GOPAC later produced two tapes from the session. One was called "Renewing American Civilization" and was mailed to 8,742 people. (Ex. 63, JG 000001693). The other was called "Leading the Majority" and became a major training tool for GOPAC, used at least into 1996. (6/27/96 Nelson Tr. 18). Both are based on the Renewing American Civilization message and contain the core elements of the course. The "Renewing American Civilization" tape contains more of the RAC philosophy than the "Leading the Majority" tape, however, both contain the basics of the course that Mr. Gingrich describes as the "central proposition" or "heart of the course." (Ex. 56, GOPAC2 2146–2209; Ex. 64, PP000330–000337; Ex. 54, PFF 18361, 18365–18367).

lord Tr. 76). One of these was the "Renewing American Civilization" tape made from Mr. Gingrich's June 1993 training session at the Virginia Republican Convention (Ex. 63, JG 000001693). Accompanying the mailing of this tape was a letter from Joe Gaylord in his role as Chairman of GOPAC. That letter states:

> Ideas matter, and replacing the welfare state with an Opportunity society is so important that Newt is developing a college course that he'll be teaching this fall on this subject, Renewing American Civilization.
>
> I wanted you to hear his initial thoughts because it seems to me that we can't answer the question "What does the Republican Party stand for?" without considering the issues Newt has raised in this speech.

(Ex. 67, WGC 06215).

In light of GOPAC's poor financial condition, the dissemination of the Renewing American Civilization message through the course was beneficial to its political projects. In this regard, the following exchange occurred with Mr. Gingrich:

> Mr. Cole: [I]s one of the things GOPAC wanted to have done during 1993 and 1994 was the dissemination of its message; is that correct?
>
> Mr. Gingrich: Yes.
>
> Mr. Cole: GOPAC also did not have much money in those years; is that correct?
>
> Mr. Gingrich: That is correct. Particularly—it gets better in '94, but '93 was very tight.
>
> Mr. Cole: That curtailed how much it could spend on disseminating its message?
>
> Mr. Gingrich: Right.
>
> Mr. Cole: The message that it was trying to disseminate was the Renewing American Civilization message; is that right?
>
> Mr. Gingrich: Was the theme, yes.

(11/13/96 Gingrich Tr. 157–158). With respect to whether the dissemination of the course benefited GOPAC, the following exchange occurred:

> Mr. Cole: Was GOPAC better off in a situation where the message that it had chosen as its political message for those years was being disseminated by the course? Was it better off?
>
> Mr. Gingrich: The answer is yes.

(11/13/96 Gingrich Tr. 167).

3. GOPAC'S INVOLVEMENT IN THE DEVELOPMENT, FUNDING, AND MANAGEMENT OF THE RENEWING AMERICAN CIVILIZATION COURSE

a. GOPAC personnel

Starting at least as early as February 1993, Mr. Eisenach, then GOPAC's Executive Director, was involved in developing the Renewing American Civilization course. Although Mr. Eisenach has stated that Mr. Gaylord was responsible for the development of the course until mid-May 1993 (7/12/96 Eisenach Tr. 71–75; Ex. 68,

Eisenach Testimony Before House Ethics Committee at Tr. 142; Ex. 69, PFF 1167), Mr. Gaylord stated that he never had such a responsibility. (7/15/96 Gaylord Tr. 15–18). Additionally, Mr. Gingrich and others involved in the development of the course identified Mr. Eisenach as the person primarily responsible for the development of the course from early on. (7/17/96 Gingrich Tr. 117, 121; 6/13/96 Mescon Tr. 30–31; 6/28/96 Hanser Tr. 74–75; 7/3/96 Rogers Tr. 17–18, 22).[31] Several documents also establish Mr. Eisenach's role in the development of the course starting at an early stage. One document written by Mr. Eisenach is dated February 25, 1993, and shows him, as well as others, tasked with course development and marketing. (Ex. 70, PFF 16628). A memorandum from Mr. Gingrich to Mr. Mescon, dated March 1, 1993, describes how Mr. Eisenach is involved in contacting a number of institutions in regard to funding for the course. (Ex. 71, KSC 3491).

Aside from Mr. Eisenach, other people affiliated with GOPAC were involved in the development of the course. Mr. Gingrich was General Chairman of GOPAC and had a substantial role in the course. Jana Rogers served as Mr. Eisenach's executive assistant at GOPAC during the early part of 1993 and in that role worked on the development of the course. (7/3/96 Rogers Tr. 16–17). In June 1993, she temporarily left GOPAC at Mr. Eisenach's request to become the course's Site Host Coordinator. As a condition of her becoming the site host coordinator, she received assurances from both Mr. Eisenach and Mr. Gaylord that she could return to GOPAC when she had finished her assignment with the course. (7/3/96 Rogers Tr. 12–16). After approximately five months as the course's Site Host Coordinator, she returned to GOPAC for a brief time. (7/3/96 Rogers 24–25). Steve Hanser, a member of the GOPAC Board and a paid GOPAC consultant, helped develop the course. (6/28/96 Hanser Tr. 10, 19–21). Mr. Gaylord was a paid consultant for GOPAC and had a role in developing the course. (7/15/96 Gaylord Tr. 15).

Pamla Prochnow was hired as the Finance Director for GOPAC in April 1993.[32] Ms. Prochnow spent a portion of her early time at GOPAC raising funds for the course. (7/10/96 Prochnow Tr. 14–16; 6/13/96 Mescon Tr. 63–67, 82; Ex. 74, Documents produced by Prochnow).[33] A number of the people and entities she contacted were GOPAC supporters. In fact, according to Mr. Eisenach, approximately half of the first year's funding for the course came from GOPAC supporters. (Ex. 69, PFF 1168–1169). Some of those people also helped fund the course in 1994. (*See* attachments to Ex. 69, PFF 1252–1277) (the documents contain Mr. Eisenach's marks

[31] The February 15, 1993, agenda for the meeting where the RAC course and other GOPAC issues were discussed, lists Mr. Eisenach as an attendee, but does not list Mr. Gaylord as being present. (Ex. 47, JR–0000645).

[32] During her interviewing process, Ms. Prochnow was provided with materials to help her understand the goals of GOPAC. (Ex. 72, GOPAC2 0529). Although she has no specific recollection as to what these materials were, she believes they were materials related to the Renewing American Civilization movement. (7/10/96 Prochnow Tr. 18–19; Ex. 73, PP000459–000463; PP00778).

[33] Mr. Eisenach has stated that he did not ask Ms. Prochnow to do this fundraising work, but rather Mr. Gaylord did. (7/12/96 Eisenach Tr. 71, 75; Ex. 65, PFF 1168). However, both Mr. Gaylord and Ms. Prochnow clearly state that it was Mr. Eisenach, not Mr. Gaylord, who directed Ms. Prochnow to perform the fundraising work. (7/15/96 Gaylord Tr. 16, 17; 7/10/96 Prochnow Tr. 14, 73–74; Ex. 71, Letter dated July 25, 1996, from Prochnow's attorney).

of "G" next to the people, companies, and foundations that were donors or related to donors to GOPAC.))

When Mr. Eisenach resigned from GOPAC and assumed the title of the course's project director, two GOPAC employees joined him in his efforts. Kelly Goodsell had been Mr. Eisenach's Administrative Assistant at GOPAC since March of 1993 (7/9/96 Goodsell Tr. 8, 11), and Michael DuGally had been an employee at GOPAC since January 1992. (7/19/96 DuGally Tr. 9–10). Both went to work on the course as employees of Mr. Eisenach's Washington Policy Group ("WPG").[34] In the contract between WPG and KSCF, it was understood that WPG would devote one-half of the time of its employees to working on the course. WPG had only one other client at this time—GOPAC. In its contract with GOPAC, WPG was to receive the same monthly fee as was being paid by KSCF in return for one-half of the time of WPG's employees. (Ex. 76, PFF 37450–37451). The contract also stated that to the extent that WPG did not devote full time to KSCF and GOPAC projects, an adjustment in the fee paid to WPG would be made. (Ex. 76, PFF 37450). Neither Ms. Goodsell nor Mr. DuGally worked on any GOPAC project after they started working on the course in June of 1993. (7/9/96 Goodsell Tr. 8, 10–11; 7/19/96 DuGally Tr. 14). Mr. Eisenach said that he spent at the most one-third of his time during this period on GOPAC projects. (7/12/96 Eisenach Tr. 36–37). No adjustment to WPG's fee was made by GOPAC. (7/12/96 Eisenach Tr. 44).[35]

The February 15, 1993, agenda discussed above also gives some indication of GOPAC's role in the development of the Renewing American Civilization course. (Ex. 47, JR–0000645–0000647). Of the eight attendees at that meeting, five worked for or were closely associated with GOPAC (Mr. DuGally, Mr. Eisenach and Ms. Rogers were employees, Mr. Hanser was a member of the Board and a paid GOPAC consultant, and Mr. Gingrich was the General Chairman). Furthermore, the agenda for that meeting indicates that GOPAC political issues were to be discussed as well as course planning issues. Two of the GOPAC political issues apparently related to: (1) the political program described in the February 1, 1993, memorandum which lists four of GOPAC's five political projects as relating to Renewing American Civilization (Ex. 60, PFF 37569–37576), and (2) GOPAC's Charter Meeting agenda entitled "Renewing American Civilization." As discussed below, this Charter Meeting included breakout sessions to help develop a number of the lectures for the course, as well as GOPAC's message for the 1993–1994 election cycle. (Ex. 78, PP00448–PP000452). As Mr. Gingrich stated in his interview, his intention was to have GOPAC use Renewing American Civilization as its message during this time frame. (7/17/96 Gingrich Tr. 74; 7/3/96 Rogers Tr. 54–56).

In 1993 Mr. Eisenach periodically produced a list of GOPAC projects. The list is entitled "Major Projects Underway" and was

[34] As discussed earlier, WPG was a corporation formed by Mr. Eisenach which had a contract with KSCF to run all aspects of the course.

[35] The only other person who was involved in the early development of the course was Nancy Desmond. She did not work for GOPAC, but had been a volunteer at Mr. Gingrich's campaign office for approximately a year before starting to work on the course. (6/13/96 Desmond Tr. 15–16). She continued to work as a volunteer for Mr. Gingrich's campaign until July of 1993, when she was told to resign from the campaign because of the perceived negative image her two roles would project. (6/13/96 Desmond Tr. 37–38; Ex. 77, PFF 38289).

used for staff meetings. (7/12/96 Eisenach Tr. 213; 7/15/96 Gaylord Tr. 79–80; 6/28/96 Taylor Tr. 43–44). Items related to the Renewing American Civilization course were listed in several places on GOPAC's project sheets. For example, from April 1993 through at least June 1993, "Renewing American Civilization Support" is listed under the "Planning/Other" section of GOPAC's projects sheets. (Ex. 79, JG 000001139, JG 000001152, JG 000001173, JG 000001270). Another entry which appears a number of times under "Planning/Other" is "RAC Pert Chart, etc." (Ex. 79, JG 000001152, JG 000001173, JG 000001270). It refers to a time-line Mr. Eisenach wrote while he was the Executive Director of GOPAC relating to the development of the various components of the course, including marketing and site coordination, funding, readings, and the course textbook. (Ex. 80, PFF 7529–7533; 7/12/96 Eisenach Tr. 212–213). Finally, under the heading "Political" on the May 7, 1993, project sheet, is listed the phrase "CR/RAC Letter." (Ex. 79, JG 000001152). This refers to a mailing about the course sent over Mr. Gingrich's name by GOPAC to approximately 1,000 College Republicans. (Ex. 81, Mescon 0918, 0915, 0914 and Meeks 0038–0040; 7/15/96 Gaylord Tr. 81–82).

b. Involvement of GOPAC charter members in course design

As discussed earlier, Mr. Gingrich had a meeting with GOPAC Charter Members in January 1993 to discuss the ideas of Renewing American Civilization. (11/13/96 Gingrich Tr. 132). According to a letter written about that meeting, the idea to teach arose from that meeting. In April 1993, GOPAC held its semi-annual Charter Meeting. Its theme was "Renewing American Civilization." (Ex. 78, PP000448–PP000452). Mr. Gingrich gave the keynote address, entitled "Renewing American Civilization," and there were five breakout sessions entitled "Advancing the Five Pillars of Twenty-first Century Democracy." (Ex. 78, PP000449). Each of the breakout sessions was named for a lecture in the course, and these sessions were used to help develop the content of the course (11/13/96 Gingrich Tr. 164–165; 7/17/96 Gingrich Tr. 69–70; 7/12/96 Eisenach Tr. 144–146; 7/15/96 Gaylord Tr. 46) as well as GOPAC's political message for the 1993 legislative campaigns and the 1994 congressional races. (11/13/96 Gingrich Tr. 164–165; Ex. 62, Eisenach 2540). As stated in a memorandum from Mr. Eisenach to GOPAC Charter Members, these breakout sessions were intended to "dramatically improve both our understanding of the subject and our ability to communicate it." (Ex. 82, Roberts 0045–0048).

c. Letters sent by GOPAC

In June of 1993, GOPAC sent a letter over Mr. Gingrich's signature stating that "it is vital for Republicans to now DEVELOP and put forward OUR agenda for America." (Ex. 83, PP000534) (emphasis in original). In discussing an enclosed survey the letter states:

> It is the opening step in what I want to be an unprecedented mobilization effort for Republicans to begin the process of replacing America's failed welfare state.

> And the key political component of that effort will be an all-out drive to end the Democrat's 40 year control of the U.S. House or Representatives in 1994!

(Ex. 83, PP000535).[36] The letter then states that it is important to develop the themes and ideas that will be needed to accomplish the victory in 1994. (Ex. 83, PP000536). In language that is very similar to the core of the course, but with an overtly partisan aspect added to it, the letter states:

> Personally, I believe we can and should turn the 1994 midterm elections into not just a referendum on President Clinton, but on whether we maintain or replace the welfare state and the Democratic Party which supports it.
>
> I believe the welfare state which the Democrats have created has failed.
>
> In fact, I challenge anyone to say that it has succeeded, when today in America twelve year olds are having children, fifteen year olds are killing each other, seventeen year olds are dying of AIDS and eighteen year olds are being given high school diplomas they cannot even read.
>
> * * * * * * *
>
> And what I want to see our Party work to replace it with is a plan to renew America based on what I call "pillars" of freedom and progress:
>
> (1) Personal strength;
>
> (2) A commitment to quality in the workplace;
>
> (3) Spirit of American Inventiveness;
>
> (4) Entrepreneurial free enterprise applied to both the private and public sectors;
>
> (5) Applying the lessons of American history as to what works for Americans to proposed government solutions to our problems.
>
> After being active in politics for thirty years, and being in Congress for fourteen of them, I firmly believe these five principles can develop a revolutionary change in government. Properly applied, they can dramatically improve safety, health, education, job creation, the environment, the family and our national defense.

(Ex. 83, PP000536).

In other letters sent out by GOPAC, the role of the Renewing American Civilization course in relation to the Republican political goals of GOPAC were described in explicit terms. A letter to Neil Gagnon, dated May 5, 1993, over Mr. Gingrich's name, states:

> As we discussed, it is time to lay down a blue print—which is why in part I am teaching the course on Renewing American Civilization. Hopefully, it will provide the structure to build an offense so that Republicans can break through dramatically in 1996. We have a good chance to make significant gains in 1994, but only if we can reach

[36] The copy of the letter produced is a draft. While Mr. Gingrich was not able to specifically identify the letter, he did state that the letter fit the message and represented the major theme of GOPAC at that time. (7/17/96 Gingrich Tr. 60–61).

> the point where we are united behind a positive message, as well as a critique of the Clinton program.[37]

(Ex. 84, GOPAC2 0003).

In a letter dated June 21, 1993, that Pamla Prochnow, GOPAC's new finance director, sent to Charter Members as a follow-up to an earlier letter from Mr. Gingrich, she states:

> As the new finance director, I want to introduce myself and to assure you of my commitment and enthusiasm to the recruitment and training of grassroots Republican candidates. In addition, with the course Newt will be teaching in the fall—Renewing American Civilization—I see a very real opportunity to educate the American voting population to Republican ideals, increasing our opportunity to win local, state and Congressional seats.[38]

(Ex. 85, PP000194).

On January 3, 1994, Ms. Prochnow sent another letter to the Charter Members. It states:

> As we begin the new year, we know our goals and have in place the winning strategies. The primary mission is to elect Republicans at the local, state and congressional level. There, also, is the strong emphasis on broadcasting the message of renewing American civilization to achieve peace and prosperity in this country.

(Ex. 86, PP000866).

In another letter sent over Mr. Gingrich's name, the course is again discussed. The letter, dated May 12, 1994, is addressed to Marc Bergschneider and states:

> I am encouraged by your understanding that the welfare state cannot merely be repaired, but must be replaced and have made a goal of activating at least 200,000 citizen activists nationwide through my course, Renewing American Civilization. We hope to educate people with the fact that we are entering the information society. In order to make sense of this society, we must rebuild an opportunistic country. In essence, if we can reach Americans through my course, independent expenditures, GOPAC and other strategies, we just might unseat the Democratic majority in the House in 1994 and make government accountable again.

(Ex. 87, GDC 01137).

Current and former GOPAC employees said that before a letter would go out over Mr. Gingrich's signature, it would be approved by him. (7/3/96 Rogers Tr. 88; 6/27/96 Nelson Tr. 56–60). According to Mr. Eisenach, Mr. Gingrich "typically" reviewed letters that went out over his signature, but did not sign all letters that were part of a mass mailing. (7/12/96 Eisenach Tr. 35). With respect to

---

[37] Jana Rogers had not seen this letter before her interview, but after reading it she said that through her work on the course, she believed the contents of the letter set out one of the goals of the Renewing American Civilization course. (7/3/96 Rogers Tr. 75–76).

[38] Both Dr. Mescon and Dr. Siegel of KSC were shown some of these letters. They both said that had they known of this intention in regard to the course, they would not have viewed it as an appropriate project for KSC. (6/13/96 Mescon Tr. 84–87; 6/13/96 Siegel Tr. 60–62).

letters sent to individuals over Mr. Gingrich's name, Mr. Eisenach said the following:

> Mr. Eisenach: [Mr. Gingrich] would either review those personally or be generally aware of the content. In other words, on rare, if any, occasions, did I or anybody else invent the idea of sending a letter to somebody, write the letter, send it under Newt's signature and never check with him to see whether he wanted the letter to go.
>
> There were occasions—now, sometimes that would be—Newt and I would discuss the generic need for a letter. I would write the letter and send it and fax a copy to him and make sure he knew that it had been sent.
>
> Mr. Cole: Would you generally review the contents of the letter with him prior to it going out?
>
> Mr. Eisenach: Not necessarily word for word. It would depend. But as a general matter, yes.

(7/12/96 Eisenach Tr. 36). Mr. Gingrich's Administrative Assistant, Rachel Robinson, stated that in 1993 and 1994 whenever she received a letter or other document for Mr. Gingrich that was to be filed, she would sign Mr. Gingrich's name on the document and place her initials on it. This "usually" meant that Mr. Gingrich had seen the letter. (9/6/96 Robinson Tr. 4). The letter sent to Mr. Bergschneider on May 12, 1994, was produced from the files of Mr. Gingrich's Washington, D.C. office and has Ms. Robinson's initials on it. (9/6/96 Robinson Tr. 4).

The letters sent out over Mr. Gingrich's signature were shown to Mr. Gingrich during an interview. He said that none of them contained his signature, he did not recall seeing them prior to the interview, and said he would not have written them in the language used. (7/17/96 Gingrich Tr. 77–78, 140–141). Mr. Gaylord said that "it seemed to [him] there was a whole series of kind of usual correspondence that was done by the staff" that Mr. Gingrich would not see. (7/15/96 Gaylord Tr. 77). The content of the letters listed above, however, are quite similar to statements made directly by Mr. Gingrich about the movement and the role of the course in the movement. (See, e.g., Ex. 47, JR–0000646 ("emphasis is on the Republican Party as the primary vehicle for renewing American civilization"); Ex. 52 GDC 10639–10649 ("sweeping victory" will be accomplished through the course); Ex. 88, GDC 10729–10733 ("Democrats are the party of the welfare state." "Only by voting Republican can the welfare state be replaced and an opportunity society be created.")

D. "Replacing the Welfare State With an Opportunity Society" as a Political Tool

According to Mr. Gingrich, the main theme of both the Renewing American Civilization movement and the course was the replacement of the welfare state with an opportunity society. (7/17/96 Gingrich Tr. 52, 61, 170; 11/13/96 Gingrich Tr. 85). Mr. Gingrich also said, "I believe that to replace the welfare state you almost certainly had to have a [R]epublican majority." (7/17/96 Gingrich Tr. 51). "I think it's hard to replace the welfare state with the [D]emocrats in charge." (7/17/96 Gingrich Tr. 62). The course was

designed to communicate the vision and language of the Renewing American Civilization movement and "was seen as a tool that could be used to replace the welfare state." (7/17/96 Gingrich Tr. 159–160; see also 11/13/96 Gingrich Tr. 47, 76).[39]

In addition to being the title of a movement, the course, and GOPAC's political message for 1993 and 1994, "Renewing American Civilization" was also the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. (7/17/96 Gingrich Tr. 69).[40] According to Mr. Gingrich, there was an effort in 1994 to use the "welfare state" label as a campaign tool against the Democrats and to use the "opportunity society" label as an identification for the Republicans. (7/17/96 Gingrich Tr. 113). Mr. Gingrich made similar comments in a subsequent interview:

> Mr. Cole: During [1993–1994] was there an effort to connect the Democrats with the welfare state?
>
> Mr. Gingrich: Absolutely; routinely and repetitively.
>
> Mr. Cole: And a campaign use of that?
>
> Mr. Gingrich: Absolutely.
>
> Mr. Cole: A partisan use, if you will?
>
> Mr. Gingrich: Absolutely.
>
> Mr. Cole: And was there an effort to connect the Republicans with the opportunity society?
>
> Mr. Gingrich: Absolutely.
>
> Mr. Cole: A partisan use?
>
> Mr. Gingrich: Yes, sir.
>
> Mr. Cole: And that was the main theme of the course, was it not, replacement of the welfare state with the opportunity society?
>
> Mr. Gingrich: No. The main theme of the course is renewing American civilization and the main subset is that you have—that you have to replace the welfare state with an opportunity society for that to happen.

(11/13/96 Gingrich Tr. 79–80).

As referred to above, Mr. Gingrich held a training seminar for candidates on behalf of GOPAC at the Virginia Republican Convention in June 1993. (7/15/96 Gaylord Tr. 29–30). He gave a speech entitled "Renewing American Civilization" which described the nature of the movement and the course. (Ex. 56, GOPAC2 2146–2209). Near the beginning of his speech, Mr. Gingrich said:

> What I first want to suggest to you [is] my personal belief that we are engaged in a great moral and practical ef-

---

[39] During his interview, the following exchange occurred regarding the movement:
Mr. Cole: Yet there was an emphasis in the movement on the Republican Party?
Mr. Gingrich: There certainly was on my part, yes.
Mr. Cole: You were at the head of the movement, were you not?
Mr. Gingrich: Well, I was the guy trying to create it.
Mr. Cole: The course was used as the tool to communicate the message of the movement, was it not?
Mr. Gingrich: Yes, it was a tool, yes.
(11/13/96 Gingrich Tr. 76).

[40] According to Ms. Rogers, the course's Site Host Coordinator, there was coordination between the message, the movement, and activists. "They were extensions of Newt and each had to make—each group had to make sure—what I mean specifically is GOPAC and the class had to make sure that they were using the same message that Newt was trying to disseminate, that it was identical.
(7/3/96 Rogers Tr. 54).

> fort, that we are committed to renewing American civilization, and I believe that's our battle cry. That we want to be the party and the movement that renews American civilization and that renewing American civilization is both an idealistic cause and a practical cause at the same time.

(Ex. 56, GOPAC2 2146).

He then told the audience that he has four propositions with which 80% to 95% of Americans will agree. These are: (1) there is an American civilization; (2) the four can'ts; (3) the welfare state has failed; and (4) to renew American civilization it is necessary to replace the welfare state. (Ex. 56, GOPAC2 2149–2153).[41] Mr. Gingrich then went on to relate the principles of renewing American civilization to the Republican party:

> We can't do much about the Democrats. They went too far to the left. They are still too far to the left. That's their problem. But we have a huge burden of responsibility to change our behavior so that every one who wants to replace the welfare state and every one who wants to renew American civilization has a home, and it's called being Republican. We have to really learn how to bring them all in.
>
> And I think the first step of all that is to insist that at the core of identification the only division that matters is that question. You want to replace the welfare state and renew American civilization. The answer is just fine, come and join us. And not allow the news media, not allow the Democrats, not allow interest groups to force us into fights below that level in terms of defining who we are. That in any general election or any effort to govern that we are every one who is willing to try to replace the welfare state, and we are every one who is willing to renew American civilization.
>
> Now, that means there is a lot of ground in there to argue about details. Exactly how do you replace the welfare state. Exactly which idea is the best idea. But if we accept every one coming in, we strongly change the dynamics of exactly how this country is governed and we begin to create a majority Republican party that will frankly just inexorably crow[d] out the Democrats and turn them into minority status.

(Ex. 56, GOPAC2 2155–2156).

Mr. Gingrich told the audience that he would discuss three areas in his remarks: (1) the principles of renewing American civilization; (2) the principles and skills necessary to be a "renewing candidate" and then ultimately a "renewing incumbent;" and (3) the concept and principles for creating a community among those who are committed to replacing the welfare state and renewing American civilization. (Ex. 56, GOPAC2 2168). In speaking of the first area, Mr. Gingrich said that it is a very complicated subject. Because of this he was only going to give a "smattering" of an outline at the training seminar. (Ex. 56, GOPAC2 2170). He said, however, that in the

[41] These four propositions were used as the "central propositions" or "heart" of the course to introduce each session in 1993 and 1994. (Ex. 54, PFF 18361, 18365–18367).

fall he planned to teach a twenty-hour course on the subject, and then refine it and teach it again over a four-year period. (Ex. 56, GOPAC2 2170). He then described the three goals he had for the course:

> First, we want to have by April of '96 a genuine intellectual blueprint to replace the welfare state that you could look at as a citizen and say, yeah, that has a pretty good chance of working. That's dramatically better than what we've been doing.
>
> Second, we want to find 200,000 activist citizens, and I hope all of you will be part of this, committed at every level of American life to replacing the welfare state. Because America is a huge decentralized country. You've got to have school boards, city councils, hospital boards, state legislatures, county commissioners, mayors, and you've got to have congressmen and senators and the President and governors, who literally [sic] you take all the elected posts in America and then you take all the people necessary to run for those posts and to help the campaigns, etc., I think it takes around 200,000 team players to truly change America.

(Ex. 56, GOPAC2 2170–2171).

> Third, we create a process—and this is something you can all help with in your own districts—we create a process interesting enough that the national news media has to actually look at the material in order to cover the course.[42]

(Ex. 56, GOPAC2 2173).

The transcript of his speech goes on for the next 30 pages to describe the five pillars of American civilization that form the basis of the course, and how to use them to get supporters for the candidates' campaigns. In discussing this Mr. Gingrich said:

> Now, let me start just as [a] quick overview. First, as I said earlier, American civilization is a civilization. Very important. It is impossible for anyone on the left to debate you on that topic.
>
> * * * * * * *
>
> But the reason I say that is if you go out and you campaign on behalf of American civilization and you want to renew American civilization, it is linguistically impossible to oppose you. And how is your opponent going to get up and say I'm against American civilization?

(Ex. 56, GOPAC2 2175–2176). Near the end of the speech he said:

> I believe, if you take the five pillars I've described, if you find the three areas that will really fit you, and are really in a position to help you, that you are then going to have a language to explain renewing American civilization, a

[42] These are the same three specific goals that were listed in the document entitled "Renewing American Civilization Our Goal" that referred to achieving a "sweeping victory in 1996" as the overall goal. (Ex. 52, GDC 10647–10648).

> language to explain how to replace the welfare state, and three topics that are going to arouse volunteers and arouse contributions and help people say, Yes, I want this done.

(Ex. 56, GOPAC2 2207).[43]

In a document that Mr. Gingrich apparently wrote during this time (Ex. 89, Eisenach 2868–2869), the course is related to the Renewing American Civilization movement in terms of winning a Republican majority. The "House Republican Focus for 1994" is directed at having Republicans communicate a positive message so that a majority of Americans will conclude that their only hope for real change is to vote Republican. In describing that message, the document states:

> The Republican party can offer a better life for virtually every one if it applies the principles of American civilization to create a more flexible, decentralized market oriented system that uses the Third Wave of change and accepts the disciplines of the world market.
>
> These ideas are outlined in a 20 hour intellectual framework "Renewing American Civilization" available on National Empowerment Television every Wednesday from 1 pm to 3 pm and available on audio tape and video tape from 1–800–TO–RENEW.

(Ex. 89, Eisenach 2869).

In a document dated March 21, 1994, and entitled "RENEWING AMERICA: The Challenge for Our Generation,"[44] Mr. Gingrich described a relationship between the course and the movement. (Ex. 90, GDC 00132–00152). Near the beginning of the document, one of the "key propositions" listed is that the welfare state has failed and must be replaced with an opportunity society. (Ex. 90, GDC 00136). The opportunity society must be based on, among other things, the principles of American civilization. (Ex. 90, GDC 00136). The document states that the key ingredient for success is a movement to renew American civilization by replacing the welfare state with an opportunity society. (Ex. 90, GDC 00137). That movement will require at least 200,000 "partners for progress" committed to the goal of replacing the welfare state with an opportunity society and willing to study the principles of American civilization, work on campaigns, run for office, and engage in other activities to further the movement. (Ex. 90, GDC 00138).[45] Under the heading "Learning the Principles of American Civilization" the document states, "The course, 'Renewing American Civilization', is designed as a 20 hour introduction to the principles necessary to replace the welfare state with an opportunity society." (Ex. 90, GDC 00139). It then lists the titles of each class and the book of readings associated with the course. The next section is titled "Connecting the 'Partners' to the 'Principles'." (Ex. 90, GDC 00140). It de-

---

[43] As discussed above, this speech was used by GOPAC to produce two training tapes. One was called "Renewing American Civilization" and the other was called "Leading the Majority." (7/15/96 Gaylord Tr. 31).

[44] Mr. Gingrich at least wrote the first draft of this document and stated that it was compatible with what he was doing at that time. It was probably a briefing paper for the House Republican members. (Ex. 90, GDC 00132–00152; 7/17/96 Gingrich Tr. 203–204).

[45] In this section he defines the "partners for progress" as "citizens activists."

scribes where the course is being taught, including that it is being offered five times during 1994 on National Empowerment Television, and states that, "Our goal is to get every potential partner for progress to take the course and study the principles." (Ex. 90, GDC 00140).[46] The document then lists a number of areas where Republicans can commit themselves to "real change," including the Contract with America and a concerted effort to end the Democratic majority in the House. (Ex. 90, GDC 00144–00150).

A May 10, 1994 document which Mr. Gingrich drafted (7/18/96 Gingrich Tr. 234–235; 7/15/96 Gaylord Tr. 70) entitled "The 14 Steps[:] Renewing American Civilization by replacing the welfare state with an opportunity society," he notes the relationship between the course and the partisan aspects of the movement. (Ex. 88, GDC 10729–10733). After stating that the welfare state has failed and needs to be replaced (Ex. 88, GDC 10729), the document states that, "Replacing the welfare state will require a disciplined approach to both public policy and politics." (Ex. 88, GDC 10730). "We must methodically focus on communicating and implementing our vision of replacing the welfare state." (Ex. 88, GDC 10730). In describing the replacement that will be needed, Mr. Gingrich says that it:

> must be an opportunity society based on the principles of American civilization * * *.
>
> These principles each receive two hours of introduction in 'Renewing American Civilization', a course taught at Reinhardt College. The course is available on National Empowerment Television from 1–3 P.M. every Wednesday and by videotape or audiotape by calling 1–800–TO–RENEW.

(Ex. 88, GDC 10730).

This document goes on to describe the 200,000 "partners for progress" as being necessary for the replacement of the welfare state and how the Contract with America will be a first step toward replacing the welfare state with an opportunity society. (Ex. 88, GDC 10731). The document then states:

> The Democrats are the party of the welfare state. Too many years in office have led to arrogance of power and to continuing violations of the basic values of self-government.
>
> Only by voting Republican can the welfare state be replaced and an opportunity society be created.

(Ex. 88, GDC 10731).

On November 1, 1994, Mr. Gingrich attended a meeting with Ms. Minnix, his co-teacher at Reinhardt, to discuss the teaching of the course in 1995. (Ex. 92, Reinhardt 0063–0065). Also at that meeting were Mr. Hanser, Ms. Desmond, Mr. Eisenach, and John McDowell. One of the topics discussed at the meeting was Mr. Gingrich's desire to teach the course on a second day in Washing-

[46] The course was broadcast twice each week on National Empowerment Television. In light of it being a ten-week course, and being offered five times during 1994 on NET, it ran for 50 weeks during this election year. In addition to being on NET, it was also on a local cable channel in Mr. Gingrich's district in Georgia. (Ex. 91, DES 01048; 7/18/96 Gingrich Tr. 257–259).

ton, D.C. According to notes of the meeting prepared by Ms. Minnix, Mr. Gingrich wanted to teach the course in D.C. in an effort:

> to attract freshman congresspeople, the press—who will be trying to figure out the Republican agenda—and congressional staff looking for the basis of Republican doctrine. 'Take the course' will be suggested to those who wonder what a Republican government is going to stand for.

(Ex. 92, Reinhardt 0064).[47] Later in the meeting Mr. Gingrich said that his chances of becoming Speaker were greater than 50 percent and he was making plans for a transition from Democratic to Republican rule. Ms. Minnix wrote that Mr. Gingrich "sees the course as vital to this—so vital that no one could convince him to teach it only one time per week and conserve his energy." (Ex. 92, Reinhardt 0065).[48]

A number of other documents reflect a similar partisan, political use of the message and theme of Renewing American Civilization. (Ex. 93, LIP 00602–00610, ("Renewing American Civilization: Our Duty in 1994," a speech given to the Republican National Committee January 21, 1994 Winter Breakfast); Ex. 94, GDC 11010–11012, ("Whip Office Plan for 1994" with the "vision" of "Renew American civilization by replacing the welfare state which requires the election of a Republican majority and passage of our agenda"); Ex. 95, GDC 10667–10670, ("Planning Assumptions for 1994"); Ex. 96, Eisenach 2758–2777, (untitled); Ex. 97, PFF 2479–2489, (seminar on Renewing American Civilization given to the American Legislative Exchange Council); Ex. 98, PFF 37179–37188, ("House GOP Freshman Orientation: Leadership for America's 21st Century.")))

E. Renewing American Civilization House Working Group

As stated in Mr. Gingrich's easel notes from December 1992, one goal of the Renewing American Civilization movement was to "professionalize" the House Republicans. (Ex. 42, HAN 02110). His intention was to use the message of Renewing American Civilization to "attract voters, resources and candidates" and to develop a "mechanism for winning seats." (Ex. 42, HAN 02110). In this vein, a group of Republican House Members and others formed a working group to promote the message of Renewing American Civilization. Starting in approximately June 1993, Mr. Gingrich sponsored Representative Pete Hoekstra as the leader of this group and worked with him. (7/18/96 Gingrich Tr. 279).[49] According to a num-

[47] Ms. Minnix stated that the word "Republican" may not have been specifically used by Mr. Gingrich, but that it was the context of his remark. (6/12/96 Minnix Tr. 54–56).

[48] The other participants at this meeting were asked about this conversation. To the extent they recalled the discussion, they confirmed that it was as related in Ms. Minnix's memorandum. No one had a recollection that was contrary to Ms. Minnix's memorandum. (6/12/96 Minnix Tr. 54–56; 6/28/96 Hanser Tr. 71–72; 6/13/96 Desmond Tr. 76–78; 7/12/96 Eisenach Tr. 270–271; 7/17/96 Gingrich Tr. 211–215).

[49] Mr. Gingrich provided Mr. Hoekstra with some materials to explain the movement. (See Ex. 99, Hoekstra 0259). Apparently, this material included the May 13, 1993, three part document entitled "Renewing America Vision," "Renewing America Strategies," and "Renewing American Civilization Our Goal." (Ex. 52, GDC 10639–10649). In a memorandum from one of Mr. Hoekstra's staffers analyzing the material, he lists the thirteen items that were to be done to further the movement. (Ex. 100, Hoekstra 0140b). They are the same thirteen items that are listed in the "Renewing America Strategies" portion of the May 13, 1993 document.

ber of documents associated with this group, a goal was to use the theme of renewing American civilization to elect a Republican majority in the House. (Ex. 99, Hoekstra 0259; Ex. 101, Hoekstra 0264; Ex. 102, Gregorsky 0025). According to notes from a July 23, 1993 meeting, Mr. Gingrich addressed the group and made several points:

> 1. Renewing American Civilization (RAC) is the basic theme;
> 2. RAC begins with replacing the welfare state, not improving it;
> 3. RAC will occur by promoting the use of the five pillars of American civilization;
> 4. Use of the three key policy areas of saving the inner city, health, and economic growth and jobs.

(Ex. 101, Hoekstra 0264). The meeting then turned to a discussion of possible ways to improve these points. (Ex. 101, Hoekstra 0264).

On July 30, 1993, another meeting of this group was held. According to notes of that meeting, the group restated its objectives as follows:

> a. restate our objective: Renewing American Civilization by replacing the paternalistic welfare state
> —GOP majority in the House ASAP
> —nationwide GOP majority ASAP
>
> * * * * * * *
>
> —objective: create "echo chamber" for RAC
>
> * * * * * * *
>
> i. develop RAC with an eye toward marketability
>
> * * * * * * *
>
> ii. promote message so that this defines many 1994 electoral contests at the congressional level and below, and defines the 1996 national election.

(Ex. 102, Gregorsky 0025).[50]

The goal of the group was further defined in a memorandum written by one of Mr. Hoekstra's staffers in September of 1993. (Ex. 103, Hoekstra 0266–0267). In that memorandum, the staff member said the group's goal had changed "from one of promoting the Renewing American Civilization course to one of proposing a 'political platform' around which House Republican incumbents and candidates can rally." (Ex. 103, Hoekstra 0266). The group's "underlying perspective" was described as follows:

> To expand our party, it is important that Republicans develop, agree on and learn to explain a positive philosophy of government.
>
> At the core of that philosophy is the observation that the paternalistic welfare state has failed, and must be replaced by alternative mechanisms within and outside of government if social objectives are to be achieved.

[50] Mr. Gingrich reviewed notes similar to these and though he did not specifically recall them, he said they were compatible with the activities of that time. (7/18/96 Gingrich Tr. 283–284).

> Fundamental to developing a new philosophy is the idea that traditions in American civilization have proven themselves to be powerful mechanisms for organizing human behavior. There are working principles in the lessons of American history that can be observed, and should be preserved and strengthened.
>
> These working principles distinguish the Republican party and its beliefs from the Democratic party, which remains committed to the welfare state even though these policies are essentially alien to the American experience.

(Ex. 103, Hoekstra 0266–0267).

This group began to develop a program to incorporate Renewing American Civilization into the House Republican party. The program's goals included a House Republican majority, Mr. Gingrich as Speaker, and Republican Committee Chairs. (Ex. 104, Hoekstra 0147–0151). To accomplish this goal, there were efforts to have candidates, staffers and members use Renewing American Civilization as their theme. (Ex. 104, Hoekstra 0148). One proposal in this area was a training program for staffers in the principles of Renewing American Civilization for use in their work in the House. (Ex. 104, Hoekstra 0148). A memorandum from Mr. Gingrich to various members of his staffs [51] asked them to review a plan for this training program and give him their comments. (Ex. 105, WGC 03732–03745).

During his interview, Mr. Hoekstra stated that Renewing American Civilization and the concept of replacing the welfare state was intended as a means of defining who Republicans were; however, the group never finalized this as a project. (7/29/96 Hoekstra Tr. 47–48). In talking about this group, Mr. Gingrich said that he wanted the Republican party to move toward Renewing American Civilization as a theme and that he would have asked the group to study the course, understand the ideas, and use those ideas in their work. (7/18/96 Gingrich Tr. 284–286). It is not known what became of this group. Mr. Hoekstra said that the project ended without any closure, but he does not recall how that happened. (7/29/96 Hoekstra Tr. 46).

F. Marketing of the Course

As discussed above, Mr. Gingrich wrote in his March 29, 1993 memorandum that he wanted "Republican activists committed * * * to setting up workshops built around the course, and to opening the party up to every citizen who wants to renew American civilization." (Ex. 51, GDC 08892). There is evidence of efforts being made to recruit Republican and conservative organizations into becoming sponsors for the course. These sponsors were known as "site hosts." One of the responsibilities of a site host was to recruit participants. (Ex. 106, PFF 8033). Jana Rogers was the Site Host Coordinator for the course when it was at Kennesaw State College. She stated that part of her work in regard to the course involved getting Republican activists to set up workshops around the course to bring people into the Republican party. (7/3/96 Rogers

[51] This included his congressional office, his WHIP office, RAC, and GOPAC.

Tr. 67–68). She said there was an emphasis on getting Republicans to be site hosts. (7/3/96 Rogers Tr. 69).

In an undated document entitled "VISION: To Obtain Site Hosts for Winter 1994 Quarter," three "projects" are listed: (1) "To obtain site hosts from conservative organizations;" (2) "To secure site hosts from companies;" (3) "To get cable companies to broadcast course." (Ex. 107, PFF 7526). The "strategies" listed to accomplish the "project" of obtaining site hosts from conservative organizations are listed as:

> Mailing to State and local leaders through lists from National Republican Committee, Christian Coalition, American Association of Christian Schools, U.S. Chamber of Commerce, National Right to Life, Heritage Foundation, Empower America, National Empowerment Television, Free Congress, etc.

(Ex. 107, PFF 7526). One of the tactics listed to accomplish the goal of obtaining more site hosts is to:

> Contact National College Republican office to obtain names and addresses of all presidents country-wide. Develop letter to ask college republicans to try to obtain the class for credit on their campus or to become a site host with a sponsor group. Also, ask them to contact RAC office for a site host guide and additional information.

(Ex. 107, PFF 7527).

In a memorandum written by Nancy Desmond concerning the course, among the areas where she suggested site host recruiting should be directed were to "NAS members,"[52] "schools recognized as conservative" and "national headquarters of conservative groups." (Ex. 108, PFF 37328–37330). In a number of the project reports written by employees of the course in 1993, there are notations about contacts with various Republicans in an effort to have them host a site for the course. There are no similar notations of efforts to contact Democrats. (Ex. 109, Multiple Documents).[53]

In several instances mailings were made to Republican or conservative activists or organizations in an effort to recruit them as site hosts. In May of 1993 a letter was sent over Mr. Gingrich's signature to approximately 1,000 College Republicans regarding the course.[54] That letter states that:

> [C]onservatives today face a challenge larger than stopping President Clinton. We must ask ourselves what the future would be like if we were allowed to define it, and learn to explain that future to the American people in a way that captures first their imagination and then their votes.
>
> In that context, I am going to devote much of the next four years, starting this Fall, to teaching a course entitled

[52] According to Mr. Gingrich, the NAS (National Association of Scholars) is a conservative organization. (7/18/96 Gingrich Tr. 345–346).

[53] Mr. DuGally said that he made an effort to contact the Young Democrats, but they did not show any interest. (7/19/96 DuGally Tr. 31–32).

[54] Mr. Gingrich was shown this letter and he said that while he was not familiar with it, nothing in it was particularly new. (7/17/96 Gingrich Tr. 87). Jeff Eisenach, GOPAC's Executive Director and then the coordinator of the course, either wrote the letter or edited it from a draft written by another GOPAC employee. (7/12/96 Eisenach Tr. 200–201).

> "Renewing American Civilization." I am writing to you today to ask you to enroll for the class, and to organize a seminar so that your friends can enroll as well.
>
> * * * * * * *
>
> Let me be clear: This is not about politics as such. But I believe the ground we will cover is essential for anyone who hopes to be involved in politics over the next several decades to understand. American civilization is, after all, the cultural glue that holds us all together. Unless we can understand it, renew it and extend it into the next century, we will never succeed in replacing the Welfare State with an Opportunity Society.
>
> * * * * * * *

(Ex. 81, Mescon 0915; Meeks 0039). The letter ends by stating:

> I have devoted my life to teaching and acting out a set of values and principles. As a fellow Republican, I know you share those values. This class will help us all remember what we're about and why it is so essential that we prevail. Please join me this Fall for "Renewing American Civilization."

(Ex. 81, Mescon 0914; Meeks 0040). GOPAC paid for this mailing (7/12/96 Eisenach Tr. 200; 7/15/96 Gaylord Tr. 82) and it was listed as a "political" project on GOPAC's description of its "Major Projects Underway" for May 7, 1993. (Ex. 79, JG 000001152). At the top of a copy of the letter to the College Republicans is a handwritten notation to Mr. Gingrich from Mr. Eisenach: "Newt, Drops to 1000+ C.R. Chapters on Wednesday. JE cc: Tim Mescon." (Ex. 81, Mescon 0915, Meeks 0039).

During an interview with Mr. Cole, Mr. Eisenach was asked about this letter.

> Mr. Eisenach: Use of the course by political institutions in a political context was something that occurred and was part of Newt's intent and was part of the intent of other partisan organizations, but the intent of the course and, most importantly, the operation of the course and its use of tax-exempt funds was always and explicitly done in a nonpartisan way.
>
> Political organizations—in this case, GOPAC—found it to their advantage to utilize the course for a political purpose, and they did so.
>
> Mr. Cole: Were you involved in GOPAC?
>
> Mr. Eisenach: At this time I was involved in GOPAC, yes.
>
> Mr. Cole: And in making the decision that GOPAC would utilize the course?
>
> Mr. Eisenach: Yes.

(7/12/96 Eisenach Tr. 203).

Mr. DuGally worked with Economics America, Inc. to have them send a letter to the members of the groups listed in *The Right Guide* as part of an effort to recruit them as site hosts. The first paragraph of the letter states:

> Newt Gingrich asked that I tell the organizations listed in The Right Guide about his new nationally broadcast college course, "Renewing American Civilization." It promises to be an important event for all conservatives, as well as many young people who are not yet conservatives. You and your organization can be part of this project.

(Ex. 110, PFF 19821). The letter goes on to say, "And remember, since you are a team teacher you can use the course to explain and discuss your views." (Ex. 110, PFF 19821).

In the fall of 1993, Mr. DuGally arranged for a letter to be sent by Lamar Alexander on behalf of the Republican Satellite Exchange Network promoting the course and asking its members to serve as site hosts. (Ex. 111, PFF 19795–19798). In addition, a letter was prepared for mailing to all chairmen of the Christian Coalition asking them to serve as site hosts. (Ex. 112, PFF 19815). In June of 1993, Mr. DuGally worked with the Republican National Committee to have a letter sent by Chairman Haley Barbour to RNC Members informing them of the course. (Ex. 113, RNC 0094). This letter did not solicit people to be site hosts.

Jana Rogers, the Site Host Coordinator for the course, attended the College Republican National Convention. Her weekly report on the subject said the following:

> The response to Renewing American Civilization at the College Republican National Convention was overwelming [sic]. In addition to recruiting 22 sites and possibly another 30+ during follow-up, I was interviewed by MTV about the class and learned more about RESN [Republican Exchange Satellite Network] from Stephanie Fitzgerald who does their site coordination. I also handed out 400 Site Host Guides to College Republicans and about 600 registration flyers. NCRNC says it will work aggressively with their state chairmen to help us set up sites know [sic] that the convention is over.

(Ex. 114, PFF 7613). She made no effort to contact any Democratic groups. (7/3/96 Rogers Tr. 78).

In notes provided by Mr. Mescon from a meeting he attended on the course, he lists a number of groups that would be targeted for mailings on the course. They include mostly elected or party officials and the notation ends with the words "25,000/total Republican mailing." (Ex. 115, Mescon 0263). According to Mr. Mescon, the course was being marketed to Republicans as a target audience and he knew of no comparable mailing to Democrats. (6/13/96 Mescon Tr. 112–113).[55]

In an August 11, 1993, memorandum from Mr. DuGally, a WPG employee who worked on the course, he lists the entities where mailings for the course had been sent or were intended to be sent up to that point. They are as follows:

1. GOPAC farm team—9,000
2. Cong/FONG/Whip offices—4,000

[55] Others who worked on the course also said it was marketed to Republican and conservative groups. (7/3/96 Rogers Tr. 62–63; 6/13/96 Stechschulte Tr. 21–22, 57–58; 6/13/96 Desmond Tr. 66).

3. Sent to site hosts—5,500
4. College Republicans—2,000
5. American Pol Sci Assoc.—11,000
6. Christian Coalition leadership—3,000
7. *The Right Guide* list—3,000

(Ex. 116, PFF 19794).

In June of 1994, John McDowell wrote to Jeff Eisenach with his suggestions about where to market the course during that summer. The groups he listed were the Eagle Forum Collegians; the National Review Institute's Conservative Summit; Accuracy in Academia; Young Republicans Leadership Conference (Mr. McDowell was on their Executive Board); Young America's Foundation, National Conservative Student Conference; College Republican National Conference; the American Political Science Association Annual Meeting;[56] and the Christian Coalition, Road to Victory. (Ex. 117, PFF 3486–3489). At a number of these meetings, Mr. Gingrich was scheduled to be a speaker. (Ex. 117, PFF 3486–3489).

A site host listing dated August 18, 1994, identifies the approximately 100 site hosts as of that date. (Ex. 118, PFF 7493–7496). These include businesses, community groups, cable stations, and others. In addition, some colleges offered the course either for credit, partial credit or no credit. (Ex. 119, Reinhardt 0160–0164). Based on their names, it was not possible to determine whether all of the site hosts fell within the goals set forth in the above-described documents. Some of them, however, were identifiable. For example, of the 28 "community groups" listed on the August 18, 1994 "Site Host Listing," 11 are organizations whose names indicate they are Republican or conservative organizations—Arizona Republican Party; Athens Christian Coalition; Conservative PAC; Henry County Republicans; Houston Young Republicans; Huron County Republican Party; Las Rancheras Republican Women; Louisiana Republican Legislative Delegation; Northern Illinois Conservative Council; Republican Party Headquarters (in Frankfort Kentucky); Suffolk Republican Party. The list does not indicate whether the remaining groups—e.g., the Alabama Family Alliance; the Family Foundation (Kentucky); Leadership North Fulton (Georgia); the North Georgia Forum; Northeast Georgia Forum; the River of Life Family Church (Georgia)—are nonpartisan, Democratic, Republican, liberal or conservative. The list does not contain any organizations explicitly denominated as Democratic organizations. Similarly, it is not clear whether there was a particular political or ideological predominance in the businesses, cable stations and individuals listed.[57]

Mr. Gingrich said that the efforts to recruit colleges to hold the course had been "very broad." "I talked, for example, with the dean

[56] This is the only meeting where there is not a suggestion to have a Renewing American Civilization or PFF employee attend personally. Instead, Mr. McDowell apparently only intended to find an attendee who would be willing to pass out Renewing American Civilization materials.

[57] Patti Hallstrom, an activist in the Arizona Republican Party, was instrumental in recruiting host sites in Arizona, such as the Arizona Republican Party and various cable television stations. (Ex. 120, PFF 7362). She prepared part of a training manual on how to recruit cable companies as host sites. (Ex. 120, DES 00999–01007). She also provided the Renewing American Civilization project with information about which radio and talk shows in Arizona were the most conservative as possible shows where Mr. Gingrich could appear. She said the more conservative shows would allow for a "more amenable discussion." (Ex. 120, DES 00262–00264; 6/20/96 Hallstrom Tr. 41–43).

of the government school at Harvard. Berkley [sic] actually was offering the course." (7/18/96 Gingrich Tr. 346). The course at Berkeley, however, did not go through the regular faculty review process for new courses, because it was initiated by a student. (7/12/96 Eisenach Tr. 316–317). Such courses were not conducted by a professor, but could be offered on campus for credit if a faculty member sponsored the course and the Dean approved it. The student site host coordinator at Berkeley was named Greg Sikorski. (Ex. 121, JR–0000117). In the June 20, 1994 memorandum from John McDowell to Mr. Eisenach, the following is written under the heading "College Republican National Conference:" "RAC Atlanta representative to attend and staff a vendor booth. These 1,000 college students represent a good source of future 'Greg Sikorskis' * * * in the sense that they can promote RAC on their campus!" (Ex. 117, PFF 3488). The faculty sponsor for the student-initiated Renewing American Civilization course was William Muir, a former speechwriter for George Bush. (Ex. 121, JR–0000117). Aside from Mr. Sikorski and Mr. Muir, Mr. Eisenach did not know if the RAC course at Berkeley had any additional university review. (7/12/96 Eisenach Tr. 319).

The site host for the Renewing American Civilization course at Harvard was Marty Connors. (Ex. 122, LIP 00232). According to Mr. Gingrich, Marty Connors is a conservative activist. (7/18/96 Gingrich Tr. 266). In a memorandum dated October 13, 1993, from Marty Connors to Lamar Alexander, Newt Gingrich, Ed Rogers, Jeff Eisenach, Paul Weyrich, Mike Baroody, and Bill Harris, he wrote about a "series of ideas (that included the Renewing American Civilization course) that could have significant consequences in building a new 'Interactive' communication system and message for the Republican Party and the conservative movement." (Ex. 123, WGC 06781). He goes on to write that he was working on a project to take the concept of the Republican Exchange Satellite Television, National Empowerment Television and "Newt Gingrich's 'Renewing American Civilization' lectures and make them "more interactive and user friendly." (Ex. 123, WGC 06781). The purpose for this is to have a "far greater ability for 'participatory' party building in the immediate future." (Ex. 123, WGC 06781–06782). He goes on to write, "Friends, I truly believe the next major political advantage will go to the group that figures out how to use 'interactive' communications in building a new Republican coalition." (Ex. 123, WGC 06782).[58]

G. Kennesaw State College's Role in the Course

Renewing American Civilization was taught at Kennesaw State College ("KSC") in 1993. The sponsoring organization for the course was the Kennesaw State College Foundation ("KSCF"), a 501(c)(3) organization dedicated to promoting projects at KSC. The approximate expenditures for the course at KSC was $300,000. This represented 29–33% of KSCF's program expenditures for 1993. The

[58] This memorandum was faxed to Mr. Gingrich. The fax cover sheet has Mr. Gingrich's name and the date "10/15/93" on it in his handwriting. As Mr. Gingrich has said, this probably indicates that he had seen this memorandum. (12/98/96 Gingrich Tr. 36–37).

funds raised for the course and donated to KSCF were tax-deductible.

KSCF had no role in raising funds for the course. (6/13/96 Fleming Tr. 33–36). Mr. Mescon, the course's co-teacher and Dean of KSC's Business School, wrote some letters with the help of Ms. Prochnow, GOPAC's Finance Director (6/13/96 Mescon Tr. 65–68, 71–74; 7/10/96 Prochnow Tr. 58–62, 66; 7/12/96 Eisenach Tr. 69), but most of the fundraising was coordinated by Mr. Eisenach, Ms. Prochnow, and Mr. Gingrich. (7/12/96 Eisenach Tr. 68–71, 84, 97, 99; 7/17/96 Gingrich Tr. 123, 136, 137).

The course as offered at KSC was a forty-hour classroom lecture. Twenty hours were taught by Mr. Gingrich and twenty hours were taught by Mr. Mescon. While officials of KSC and KSCF considered the course to include the full forty hours of lecture (6/13/96 Mescon Tr. 38; 6/13/96 Fleming Tr. 23), only the twenty hours taught by Mr. Gingrich were taped and disseminated. (6/13/96 Siegel Tr. 25–26; 6/13/96 Mescon Tr. 35; 6/13/96 Fleming Tr. 23). The funds raised for the course were primarily used for the dissemination of Mr. Gingrich's portion of the course to the various site host locations. (6/13/96 Fleming Tr. 22, 24; 6/13/96 Mescon Tr. 55–56). No one at KSC or KSCF had any role in deciding which portions of the course would be taped and disseminated or even knew the reasons for doing it. (6/13/96 Mescon Tr. 36, 44–45, 58–59; 6/13/96 Fleming Tr. 23; 6/13/96 Siegel Tr. 78–79).

KSCF did not manage the course. It contracted with Mr. Eisenach's Washington Policy Group, Inc. ("WPG") to manage and raise funds for the course's development, production and distribution. In return, WPG was paid $8,750 per month.

The contract between WPG and KSCF ran from June 1, 1993, through September 30, 1993.[59] All funds raised were turned over to KSCF and dedicated exclusively for the use of the Renewing American Civilization course. KSCF's only role was to act as the banker for the funds for the course and disburse them upon a request from Mr. Mescon. (6/13/96 Fleming Tr. 24–25; 6/13/96 Mescon Tr. 103; Ex. 124, KSF 001269, Mescon 0454, KSF 003804, PFF 16934, KSF 001246). Mr. Mescon did not engage in a detailed review of the bills. He merely reviewed the bills that were provided by Mr. Eisenach or his staff and determined whether the general nature of the bills fell within the parameters of the project of dissemination of the course. (6/13/96 Mescon Tr. 61–63).

When the contract between WPG and KSCF ended, the Progress and Freedom Foundation ("PFF") assumed the role WPG had with the course at the same rate of compensation.[60] PFF was also a

[59] The contract between WPG and KSCF was never signed by KSCF. It was directed to Dr. Mescon, but he was not an authorized agent of KSCF. According to Jeffery Eisenach, President of WPG, even though the contract was not signed, it memorialized the terms of the relationship between WPG and KSCF. (Ex. 41, Mescon 0651–0652; 7/12/96 Eisenach Tr. 42; 11/14/96 Eisenach Tr. 11).

[60] Prior to assuming control of the course PFF was tasked with putting together the book of readings that were to be used for the course. This entailed Mr. Eisenach and Mr. Hanser editing the writings of others. Mr. Hanser was paid $5,000 or $10,000 for this work, but Mr. Eisenach was not separately compensated for his role in this. (7/12/96 Eisenach Tr. 68). Mr. Eisenach was president of PFF, WPG, former Executive Director of GOPAC, and advisor to Mr. Gingrich. Mr. Hanser was a close friend, confidant, and at times a congressional employee of Mr. Gingrich. He was also a board member and consultant to GOPAC and a board member and consultant to the Progress and Freedom Foundation. (6/28/96 Hanser Tr. 6–10, 14). He had a substantial role in developing the course. (6/28/96 Hanser Tr. 19–20).

501(c)(3) tax exempt organization, but its status as such was not used while the course was at KSC. Mr. Eisenach was the founder and president of PFF.

KSCF and KSC had little or no role in supervising the course or its dissemination. Since the course was a "Special Topics" course, it did not need to go through formal approval by a curriculum committee at KSC—it only required Mr. Mescon's approval. (6/13/96 Siegel Tr. 15–16, 30, 32, 76–77). While Mr. Mescon was given advance copies of Mr. Gingrich's lectures, he had little input into their content. (6/28/96 Hanser Tr. 22; 6/13/96 Desmond Tr. 63). Mr. Mescon described his role more in terms of having his own 20 hours to put forth any counterpoint or objection to any of the material in Mr. Gingrich's lectures. (6/13/96 Mescon Tr. 40–41).[61]

Shortly after PFF took over the management of the course, the Georgia Board of Regents passed a resolution prohibiting any elected official from teaching at a Georgia state educational institution. This was the culmination of a controversy that had arisen around the course at KSC. The controversy pertained to objections voiced by KSC faculty to the course on the grounds that it was essentially political. (Ex. 127, KSC 3550–3551, 3541, 3460, 3462). Because of the Board of Regent's decision and the controversy, it was decided that the course would be moved to a private college. (7/12/96 Eisenach Tr. 47–50).[62]

H. Reinhardt College's Role in the Course

Reinhardt College was chosen as the new host for the course in part because of its television production facilities. (6/12/96 Falany Tr. 14). The 1994 and 1995 courses took place at Reinhardt. While there, PFF assumed full responsibility for the course. It no longer received payments to run the course. Rather, it paid Reinhardt to

---

[61] The December 8, 1994 letter from Mr. Gingrich to the Committee states that, "Respected scholars such as James Q. Wilson, Everett Carl Ladd, and Larry Sabato continue to contribute to and review course content." (Ex. 138, p. 3). The same reference to Mr. Wilson's and Mr. Sabato's review of the course is contained in a September 3, 1993 memorandum sent out over Jana Rogers' name to site hosts. (Ex. 125, PFF 22963). However, in a letter from James Q. Wilson to Mr. Eisenach dated September 28, 1993, Mr. Wilson wrote:

> Perhaps I don't understand the purpose of the course, but if it is to be a course rather [than] a series of sermons, this chapter won't do. It is bland, vague, hortatory, and lacking in substance. (emphasis in original)
>
> * * * * * * *
>
> I could go on, but I dare not for fear I have misunderstood what this enterprise is all about. I am a professor, and so I bring the perspectives (and limitations) of a professor to bear on this matter. If this is not to be a course but instead a sermon, then you should get a preacher to comment on it.

(Ex. 126, PFF 5994–5995). Also, in a book co-written by Larry Sabato, the following statements are made:

> In late 1992 and early 1993, Gingrich began conceiving a new way to advance those political goals—a nationally broadcast college course, ambitiously titled "Renewing American Civilization," in which he would inculcate students with his Republican values. (p. 94).
>
> * * * * * * *
>
> Nominally an educational enterprise, internal course planning documents revealed the true nature of the course as a partisan organizing tool. (p. 95).

Sabato, L. and Simpson, G., "Dirty Little Secrets: The Persistence of Corruption in American Politics," Times Books (1996).

[62] Near the end of his interview, Mr. Mescon expressed embarrassment in regard to his participation in the course. He became involved in the course in order to raise the profile of the school, but now believes that his efforts have had severe repercussions. (6/13/96 Mescon Tr. 136–137).

use the college's video production facilities. All funds for the course were raised by and expended by PFF under its tax-exempt status. The approximate expenditures for the course were $450,000 in 1994 and in $450,000 in 1995. At PFF this represented 63% of its program expenditures for its first fiscal year (which ended March 31, 1994) and 35% of its program expenditures for its second fiscal year (which ended March 31, 1995).[63]

Reinhardt had a curriculum committee review the content of the course before deciding to have it presented on its campus. (6/12/96 Falany Tr. 15–16). The controversy over the course at KSC, however, affected the level of involvement Reinhardt was willing to assume in regard to the course. (6/12/96 Falany Tr. 44–48, 51–53, 59–66; 6/12/96 Minnix Tr. 26–27). In this regard, Reinhardt's administration saw a distinction between the "course" and a broader political "project." As stated in a memorandum from Mr. Falany, Reinhardt's President, to Mr. Eisenach dated November 11, 1993:

> First, there seems to be a "project", which is Renewing American Civilization, of which the "course" is a part. This distinction is blurred at times in the Project Overview. When you refer to the "project" it seems to imply a broader political objective (a non-welfare state). This is not to say that this political objective should be perceived as being negative, but it should, in fact, be seen as broader than and distinct from the simpler objective of the "course."

(Ex. 128, Reinhardt 0225).[64] Because of this concern, Reinhardt administrators agreed to be involved only in the actual teaching of the course on its campus and would not participate in any other aspects of the project. (6/12/96 Falany Tr. 51–53, 59–66; 6/12/96 Minnix Tr. 26–27).[65] In this regard, Mr. Falany made it clear to the faculty and staff at the college that:

> It is important to understand that, for the Winter Quarter 1994, the College will offer the course and teach it—that is the extent of our commitment. At the present time, the Progress and Freedom Foundation will handle all of the fund raising associated with the course; the distribution of tapes, text and materials; the broadcasting; and the handling of all information including the coordination of off-campus sites.

(Ex. 129, Reinhardt 0265).[66]

As was the case at KSC, Reinhardt administrators considered the course to be the forty hours of lecture by both Mr. Gingrich and Ms. Minnix. (6/12/96 Falany Tr. 74–76). Again, only Mr. Gingrich's portion of the course was disseminated outside of Reinhardt. (6/12/96 Falany Tr. 53–54; 6/12/96 Minnix Tr. 48–49). Ms. Minnix had little contact with Mr. Gingrich, and no input into the content of

---

[63] As of November 1996, PFF's tax return (Form 990) for its third fiscal year (which ended March 31, 1996) had not been filed.

[64] Reinhardt saw the "project" as essentially dealing with the dissemination of the course outside of Reinhardt's campus. (6/12/96 Falany Tr. 48–50, 54–66, 84–85).

[65] All of the funds for the course while at Reinhardt were raised by PFF under its tax exempt status.

[66] Reinhardt College did rent its television production facilities to PFF for its use in the dissemination in the course, and was paid separately for this in the amount of $40,000. All production beyond that was handled by PFF. (6/12/96 Falany Tr. 27–28).

the course in 1994. In 1995 she had only limited input into the content of the course. (6/12/96 Minnix Tr. 20–22). Similarly, Mr. Gingrich and his associates provided no input as to Ms. Minnix's portion of the course. (6/12/96 Minnix Tr. 31–32).

While Mr. Falany did not know the purpose for disseminating the course, and made no inquiries in that regard (6/12/96 Falany Tr. 48–50; 54–66; 84–85), Ms. Minnix did have some knowledge in this area. Based on her contacts with the people associated with the course, she believed Mr. Gingrich had a global vision of getting American civilization back "on track" and that he wanted to shape the public perception through the course. (6/12/96 Minnix Tr. 59–60). She felt there was an "evangelical side" to the course, which she described as an effort to have people get involved in politics, run for office, and try to influence legislation. (6/12/96 Minnix Tr. 70–71). Ms. Minnix felt uncomfortable with this "evangelical side." (6/12/96 Minnix Tr. 70). Furthermore, as reflected in her memorandum of the November 1, 1994 meeting with Mr. Gingrich and others, she was aware that the course was to be used to let people know what Mr. Gingrich's political agenda would be as Speaker. (6/12/96 Minnix Tr. 53–59; Ex. 92, Reinhardt 0064). As with KSC, one of the reasons Reinhardt administrators wanted to have the course taught on its campus was to raise profile of the school. (6/12/96 Falany Tr. 112–113).

I. End of Renewing American Civilization Course

Although Mr. Gingrich had intended to teach the course for four years, through the 1996 Winter quarter, he stopped teaching it after the 1995 Winter quarter. According to most of the witnesses interviewed on this subject, the reason for this was that he had run out of time in light of the fact that he had become Speaker. (7/12/96 Eisenach Tr. 280; 6/28/96 Hanser Tr. 52–53). On the other hand, Mr. Gingrich says that he had learned all he could from teaching the course and had nothing new to say on the topics. (7/18/96 Gingrich Tr. 364). Mr. Gingrich refused to support the efforts of PFF in regard to the course at that point, largely because he was disappointed with Mr. Eisenach's financial management of the course. (7/18/96 Gingrich Tr. 365–366). Mr. Eisenach had indicated to Mr. Gingrich that the course was $250,000 in debt and that PFF had used its own resources to cover this shortfall. (Ex. 130, GDC 11325). Mr. Gingrich was skeptical of this claim, offered to have the records reviewed, and stated that he would help raise any amount that the review disclosed was needed. According to Mr. Gingrich, this offer was not pursued by Mr. Eisenach. (7/18/96 Gingrich Tr. 367–368).

IV. Ethics Committee Approval of Course

On May 12, 1993, Mr. Gingrich wrote the Committee asking for "guidance on the development of an intellectual approach to new legislation that will be different from our normal activities." (Ex. 131, p. 1). He said that he wanted "to make sure that [his] activities remain within a framework that meets the legitimate ethics concerns of the House." (Ex. 131, p. 1). He went on to describe a

course he was planning to teach in the fall of 1993 at Kennesaw State College.

The course would be based on his January 25, 1993 Special Order entitled "Renewing American Civilization." (Ex. 131, p. 2). It would be "completely non-partisan" and, he hoped, would include ideas from many people, including politicians from both parties and academics. (Ex. 131, p. 2). He stated that he believed the development of ideas in the course was a "crucial part" of his job as a legislator. (Ex. 131, p. 3). He ended his letter with a request to the Committee to meet to discuss the project if the Committee had any concerns. (Ex. 131, p. 3).

In June 1993, counsel for the Committee, David McCarthy, met with Mr. Gingrich, two people from his staff (Annette Thompson Meeks and Linda Nave) and Mr. Eisenach to discuss the course. (7/18/96 McCarthy Tr. 7; 7/10/96 Meeks Tr. 13). Mr. McCarthy's initial concern was whether Mr. Gingrich could qualify for a teaching waiver under the House ethics rules. (7/18/96 McCarthy Tr. 16). When he learned Mr. Gingrich was teaching without compensation, the issue of a teaching waiver became, in his opinion, irrelevant. (7/18/96 McCarthy Tr. 16). Mr. McCarthy then asked questions regarding whether any official resources would be used to support the course and whether Mr. Gingrich planned to use any unofficial resources to subsidize his official business. Mr. McCarthy did not see any problems pertaining to these issues. Mr. Gingrich indicated that he might repeat the lectures from the course as Special Orders on the floor of the House. Mr. McCarthy suggested that Mr. Gingrich consult with the House Parliamentarian on that subject. (Ex. 132, p. 1).

One issue raised with Mr. McCarthy was whether the House Ethics Rules permitted Mr. Gingrich to raise funds for a tax-exempt organization. Mr. McCarthy's conclusion was that since KSCF was a qualified tax-exempt organization, Mr. Gingrich could raise funds for KSCF as long as he complied with the relevant House rules on the subject. (7/18/96 McCarthy Tr. 17). Mr. Eisenach raised the issue concerning the propriety of his being involved in fundraising for the course in light of the fact that he also worked for GOPAC. According to Mr. McCarthy, his response to the issue was as follows:

> [T]o my knowledge of tax law, the issue of whether the contributions in support of the course would keep their tax-deductible status would turn not on who did the fundraising but on how the funds were spent, and that the educational nature of the course spoke for itself. I told him that I was aware of no law or IRS regulation that would prevent Eisenach from raising charitable contributions, even at the same time that he was raising political contributions. In any event, I advised him, I expected the Committee to stick by its advisory opinion in the Ethics Manual and not get into second-guessing the IRS on its determinations of tax-exempt status.

(Ex. 132, p. 2).

Mr. McCarthy said in an interview that his statement regarding the Committee's "stick[ing]" by its advisory opinion pertained only

to whether Mr. Gingrich could raise funds for the course. (7/18/96 McCarthy Tr. 19). The discussion did not relate to any other 501(c)(3) issues. (7/18/96 McCarthy Tr. 19). While Mr. McCarthy was aware that the course lectures would be taped and broadcast (7/18/96 McCarthy Tr. 16), neither Mr. Gingrich nor his staff asked for Mr. McCarthy's advice regarding what activities in that regard were permissible under 501(c)(3) and Mr. McCarthy did not discuss such issues. (7/18/96 McCarthy Tr. 19; 7/18/96 Gingrich Tr. 375–376; 7/10/96 Meeks Tr. 15). Mr. McCarthy did not recall any discussion regarding a Renewing American Civilization movement. (7/18/96 McCarthy Tr. 16). Mr. McCarthy did not recall any discussion of GOPAC's use of the Renewing American Civilization message. (7/18/96 McCarthy Tr. 12–13). The discussion pertaining to Mr. Eisenach and GOPAC was brief. (Ex. 132, p. 2).

During the meeting with Mr. McCarthy, there were no questions posed about 501(c)(3) or what could be done in regard to the course, aside from the fund-raising issue under 501(c)(3). (7/18/96 Gingrich Tr. 375–376). Mr. Gingrich did not believe that it was necessary to explain to Mr. McCarthy his intended use for the course.

> Mr. Cole: We are focusing, however, on your intended use of the course. And your intended use of the course here was in a partisan political fashion; is that correct?
>
> Mr. Gingrich: My intended use was, but I am not sure I had any obligation to explain that to the [C]ommittee. As long as the course itself was nonpartisan and the course itself was legal and the course itself met both accreditation and tax status, I don't believe I had an obligation to tell the Ethics Committee what my political strategies were. I think that's a retrospective comment. And maybe I am wrong.
>
> I don't think—the questions were: Was it legal? Did I use official funds? Had we gotten approval? Was GOPAC's involvement legitimate and legal? Was it an accredited course? Was I getting paid for it?
>
> I mean, none of those questions require that I explain a grand strategy, which would have seemed crazy in '94. If I had wandered around and said to people, hi, we are going to win control, reshape things, end the welfare entitlement, form a grand alliance with Bill Clinton, who is also going to join us in renewing America, how would I have written that?

(11/13/96 Gingrich Tr. 89–90).

On July 21, 1993, Mr. Gingrich wrote the Committee to provide additional information about the course he planned to teach at KSC. The letter did not discuss how the course was to be funded or that there was a plan to distribute the course nationally via satellite, videotape, audiotape and cable, or that GOPAC's main theme was to be "Renewing American Civilization." The letter also did not discuss GOPAC's role in the course. (Ex. 133).[67]

[67] The information Mr. Gingrich provided to the Committee was that the Kennesaw State College Foundation, a 501(c)(3) organization affiliated with Kennesaw State College, was providing him with a "Content Coordinator to coordinate the videotape inserts and other materials that

Continued

On August 3, 1993, the Committee, in a letter signed by Mr. McDermott and Mr. Grandy, responded to Mr. Gingrich's letters of May 12, 1993 and July 21, 1993, regarding his request to the teach the course and his request to present the course materials in Special Orders. (Ex. 134, p. 1). The Committee's letter also notes that Mr. Gingrich had asked if he could help KSC raise funds for the course. The Committee's guidance was as follows:

> 1. Since Mr. Gingrich was teaching the course without compensation, he did not need the Committee's approval to do so;
> 2. It was within Mr. Gingrich's "official prerogative" to present the course materials in Special Orders;
> 3. Mr. Gingrich was permitted to raise funds for the course on behalf of charitable organizations, "provided that no official resources are used, no official endorsement is implied, and no direct personal benefit results."

(Ex. 134, p. 1). The Committee, however, advised Mr. Gingrich to consult with the FEC regarding whether election laws and regulations might pertain to his fundraising efforts. The Committee's letter to Mr. Gingrich did not discuss any matters relating to the implications of 501(c)(3) on the teaching or dissemination of the course or GOPAC's relationship to the course. (Ex. 134, p. 1).

V. Legal Advice Sought and Received

As described in greater detail in the Appendix, section 501(c)(3) requires, among other things, that an organization be organized and operated exclusively for one or more exempt purposes. Treas. Reg. 1.501(c)(3)–1(d)(1)(ii) provides that an organization does not meet this requirement: Unless it serves a public rather than a private purpose. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests.

The purpose of the "private benefit" prohibition is to ensure that the public subsidies flowing from section 501(c)(3) status, including income tax exemption and the ability to receive tax-deductible charitable contributions, are reserved for organizations that are formed to serve public, not private interests. Treas. Reg. 1.501(c)(3)–1(c)(1) defines the application of the private benefit prohibition in the context of the operational test: An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Although cases on the private benefit doctrine date back to 1945,[68] a more recent, significant case on the subject is the 1989 Tax Court opinion in *American Campaign Academy* v. *Commis-*

---

will be used in the presentations." (Ex. 133, pp. 1–2). He also wrote that none of his staff would perform tasks associated with the course and that the course material would not be based on previous work of his staff. (Ex. 133, p. 1). Finally, he wrote that much of the material from the course would be presented in Special Orders, although the presentations would have some differences. (Ex. 133, p. 2).

[68] *Better Business Bureau of Washington, D.C.* v. *United States,* 326 U.S. 279 (1945).

sioner, 92 T.C. 1053 (1989). That case discusses the doctrine in terms of conferring an impermissible private benefit on Republican candidates and entities.

Prior to his involvement in both AOW/ACTV and the Renewing American Civilization course, Mr. Gingrich was aware of the tax controversy pertaining to the American Campaign Academy ("ACA" or "Academy"). In his interview with Mr. Cole he said, "I was aware of [ACA] because * * * the staff director of the [ACA] had been totally involved. I was aware of his briefings and what was involved. * * * I was aware of them at the time and I was aware of them during the court case." (7/18/96 Gingrich Tr. 375–376). "I lived through that case. I mean, I was very well aware of what the [American Campaign Academy] did and what the ruling was." (11/13/96 Gingrich Tr. 61).[69]

Responding to the question of whether he had any involvement with the Academy, Mr. Gingrich said: "I think I actually taught that [sic], but that's the only direct involvement I had." (12/9/96 Gingrich Tr. 58). In an undated document on GOPAC stationery entitled "Offices of Congressman Newt Gingrich," three offices are listed: GOPAC, FONG, and the American Campaign Academy. (Ex. 143, Kohler 285). Mr. Gingrich did not believe that he had an office at the Academy, but thought it possible that his press secretary, Rich Galen, had an office there. (12/9/96 Gingrich Tr. 58–59).

In speaking about the Renewing American Civilization course, Mr. Gingrich told the *New York Times* that he acted very aggressively in regard to 501(c)(3) law:

> "Whoa," [Mr. Gingrich] said, when asked after class one recent Saturday if the course nears the edge of what the law allows. "Goes right up to the edge. What's the beef? Doesn't go over the edge, doesn't break any law, isn't wrong. It's aggressive, it's entrepreneurial, it's risk taking."

New York Times, section A, page 12, column 1 (Feb. 20, 1995). (Ex. 144). In addition, Mr. Gingrich has had involvement with a number of tax-exempt organizations. As Mr. Gingrich's tax lawyer stated, politics and 501(c)(3) organizations are an "explosive mix." (12/12/96 Holden Tr. 132–134, 146).

Despite all of this, he did not seek specific legal advice concerning the application of section 501(c)(3) with respect to AOW/ACTV or the Renewing American Civilization course. Furthermore, he did not know if any one did so on his behalf. With respect to the course, the following exchange occurred:

> Mr. Cole: Were you involved in seeking any legal advice concerning the operation of the course under 501(c)(3)?
>
> Mr. Gingrich: No. We sought legal advice about ethics.
>
> Mr. Cole: Did you seek any legal advice concerning the 501(c)(3) issues involving the course?
>
> Mr. Gingrich: No. I did not.
>
> Mr. Cole: Do you know if anybody did on your behalf?

[69] His adviser, Mr. Gaylord, was a director of the Academy. (12/9/96 Gingrich Tr. 57; *American Campaign Academy* v. *Commissioner,* 92 T.C. 1053, 1056 (1989)). As referred to above, Mr. Gaylord was one of the "five key people" Mr. Gingrich relied on most. (Ex. 3, GDC 11551, GDC 11553).

Mr. Gingrich: No.

(7/17/96 Gingrich Tr. 140). With respect to AOW/ACTV, Mr. Gingrich said that he did not get any legal advice regarding the projects. (12/9/96 Gingrich Tr. 54). He said that he assumed Mr. Callaway sought such legal advice. (12/9/96 Gingrich Tr. 54).

Mr. Gingrich said two attorneys involved with GOPAC at the time, Jim Tilton and Dan Swillinger, monitored all GOPAC activities and would have told him if the projects violated the law. (12/9/96 Gingrich Tr. 54–56). Mr. Callaway said neither Mr. Swillinger nor Mr. Tilton was ever told that one of the purposes of ACTV was to recruit people to the Republican party. (12/7/96 Callaway Tr. 41, 47).[70]

Mr. Gingrich explained to the Subcommittee in November 1996 that, in his opinion, there were no "parallels" between the American Campaign Academy and the Renewing American Civilization course. (11/13/96 Gingrich Tr. 61). After this explanation, Mr. Schiff and Mr. Gingrich had the following exchange:

> Mr. Schiff: Did you go to a tax expert and say, here is what I have in mind; do you agree that there are no parallels and that there's no problem with the American Campaign Academy case in terms of what I am doing here? I am just asking if you did that?
>
> Mr. Gingrich: The answer is, no. I just want to assert the reason I wouldn't have done it is as a college teacher who had taught on a college campus I didn't think the two cases—I also didn't ask them if it related to spouse abuse. I mean, I didn't think the two cases had any relationship.

(11/13/96 Gingrich Tr. 61–62). During his testimony before the Subcommittee in December, Mr. Schiff raised similar questions with Mr. Gingrich.

> Mr. Schiff: What strikes me is without trying to resolve that at this minute, the possibility is out there, the possibility that a violation of 501(c)(3) is very much in evidence to me. And it seems to me that is true all the way along. You did have the American Campaign Academy case of

---

[70] A document dated November 13, 1990, entitled *Campaign For A Successful America,* was reviewed by the Subcommittee. (Ex. 145, Eisenach 3086–3142). In a section drafted by Gordon Strauss, an attorney in Ohio, for a consulting group called the Eddie Mahe Company, the following is written:

> [S]ome educational organizations, tax exempt under Section 501(c)(3) of the Internal Revenue Code, have engaged in activities which affect the outcome of elections, though that is theoretically not supposed to occur.

(Ex. 145, Eisenach 3132). The document also contains the following:

> A very controversial program is being undertaken by a (c)(3), indicating that it may have involvement in the electorial process, notwithstanding the express prohibition on it. At this time, a (c)(3) is not recommended because it would have to be truly independent of the (c)(4) and its PAC.

(Ex. 145, Eisenach 3134).

There was substantial inquiry about this document during the Preliminary Inquiry. No evidence was uncovered to indicate that Mr. Gingrich had any exposure to this document. (12/5/96 Mahe Tr. 34–35; 12/9/96 Gingrich Tr. 52–54; 12/5/96 Eisenach Tr. 59–61). Mr. Strauss was interviewed and stated that the document had nothing to do with AOW/ACTV, the 501(c)(3) organization referred to in the document was merely one he had heard of in an IRS Revenue Ruling, and that he never gave Mr. Gingrich any advice on the law pertaining section 501(c)(3) in regard to AOW/ACTV, the Renewing American Civilization course, or any other projects. The only legal advice he gave Mr. Gingrich pertained to need for care in the use of official resources for travel expenses.

> 1989, which you have indicated you were aware of. It's true the facts were different, but nevertheless something sprung up that told somebody there was a 501(c)(3) problem here if you get too close to political entities.
>
> What I am getting at is this, and again to answer any way you wish, wasn't it, if not intentional, wasn't it reckless to proceed with your involvement as a Member of the House of Representatives into at least a couple of—involvements with the 501(c)(3) organizations, whether it was Progress & Freedom or Kennesaw State or Abraham Lincoln Opportunity Foundation, without getting advice from a tax attorney to whom you told everything? You said, this is the whole plan, this is the whole movement of Renewing American Civilization. * * *
>
> Shouldn't that have been presented to somebody who is a tax attorney, and said, now, am I going to have any problems here? Is this okay under the 501(c)(3) laws?

(12/10/96 Gingrich Tr. 32–33). In response to Mr. Schiff's question, Mr. Gingrich explained why he thought there was no need to seek legal advice because the facts of *American Campaign Academy* and Renewing American Civilization were inapposite. (12/10/96 Gingrich Tr. 34–36).

> Mr. Gingrich: The facts are the key. I was teaching at an accredited university; [ACA] was an institution being set up as basically a politically training center. My course was open to everybody; [ACA] was a Republican course. My course says nothing about campaigns; [ACA] was a course specifically about campaigns.
>
> There are four standards * * * none of which apply to Renewing American Civilization. * * * Just at an objective level you are going to put these [ACA and RAC] up on a board and say that is not a relevant question.

(12/10/96 Gingrich Tr. 35). After Mr. Gingrich's explanation, Mr. Schiff said the following:

> Mr. Schiff: I understand how you distinguish the facts between the American Campaign Academy case and your course. There are those that would argue that the legal holding applies equally to both. In other words, that which brings you to the legal conclusion of not complying with the 501(c)(3) laws, for various reasons that I'd rather not get into now—discuss with Mr. Holden, perhaps—that those are in common even if certain peripheral facts are different.
>
> What I'm getting at is, excuse me for using your own words, but you're not a lawyer. Knowing that there was an attempt to set up a 501(c)(3) training and education academy which floundered in the courts because of something, wouldn't that motivate particularly a Member of the House to want to say, before you start into another one, maybe I ought to sit down with somebody who is a tax expert and tell them the whole plan here, not just course content, but where the course fits into all the strategies here and say,

> now, do you think I've got a problem? And I don't think you did that. If you did, tell me you did. * * *

(12/10/96 Gingrich Tr. 36–37). Mr. Gingrich's response was threefold:

> Mr. Gingrich: [First,] [i]f you read the speech I gave in January of 1993, which was the core document from which everything else comes, I talk very specifically about a movement in the speech. I talk very simply about 2 million, not 200,000, volunteers, citizen activists, in the speech. I describe it as a cultural movement that has a political component in the speech.
>
> That's the core document I gave to everyone when I would say, here's what I want to try to teach about. Here is what I want to try to do. That document clearly says there is a movement, and this course is designed to outline the principles from which the movement comes. And so, if everybody who was engaged in looking at the course, whether it was Kennesaw Foundation's lawyers or it was Progress & Freedom's lawyers or it was Reinhardt's lawyers, and the president of the college in both cases, everybody had a chance to read the core document which has movement very specifically in it.
>
> Second, the reason I didn't seek unique legal counsel is as a Ph.D. teaching in a State college in an accredited setting, it never occurred—I mean, if I had thought—this is another proof of my ignorance or proof of my innocence, I'll let you decide—it never occurred to me that this is an issue. * * *
>
> [Third,] I think everybody who has actually seen my course will tell you * * * I was very careful. Ironically, Max Cleland, who won the Senate seat, is the only current politician used in the course other than John Lewis.
>
> And so the course was clearly not Republican. It was clearly not designed to send a partisan message. No one I know of who has actually seen the course thinks that it was a partisan vehicle. It has no relationship to the American Campaign Academy.

(12/10/96 Gingrich Tr. 37–39).

Officials at KSC and Reinhardt did not seek legal advice pertaining to the application of 501(c)(3) to the course. The only such advice ever sought was by KSCF in connection with the agreement to transfer the course to PFF in November 1993 and in asking its outside lawyers to render a legal opinion concerning the course in 1995. Citing the attorney/client privilege, KSCF officials have refused to disclose to the Subcommittee the advice KSCF received in both instances. (6/13/96 Mescon Tr. 60; 6/13/96 Siegel Tr. 36–37; 6/12/96 Falany Tr. 50–51; 6/13/96 Fleming Tr. 46–48).

In his July 1996 interview, Mr. Eisenach said that he did not seek legal advice pertaining to the application of 501(c)(3) to the course. (7/12/96 Eisenach Tr. 236). In his November 1996 interview, Mr. Eisenach said that he had worked with many attorneys who had experience in 501(c)(3) law. (11/14/96 Eisenach Tr. 84–88). But he was not able to point to any specific consultation with a tax

attorney where the entire relationship between the course, the movement, and political goals were fully set forth and found to be within the bounds of 501(c)(3). (11/14/96 Eisenach Tr. 88–91).

VI. Summary of the Report of the Subcommittee's Expert

A. Introduction

Because of differences of opinion among the Members of the Subcommittee regarding the tax issues raised in the Preliminary Inquiry, the Subcommittee determined that it would be helpful to obtain the views of a recognized expert in tax-exempt organizations law, particularly with respect to the "private benefit" prohibition. The expert, Celia Roady, reviewed Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval. She also reviewed Mr. Gingrich's activities on behalf of KSCF, PFF, and Reinhardt College in regard to the Renewing American Civilization course and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval. The purpose of this review was to determine whether those activities violated the status of any of these organizations under section 501(c)(3) of the Internal Revenue Code.

B. Qualifications of the Subcommittee's Expert

Ms. Roady is a partner in the Washington, D.C. office of the law firm Morgan, Lewis & Bockius LLP where she specializes full-time in the representation of tax-exempt organizations. Her practice involves the provision of advice on all aspects of section 501(c)(3). Ms. Roady has written many articles on tax-exempt organization issues for publication in legal periodicals such as the "Journal of Taxation of Exempt Organizations" and the "Exempt Organization Tax Review." She is a frequent speaker on exempt organizations topics, regularly lecturing at national tax conferences such as the ALI/ABA conference on charitable organizations and the Georgetown University Law Center conference on tax-exempt organizations, as well as at local tax conferences and seminars on tax-exempt organization issues. In 1996, she was named the Program Chair of the Georgetown University Law Center's annual conference on tax-exempt organizations. (11/15/96 Roady Tr. 2–7).

Ms. Roady is the immediate past Chair of the Exempt Organizations Committee of the Section of Taxation of the American Bar Association, having served as Chair from 1993 to 1995. She is currently serving a three-year term as a member of the Council of the ABA Section of Taxation, and is the Council Director for the Section's Exempt Organizations Committee. She also serves on the Legal Section Council of the American Society of Association Executives, and is a Fellow of the American College of Tax Counsel. (11/15/96 Roady Tr. 2–7).

Ms. Roady served a three-year term as the Co-Chair of the Exempt Organizations Committee of the District of Columbia Bar's Tax Section from 1989 to 1991. She also served on the Steering Committee of the D.C. Bar's Tax Section from 1989 to 1995, and

as Co-Chair of the Steering Committee from 1991 to 1993. (11/15/96 Roady Tr. 2–7).

Each of the attorneys interviewed for the position of expert for the Subcommittee highly recommended Ms. Roady. She was described as being impartial and one of the leading people in the field of exempt organizations law. (11/15/96 Roady Tr. 2).[71]

Ms. Roady is a 1973 magna cum laude graduate of Duke University. She received her law degree from Duke Law School, with distinction, in 1976. She received a masters degree in taxation from the Georgetown University Law Center in 1979.

C. Summary of the Expert's Conclusions

Ms. Roady considered the following issues in her review:

1. whether the content of the television programs broadcast by ALOF or the Renewing American Civilization course were "educational" within the meaning of section 501(c)(3);
2. whether one of the purposes of the activities with respect to the television programs or the course was to provide more than an incidental benefit to GOPAC, Mr. Gingrich, or other Republican entities and candidates in violation of the private benefit prohibition in section 501(c)(3);
3. whether the activities with respect to the television programs or the course provided support to GOPAC or a candidate for public office in violation of the campaign intervention prohibition in section 501(c)(3);
4. whether the activities with respect to the television programs or the course violated the private inurement prohibition in section 501(c)(3); and
5. whether the activities with respect to the television programs or the course violated the lobbying limitations applicable to section 501(c)(3) organizations.

(11/15/96 Roady Tr. 7).[72]

With respect to the last two issues, Ms. Roady did not conclude that the activities with respect to the television programs or the course resulted in impermissible private inurement or violated the lobbying limitations applicable to section 501(c)(3) organizations. Similarly, with respect to the first issue, Ms. Roady concluded that the television programs and the course met the requirements of the methodology test described in Rev. Proc. 86–43 and were "educational" within the meaning of section 501(c)(3) even though they advocated particular viewpoints and positions. Accordingly, Ms. Roady concluded that the activities with respect to the television

[71] The one known public comment on the matter by Ms. Roady is found in the following paragraph from a New York Times article: "Clearly, it's an aggressive position," said Celia Roady, a Washington lawyer and chairwoman of the American Bar Association's committee on tax-exempt organizations, who stressed that she was not talking for the association. "Whether it's too aggressive and crosses the line, I don't know. Clearly, it's more aggressive than many exempt organizations would go forward with."

New York Times, section A, page 12 (Feb. 20, 1995). (Ex. 144). In the same article, Mr. Gingrich is quoted as saying that he acted aggressively in regard to 501(c)(3) law: "Whoa," [Mr. Gingrich] said, when asked after class one recent Saturday if the course nears the edge of what the law allows. "Goes right up to the edge. What's the beef? Doesn't go over the edge, doesn't break any law, isn't wrong. It's aggressive, it's entrepreneurial, it's risk taking."

New York Times, section A, page 12, column 1 (Feb. 20, 1995).

[72] A detailed discussion of the law pertaining to organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code is attached as an Appendix to this Report.

programs and the course served an educational purpose and would be appropriate activities for section 501(c)(3) organizations, as long as there was no violation of the private benefit prohibition or the campaign intervention prohibition. She found substantial evidence, however, of violations of both such prohibitions and therefore concluded that Mr. Gingrich's activities on behalf of the organizations and the activities of others on behalf of the organizations with Mr. Gingrich's knowledge and approval violated the organizations' status under section 501(c)(3). (11/15/96 Roady Tr. 7). The basis for her conclusions may be summarized briefly as follows:

1. THE AMERICAN CITIZENS TELEVISION PROGRAM OF ALOF [73]

a. Private benefit prohibition

Under section 501(c)(3) and the other legal authorities discussed above, the analysis of whether there is a violation of the private benefit prohibition does not depend on whether the activities at issue—the television programs—served an exempt purpose. Even though the television programs met the definition of "educational," there is a violation of section 501(c)(3) if another purpose of the activities was to provide more than an insubstantial or incidental benefit to GOPAC or any other private party. As the Supreme Court stated in *Better Business Bureau* v. *United States,* 326 U.S. 276, 283 (1945), "the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." In making such a determination, the Tax Court has held that the proper focus is "the purpose towards which an organization's activities are directed and not the nature of the activities themselves." American Campaign Academy, 92 T.C. at 1078–79. The determination as to whether there is a violation of the private benefit prohibition cannot, therefore, be made solely by reference to the content of the television programs or whether the activities in relation to the programs served an educational purpose. Rather, the determination requires a factual analysis to determine whether the organization's activities also had another, nonexempt purpose to provide more than an incidental benefit to a private party such as GOPAC or Republican entities and candidates. In this case, there is substantial evidence that these parties were intended to and did receive more than an incidental benefit from the activities conducted by ALOF.

In summary, according to Ms. Roady, the evidence shows that the ACTV project was a continuation of GOPAC's AOW project, and had the same partisan, political goals as AOW. These goals included, among other things, reaching "new groups of voters not traditionally associated with [the Republican] party;" "mobiliz[ing] thousands of people across the nation at the grass roots level [to become] dedicated GOPAC activists;" and "making great strides in continuing to recruit activists all across America to become involved with the Republican party." The persons who conducted the

[73] After Ms. Roady met with the Subcommittee to discuss the tax-exempt organizations law and her conclusions regarding Renewing American Civilization, she met with the Special Counsel to discuss the ACTV project. Although she did not formally present her conclusions to the Subcommittee, the legal principles she explained during her meetings with the Subcommittee with respect to Renewing American Civilization were equally applicable to the facts surrounding the ACTV project and support her conclusions set forth in this section of the Report.

ACTV project on behalf of ALOF were GOPAC officers, employees, or consultants. In essence, the transfer of the AOW project from GOPAC to ALOF was more in name than substance, since the same activities were conducted by the same persons in the same manner with the same goals. Through the use of ALOF, however, these persons were able to raise tax-deductible charitable contributions to support the ACTV project, funding that would not have been available to GOPAC on a tax-deductible basis.

Taken together, according to Ms. Roady, the facts as described above show that in addition to its educational purpose, another purpose of the ACTV project was to benefit GOPAC and, through it, Republican entities and candidates, by continuing to conduct the AOW project under a new name and through a section 501(c)(3) organization that could raise funding for the project through tax-deductible charitable contributions. This benefit was not merely incidental. To the contrary, the evidence supports a finding that one of the main purposes for transferring the project to ALOF was to make possible the continuation of activities that substantially benefited GOPAC and Republican entities and candidates.

For these reasons, Ms. Roady concluded that one of the purposes of Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval was to provide more than an incidental benefit to GOPAC and Republican entities and candidates in violation of the private benefit prohibition.

b. Campaign intervention prohibition

As with respect to the private benefit prohibition, the legal authorities discussed above make it clear, according to Ms. Roady, that the analysis of whether there is a violation of the campaign intervention prohibition does not turn on whether the television programs had a legitimate educational purpose. In the IRS CPE Manual, the IRS explained that "activities that meet the [educational] methodology test * * * may nevertheless constitute participation or intervention in a political campaign." IRS CPE Manual at 415. See also New York Bar, 858 F.2d 876 (2d Cir. 1988); Rev. Proc. 86–43. Nor does the analysis turn on the fact that the television programs did not expressly urge viewers to "support GOPAC," "vote Republican," or "vote for Mr. Gingrich." The IRS does not follow the express advocacy standard applied by the FEC, and it is not necessary to advocate the election or defeat of a clearly identified candidate to violate the campaign intervention prohibition. IRS CPE Manual at 413. The determination as to whether there is a violation of the campaign intervention prohibition requires an overall "facts and circumstances" analysis that cannot be made solely by reference to the content of the television programs.

The central issue is whether the television programs provided support to GOPAC. When Congress enacted section 527 in 1974, the legislative history explained that the provision was not intended to affect the prohibition against electioneering activity contained in section 501(c)(3). The IRS regulations under section 527 provide that section 501(c)(3) organizations are not permitted to establish or support a PAC. Treas. Reg. § 1.527–6(g). Under the applicable legal standards, there is a violation of the campaign interven-

tion prohibition with respect to ALOF if the evidence shows that the ACTV project provided support to GOPAC, even though the television programs were educational and were not used as a means to expressly advocate the election or defeat of a particular candidate.

According to Ms. Roady, there is substantial evidence of such support in this case. As discussed above, the evidence shows that the ACTV project conducted by ALOF was a continuation of AOW, a partisan, political project undertaken by GOPAC. Mr. Gingrich himself described ACTV as a continuation of the AOW project. The activities conducted by ALOF with respect to the ACTV project were the same as the activities that had been conducted by GOPAC with respect to the AOW project. The persons who conducted the ACTV project on behalf of ALOF were GOPAC officers, employees, or consultants. Shifting the project to ALOF allowed the parties to raise some tax-deductible charitable contributions to conduct what amounted to the continuation of a GOPAC project for partisan, political purposes. For these reasons, Ms. Roady concluded that Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval provided support to GOPAC in violation of the campaign intervention prohibition.

2. THE RENEWING AMERICAN CIVILIZATION COURSE

a. Private benefit prohibition

The determination of whether there is a violation of the private benefit prohibition does not depend on whether the teaching and dissemination of the course served an educational purpose, and cannot be made simply by analyzing the content of Mr. Gingrich's lectures. The course met the definition of "educational" under section 501(c)(3) and served an educational purpose. (11/15/96 Roady Tr. 7). Nevertheless, there is a violation of section 501(c)(3) if another purpose of the course was to provide more than an incidental private benefit. (11/15/96 Roady Tr. 17). Making this determination requires an analysis of the facts to find out whether Mr. Gingrich's activities on behalf of KSCF, PFF, and Reinhardt and the activities of others with his knowledge and approval had another nonexempt purpose to provide more than an incidental benefit to private parties such as Mr. Gingrich, GOPAC, and other Republican entities and candidates. In this case, there is substantial evidence that these parties were intended to and did receive more than an incidental benefit from the activities conducted with respect to the course. (11/15/96 Roady Tr. 78, 123, 124, 130, 131, 142–145, 173, 195).

In summary, according to Ms. Roady, the evidence shows that the course was developed by Mr. Gingrich in the context of a broader movement. (11/15/96 Roady Tr. 127–130, 134–135, 196). This movement was intended to have political consequences that would benefit Mr. Gingrich in his re-election efforts, GOPAC in its national political efforts, and Republican party entities and candidates in seeking to attain a Republican majority. The goals of the movement were expressed in various ways, and included arousing 200,000 activists interested in renewing American civilization by

replacing the welfare state with an opportunity society and having the Republican party adopt the message of Renewing American Civilization so as to attract those activists to the party. It was intended that a Republican majority would be part of the movement, and that the Republican party would be identified with the "opportunity society" and the Democratic party with the "welfare state." (11/15/96 Roady Tr. 128, 130, 142, 145–148, 217–218; 11/19/96 Roady Tr. 35, 41).

The movement, the message of the movement, and the course were all called "Renewing American Civilization." Mr. Gingrich's lectures in the course were based on the same principles as the message of the movement, and the course was an important vehicle for disseminating the message of the movement. Mr. Gingrich stated that the course was "clearly the primary and dominant method [of disseminating the message of the movement.]" Mr. Gingrich used the Renewing American Civilization message in almost every political and campaign speech he made in 1993 and 1994. He was instrumental in determining that virtually the entire political program for GOPAC for 1993 and 1994 would be centered on developing, disseminating, and using the message of Renewing American Civilization. (11/15/96 Roady Tr. 125–127, 144–145, 148–149, 153, 177, 218).

Although GOPAC's financial resources were not sufficient to enable it to carry out all of the political programs at its usual level during this period, it had many roles in regard to the course. These roles included development of the course content which was coordinated in advance with GOPAC charter members, fundraising for the course on behalf of the section 501(c)(3) organizations, and promotion of the course. GOPAC envisioned a partisan, political role for the course. (11/15/96 Roady Tr. 197–202, 208–209).

From 1993 to 1995, KSCF and PFF spent most of the money they had raised for the course on the dissemination of the 20 hours taught by Mr. Gingrich. These funds were raised primarily through tax-deductible charitable contributions to KSCF and to PFF,[74] funding that would not have been available had the project been conducted by GOPAC or another political or noncharitable organization.

According to Ms. Roady, the facts as set forth above show that, although the Renewing American Civilization course served an educational purpose, it had another purpose as well. (11/19/96 Roady Tr. 37, 40). The other purpose was to provide a means for developing and disseminating the message of Renewing American Civilization by replacing the welfare state with an opportunity society. That was the main message of GOPAC and the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. Through the efforts of Mr. Gingrich and others acting with his knowledge and approval, tax-deductible charitable contributions were raised to support the dissemination of a course in furtherance of Mr. Gingrich's political strategies. (11/19/96 Roady Tr. 37, 38). Mr. Gingrich encouraged GOPAC, House Republicans and other Republican entities and candidates to use the

[74] Some funding came from the sale of videotapes and audiotapes of the course. (7/12/96 Eisenach Tr. 283).

course in their political strategies as well. (11/15/96 Roady Tr. 145, 152, 173).

The partisan, political benefit to these parties was intended from the outset, and this benefit cannot be considered merely incidental. To the contrary, the evidence supports a finding that one of Mr. Gingrich's main purposes for teaching the course was to develop and disseminate the ideas, language, and concepts of Renewing American Civilization as an integral part of a broad movement intended to have political consequences that would benefit him in his re-election efforts, GOPAC in its political efforts, and other Republican entities and candidates in seeking to attain a Republican majority. For these reasons, Ms. Roady concluded that one of the purposes of Mr. Gingrich's activities on behalf of KSCF, PFF and Reinhardt in regard to the course entitled "Renewing American Civilization" and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval was to provide more than an incidental benefit to Mr. Gingrich, GOPAC, and other Republican entities and candidates in violation of the private benefit prohibition. (11/15/96 Roady Tr. 122, 125, 127, 143–145, 148, 152, 153, 187–189, 213–217).

b. Campaign intervention prohibition

As discussed above, neither the fact that the content of the Renewing American Civilization course is educational within the meaning of section 501(c)(3) nor the fact that the course lectures do not contain expressions of support or opposition for a particular candidate precludes a finding that there is a violation of the campaign intervention prohibition. Section 501(c)(3) organizations are prohibited from establishing or supporting PACs, and from providing support to candidates in their campaign activities. The relevant issue is whether the course provided support to GOPAC or to Mr. Gingrich in his capacity as a candidate.

According to Ms. Roady, there is substantial evidence of such support in this case. As discussed above, the evidence shows that the course was developed by Mr. Gingrich as a part of a broader political movement to renew American civilization by replacing the welfare state with an opportunity society. The course was an important vehicle for disseminating the message of that movement. The message of replacing the welfare state with the opportunity society was also used in a partisan, political fashion. The "welfare state" was associated with Democrats and the "opportunity society" was associated with Republicans. The message of the course was also the main message of GOPAC during 1993 and 1994 and the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. Through the use of section 501(c)(3) organizations, Mr. Gingrich and others acting with his knowledge and approval raised tax-deductible charitable contributions which were used to support a course designed, developed and disseminated in a manner that provided support to GOPAC in its political programs and to Mr. Gingrich in his re-election campaign. For these reasons, Ms. Roady concluded that Mr. Gingrich's activities on behalf of KSCF, PFF and Reinhardt and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval provided support to GOPAC and to Mr. Gingrich

in violation of the campaign intervention prohibition. (11/15/96 Roady Tr. 171–175, 194).

D. Advice Ms. Roady Would Have Given

Had Mr. Gingrich or others associated with ACTV or Renewing American Civilization consulted with Ms. Roady prior to conducting these activities under the sponsorship of 501(c)(3) organizations, she would have advised that they not do so for the reasons set forth above. During her testimony before the Subcommittee, she was asked what her advice would have been to Mr. Gingrich and others associated with ACTV and Renewing American Civilization. She said that she would have recommended the use of a 501(c)(4) organization to pay for the dissemination of the course, as long as the dissemination was not the primary activity of the 501(c)(4) organization. If this had been done, contributions for ACTV and the course would not have been tax-deductible. (11/15/96 Roady Tr. 207–208).

VII. SUMMARY OF CONCLUSIONS OF MR. GINGRICH'S TAX COUNSEL

A. Introduction

During the Preliminary Inquiry, Mr. Gingrich's lawyer forwarded to the Subcommittee a legal opinion letter and follow-on letter regarding the tax questions at issue. The letters were prepared by attorney James P. Holden. At Mr. Gingrich's request, Mr. Holden and his partner who helped him prepare the letters, Susan Serling, met with the Subcommittee on December 12, 1996, to discuss his conclusions. The purpose of the letters was to express Mr. Holden's conclusions regarding whether any violation of section 501(c)(3) occurred with respect to the Renewing American Civilization course.

His understanding of the facts of the matter was based on a review of the course book prepared for the course, videotapes of the course, documents produced by KSC pursuant the Georgia Opens Records Act, PFF's application to the IRS for exemption, newspaper articles, discussions with Mr. Baran, Mr. Eisenach, and counsel to PFF and KSCF.[75]

B. Qualifications of Mr. Gingrich's Tax Counsel

Mr. Holden is a partner at the Washington, D.C. law firm of Steptoe and Johnson. He was an adjunct professor at Georgetown University Law Center from 1970 to 1983. He is co-author of "Ethical Problems in Federal Tax Practice" and "Standards of Tax Practice." He is the author of numerous tax publications and a speaker at numerous tax institutes. He was chair of the American Bar Association Section of Taxation from 1989 to 1990; chair of the Advisory Group to the Commissioner of Internal Revenue from 1992 to 1993; and chair of the IRS Commissioner's Review Panel on Integ-

[75] Mr. Holden and his partner conferred with Mr. Eisenach for about three hours. (12/12/96 Holden Tr. 38). The conversation with KSCF counsel, via telephone, lasted about 30 minutes. (12/12/96 Holden Tr. 39). The conversation with PFF's counsel lasted about two hours. (12/12/96 Holden Tr. 38–39). Mr. Holden did not talk to Mr. Gingrich prior to writing the opinion. (12/12/96 Holden Tr. 43). He also did not talk to anyone else involved in the course, such as Mr. Hanser, Ms. Rogers, Ms. Nelson, Mr. Mescon, or Ms. Minnix. (12/12/96 Holden Tr. 43–44).

rity Controls from 1989 to 1990. He was a trustee and president of the American Tax Policy Institute from 1993 to 1995 and a regent of the American College of Tax Counsel. He is or was a member of the following organizations: American Law Institute (consultant, Federal Income Tax Project); Advisory Group to Senate Finance Committee Staff regarding Subchapter C revisions (1984–1985); Board of Advisors, New York University/Internal Revenue Service Continuing Professional Education Program (1987–1990); and BNA Tax Management Advisory Board. He received a J.D. degree from Georgetown University Law Center in 1960 and a B.S. degree from the University of Colorado in 1953.

His experience in 501(c)(3) law stems principally from one client and one case that has been before the IRS for the past six years. (12/12/96 Holden Tr. 21).[76] He said during his testimony, "I don't pretend today to be a specialist in exempt organizations. * * * I pretend to be an expert in the political aspects of such organizations." (12/12/96 Holden Tr. 21). The one case Mr. Holden worked on has not been resolved and he has spent, on average, about 30 percent of his time for the last six years on this case. (12/12/96 Holden Tr. 24). He has never been a member of any organization or committee concerned principally with tax-exempt organizations law. (12/12/96 Holden Tr. 25). He does not have any publications in the exempt organizations field. (12/12/96 Holden Tr. 25). He has never given any speeches on exempt organizations law nor has he been an expert witness with respect to exempt organizations law. (12/12/96 Holden Tr. 26).

When Mr. Baran asked Mr. Holden to prepare his opinion letter, Mr. Baran did not ask what qualifications Mr. Holden had in the exempt organizations area. (12/12/96 Holden Tr. 32). Mr. Holden did not give Mr. Baran any information regarding his background in exempt organizations law other than the names of two references. (12/12/96 Holden Tr. 33).

Mr. Holden's partner who helped prepared the opinion, Susan Serling, does not have experience in the exempt organizations field other than with respect to the one case referred to above that is still before the IRS. (12/12/96 Holden Tr. 27). She is not a member of the ABA Exempt Organizations Committee and does not have any publications in the exempt organizations field. She has never given any speeches pertaining to exempt organizations law and has never testified as an expert witness with respect to exempt organizations law. (12/12/96 Holden Tr. 27).

C. Summary of Conclusions of Mr. Gingrich's Tax Counsel

As set forth in Mr. Holden's opinion letter, his follow-on letter, and in his testimony, it was Mr. Holden's opinion, based on his review of the facts available to him, that "there would be no violation of section 501(c)(3) if an organization described in that section were to conduct 'Renewing American Civilization' as its primary activity." (9/6/96 Holden Ltr. 4). In arriving at this opinion, Mr. Holden evaluated the facts in light of the requirements:

[76] Although Mr. Holden declined to identify the client in this case, he said that the case "is perhaps the largest case the Internal Revenue Service has before it on this whole issue." (12/12/96 Holden Tr. 20–21).

> 1. that a section 501(c)(3) organization be operated exclusively for an exempt purpose;
> 2. that the organization serve a public rather than a private interest;
> 3. that the earnings of an organization not inure to the benefit of any person;
> 4. that no substantial part of the activities of the organization consist of attempting to influence legislation; and
> 5. that the organization not participate or intervene in any political campaign in support of or in opposition to any candidate for public office.

(9/6/96 Holden Ltr. 4). A discussion of Mr. Holden's views on the two principal tax questions at issue before the Subcommittee—the private benefit prohibition and campaign intervention prohibition—is set forth below.

1. PRIVATE BENEFIT PROHIBITION

With respect to whether Renewing American Civilization violated the private benefit prohibition described above, Mr. Holden's opinion and follow-on letter focused exclusively on the *American Campaign Academy case.* His letters did not refer to other precedent or IRS statements pertaining to the private benefit prohibition. In evaluating whether Renewing American Civilization created any discernible secondary benefit, in the terms used by the Court in *American Campaign Academy,* Mr. Holden considered whether the course provided an "identifiable benefit" to GOPAC or the Republican party. He concluded that it did not.

> Following our review of the course materials, the course syllabi, and video tapes of the course lectures, we have not been able to identify any situation in which students of the course were advised to vote Republican, join the Republican party, join GOPAC, or support Republicans in general. Rather, the course explored broad aspects of American civilization through Mr. Gingrich's admittedly partisan viewpoint.

(9/17/96 Holden Ltr. 5). Mr. Holden also wrote:

> From our review of the course materials * * * and their presentation, it appears to us that the educational message was not narrowly targeted to benefit particular organizations or persons beyond the students themselves.

(9/6/96 Holden Ltr. 58). During his testimony before the Subcommittee, Mr. Holden said that because the course was educational within the meaning of the "methodology test" referred to above, he could not "conceive" of how the broad dissemination of its message could violate 501(c)(3). (12/12/96 Holden Tr. 71).

> Now, when we get into the course—and I am saying I am going to look at the activities, and if I have a clean educational message, then my organization is entitled to disseminate that message as broadly as we have the resources to do [for any purpose as long as it is] serving the

> public with that in the sense that this message has utility to the public.

(12/12/96 Holden Tr. 113–114).

In coming to his conclusion that the course did not violate the private benefit prohibition, Mr. Holden made several findings of fact and several assumptions. For example, he wrote that he considered the facts that established a close connection between individuals who were active in GOPAC and the development and promotion of the course. As he characterized it, GOPAC's former Executive Director and GOPAC employees became employees or contractors to the organizations that conducted the course. Individuals, foundations, and corporations that provided financial support for the course were also contributors to GOPAC or Mr. Gingrich's political campaigns. GOPAC employees solicited contributions for the course. (9/6/96 Holden Ltr. 4). Furthermore, documents he reviewed:

> provide[d] evidence that the course was developed in a political atmosphere and as part of a larger political strategy. The documents indicate that Mr. Gingrich and GOPAC evolved a political theme that they denominated "Renewing American Civilization" and that, in their political campaign capacities, they intended to press this theme to the advantage of Republican candidates.

(9/17/96 Holden Ltr. 2).

Mr. Holden assumed a political motivation behind the development of the course. As described in his opinion letter:

> [T]he individuals who controlled GOPAC and who participated in promoting the course viewed the course as desirable in a political context, and many of their expressions and comments evidence a political motive and interest. * * * Mr. Gingrich is a skilled politician whose ideology finds expression in a political message, and he is interested in maximum exposure of that message and in generating interest in those who might be expected to become advocates of the message. In sum, we have not assumed that the development and promotion of the course were free from political motivation.

(9/6/96 Holden Ltr. 4–5). Furthermore, Mr. Holden said that when preparing his opinion, he made the "critical assumption that the interests of the political persona surrounding GOPAC were advanced by creating this course." (12/12/96 Holden Tr. 72). In this regard, Mr. Holden also said during his testimony:

> We have taken as an assumption that the intent [of the course] was to benefit the political message. If someone told me that teaching the course actually resulted in the benefit, I guess I wouldn't be surprised because that was our understanding of the objective. * * * I accept[ed] for purposes of our opinion that there was an intent to advance the political message by utilizing a (c)(3).

(12/12/96 Holden Tr. 83).

In Mr. Holden's opinion, however, the political motivation or strategy behind the creation of the course is irrelevant when determining whether a violation of the private benefit prohibition occurred.

> It is not the presence of politicians or political ideas that controls. The pertinent law does not turn on the political affiliations or political motivations of the principal participants.

(9/6/96 Holden Ltr. 6). According to Mr. Holden, the issue of whether a violation of 501(c)(3) occurred "may not be resolved by a determination that the individuals who designed and promoted the course acted with political motivation." (9/17/96 Holden Ltr. 4). In his opinion, when determining whether an organization violated the private benefit prohibition, it is necessary to determine whether an organization's activities in fact served a private interest. (12/12/96 Holden Tr. 80). What motivates the activities is irrelevant.

> I'm saying it's irrelevant to look to what caused an individual or group of individuals to form a (c)(3) or to utilize a 501(c)(3) organization. The question instead is on the activities—the focus instead is on the activities of the organization and whether they violated the operational test. I think that's a critical distinction.

(12/12/96 Holden Tr. 61). He said that he was "aware of no authority that would hold that because one is motivated to establish a 501(c)(3) organization by business, political, or other motivation, that means that the organization cannot operate in a manner that satisfies 501(c)(3), because we are talking about an operational test." (12/12/96 Holden Tr. 17–18). Mr. Holden cited *American Campaign Academy* as an authority for his conclusion that an organization's activity must itself benefit a targeted group and that motivation of an organization's agents in conducting that activity is irrelevant. Mr. Holden said:

> [In American Campaign Academy] [t]he focus was, instead, on the operational test and whether the activities of the organization evidenced a purpose to serve a private interest. But you have to find that in the activities of the organization and not in some general notion of motivation or background purpose.

(12/12/96 Holden Tr. 61).

In light of these and similar comments made by Mr. Holden, the Special Counsel asked Mr. Holden to comment on statements found in the *American Campaign Academy* case at page 1064. The statements are in a section of the case under the heading "Operational Test" and are as follows:

> The operational test examines the *actual purpose* for the organization's activities and *not* the nature of the activities or the organization's statement of purpose. (citations omitted). (emphasis supplied).
>
> In testing compliance with the operational test, we look beyond the four corners of the organization's charter to discover "the actual objects *motivating* the organization

> and the subsequent conduct of the organization." (citations omitted). (emphasis supplied).
>
> What an organization's purposes are and what purposes its activities support are questions of fact. (citations omitted).

(12/12/96 Holden Tr. 75–76). After the Special Counsel brought these sections of the case to Mr. Holden's attention, the following exchange occurred:

> Mr. Holden: May I refer you to the last sentence before the next heading, "Operating Primarily for Exempt Purposes." The last sentence before that says: "The sole issue for declaration [sic] is whether respondent properly determined that petitioner failed to satisfy the first condition of the operational test by not primarily engaging in activities, which is not for exempt purposes."
>
> It's an activities test. And this is where the courts say this is the sole issue. The stuff before, they're just kind of reciting the law. When he gets to this, he said this is what we have to determine.
>
> Mr. Cole: But in reciting the law, don't they say, in testing compliance with the operational test, we look beyond the four corners of the organization's charter to discover the actual objects motivating the organization? Prior to that, they say the operational test examines the actual purpose for the organization's activities, not the nature of the activities or the organization's statement of purpose.
>
> I grant you that is the statement of the law, but you are saying that has no significance?
>
> Mr. Holden: That's not the case Judge Nims decided. * * *

(12/12/96 Holden Tr. 77).

2. CAMPAIGN INTERVENTION PROHIBITION

In his opinion letter, Mr. Holden wrote that it was "important to note that section 501(c)(3) does not, as is often suggested, bar 'political activity' [by 501(c)(3) organization]." (9/6/96 Holden Ltr. 68). The prohibition is more limited and prohibits an organization from participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office. In order for an organization to violate this prohibition, there must exist a campaign, a candidate, a candidate seeking public office, and an organization that participates or intervenes on behalf of or in opposition to that candidate. (9/6/96 Holden Ltr. 68–69). Mr. Holden concluded that the course did not violate this prohibition.

> The [course] materials contain no endorsement of or opposition to the candidacy of any person, whether expressed by name or through the use of a label that might be taken as a stand-in for a candidate. While the materials are critical of what is referred to as the "welfare state" and laudatory of what is described as an "opportunity society," none of this is properly characterized as personalized to candidates, directly or indirectly.

(9/6/96 Holden Ltr. 72). During his testimony before the Subcommittee, Mr. Holden said that the course contained issue advocacy in the sense that it called for the replacement of the welfare state with the opportunity society. (12/12/96 Holden Tr. 103–104). He also said that this issue—the replacement of the welfare state with an opportunity society—was closely identified with Mr. Gingrich and his political campaigns. (12/12/96 Holden Tr. 104). He, however, did not see this as a basis for concluding that the course violated the prohibition on intervention in a political campaign because "Mr. Gingrich [had not] captured [this issue] to the point where it is not a legitimate public interest issue for discussion in a purely educational setting, even where he is the instructor." (12/12/96 Holden Tr. 104).[77]

D. Advice Mr. Holden Would Have Given

During his appearance before the Subcommittee, Mr. Holden was asked about what type of organization he would have advised Mr. Gingrich and others to use in order to conduct and disseminate Renewing American Civilization had he been asked in advance. He said that he would not have advised the use of a 501(c)(3) organization because the mix of politics and tax-deductible funds is too "explosive."

> I would have advised them not to do the activity through a (c)(3). I have already expressed that view to the Speaker. He didn't consult me in advance, but I said, if I had been advising you in advance. He said, why not. I said, because the intersection of political activity and 501(c)(3) is such an explosive mix in terms of the IRS view of things that I would not advise you to move that close to the issue. You should find a way of financing the course that doesn't involve the use of 501(c)(3) funds. That would have been my advice to him.
>
> I said, that doesn't mean I conclude that what you did is a violation. In fact, I think we are kind of fairly far out beyond the frontiers of what has been decided in the past in this area. We are looking at the kind of case that I do not think has ever been presented. I do not see how anyone can conclude that this is an open and shut case. It just is not of that character.

(12/12/96 Holden Tr. 132–134). Mr. Holden said that an appropriate vehicle for the course might have been a 501(c)(4) organization because such an organization can engage in some political activity and the activity would not have used tax-deductible funds.

---

[77] See also 12/12/96 Holden Tr. 103:

Mr. Schiff: But if you are providing 501(c)(3) raised money to pay for that candidate to give the same message, which is his political message, I think, for all substantial purposes, aren't you then, in effect, intervening or even endorsing the candidate by using that type of money to allow him to get his message further than it would get in the absence of that money?

Mr. Holden: I go back to the fact that we have a clean curriculum that we were talking about in a hypothetical and in the judgment that we reached about this case, and I don't believe that merely because a political figure takes a particular set of values and articulates them as a political theme, that that so captures that set of values that a 501(c)(3) organization cannot legitimately educate people about that same set of values.

Mr. Schiff: With the same messenger?

Mr. Holden: It doesn't seem to me that that compels a conclusion that there's a violation of 501(c)(3).

(12/12/96 Holden Tr. 132–134). Later, Mr. Holden re-iterated that he would have not recommended that Renewing American Civilization be sponsored and funded by a 501(c)(3) organization and pointed out such activities are highly likely to attract the attention of the IRS.

> [T]hose funds are deductible and the conjunction of politics and a (c)(3) organization is so explosive as a mix that it is bound to attract the attention of the Internal Revenue Service. I wouldn't have been thinking about this committee. I would have been thinking about whether the Internal Revenue Service would have been likely to challenge.

(12/12/96 Holden Tr. 146). After Mr. Holden made this comment, the following exchange occurred:

> Ms. Pelosi: So it would have raised questions[?]
> Mr. Holden: Yes.
> Mr. Goss: Isn't that a little bit akin to having a yacht and an airplane on your tax return for business purposes[?]
> Mr. Holden: It is one of those things that stands out.

(12/12/96 Holden Tr. 146–147).

VIII. Summary of Facts Pertaining to Statements Made to the Committee

A. Background

On or about September 7, 1994, Ben Jones, Mr. Gingrich's Democratic opponent in 1994, filed with the Committee a complaint against Mr. Gingrich. The complaint centered on the course. Among other things, it alleged that Mr. Gingrich had used his congressional staff to work on the course and that he had misused organizations that were exempt from taxation under section 501(c)(3) of the Internal Revenue Code because the course was a partisan, political project, with significant involvement by GOPAC, and was not a permissible activity for a section 501(c)(3) organization. (Ex. 135).

On or about October 4, 1994, Mr. Gingrich wrote the Committee in response to the complaint and primarily addressed the issues concerning the use of congressional staff for the course. In doing so he stated:

> I would like to make it abundantly clear that those who were paid for course preparation were paid by either the Kennesaw State Foundation, [sic] the Progress and Freedom Foundation or GOPAC. * * * Those persons paid by one of the aforementioned groups include: Dr. Jeffrey Eisenach, Mike DuGally, Jana Rogers, Patty Stechschultez [sic], Pamela Prochnow, Dr. Steve Hanser, Joe Gaylord and Nancy Desmond.

(Ex. 136, p. 2).

After the Committee received and reviewed Mr. Gingrich's October 4, 1994 letter, it sent him a letter dated October 31, 1994, asking for additional information concerning the allegations of misuse

of tax-exempt organizations in regard to the course. The Committee also asked for information relating to the involvement of GOPAC in various aspects of the course. As set forth in the letter, the Committee wrote:

> There is, however, an allegation which requires explanation before the Committee can finalize its evaluation of the complaint. This is the allegation that, in seeking and obtaining funding for your course on Renewing American Civilization, you improperly used tax-exempt foundations to obtain taxpayer subsidization of political activity.
>
> * * * * * * *
>
> Your answers to [questions set forth in the letter] would be helpful to the Committee in deciding what formal action to take with respect to the complaint.
>
> * * * * * * *
>
> A number of documents submitted by Ben Jones, however, raise questions as to whether the course was in fact exclusively educational in nature, or instead constituted partisan political activity intended to benefit Republican candidates.

(Ex. 137, pp. 1–2).

B. Statements Made by Mr. Gingrich to the Committee, Directly or Through Counsel

1. MR. GINGRICH'S DECEMBER 8, 1994 LETTER TO THE COMMITTEE

In a letter dated December 8, 1994, Mr. Gingrich responded to the Committee's October 31, 1994 letter. (Ex. 138). In that letter, Mr. Gingrich made the following statements, which he has admitted were inaccurate, incomplete, and unreliable.

> 1. [The course] was, by design and application, completely non-partisan. It was and remains about ideas, not politics. (Ex. 138, p. 2).
>
> 2. The idea to teach "Renewing American Civilization" arose wholly independent of GOPAC, because the course, unlike the committee, is non-partisan and apolitical. My motivation for teaching these ideas arose not as a politician, but rather as a former educator and concerned American citizen * * *. (Ex. 138, p. 4).
>
> 3. The fact is, "Renewing American Civilization" and GOPAC have never had any official relationship. (Ex. 138, p. 4).
>
> 4. GOPAC * * * is a political organization whose interests are not directly advanced by this non-partisan educational endeavor. (Ex. 138, p. 5).
>
> 5. As a political action committee, GOPAC never participated in the administration of "Renewing American Civilization." (Ex. 138, p. 4).
>
> 6. Where employees of GOPAC simultaneously assisted the project, they did so as private, civic-minded individuals contributing time and effort to a 501(c)(3) organization. (Ex. 138, p. 4).

> 7. Anticipating media or political attempts to link the Course to [GOPAC], "Renewing American Civilization" organizers went out of their way to avoid even the appearances of improper association with GOPAC. Before we had raised the first dollar or sent out the first brochure, Course Project Director Jeff Eisenach resigned his position at GOPAC. (Ex. 138, p. 4).

The goal of the letter was to have the complaint dismissed. (11/13/96 Gingrich Tr. 36).

2. MARCH 27, 1995 LETTER OF MR. GINGRICH'S ATTORNEY TO THE COMMITTEE

On January 26, 1995, Representative Bonior filed with the Committee an amended version of the Ben Jones complaint against Mr. Gingrich. (Ex. 139). Among other things, the complaint re-alleged that the Renewing American Civilization course had partisan, political purposes and was in violation of section 501(c)(3). The complaint also alleged substantial involvement of GOPAC in the course. (Ex. 139, pp. 1–7). In a letter dated March 27, 1995, Mr. Baran, Mr. Gingrich's attorney and a partner at the law firm of Wiley, Rein and Fielding, filed a response on behalf of Mr. Gingrich to the amended complaint. (Ex. 140, PFF 4347). Prior to the letter being delivered, Mr. Gingrich reviewed it and approved its submission to the Committee. (7/18/96 Gingrich Tr. 274–275).

> Mr. Cole: If there was anything inaccurate in the letter, would you have told Mr. Baran to change it?
> Mr. Gingrich: Absolutely.

(7/18/96 Gingrich Tr. 275).

The letter contains the following statements, which Mr. Gingrich has admitted were inaccurate, incomplete, and unreliable.

> 1. As Ex. 13 demonstrates, the course solicitation * * * materials are completely non-partisan. (Ex. 140, p. 19, fn. 7).
> 2. GOPAC did not become involved in the Speaker's academic affairs because it is a political organization whose interests are not advanced by this non-partisan educational endeavor. (Ex. 140, p. 35).
> 3. The Renewing American Civilization course and GOPAC have never had any relationship, official or otherwise. (Ex. 140, p. 35).
> 4. As noted previously, GOPAC has had absolutely no role in funding, promoting, or administering Renewing American Civilization. (Ex. 140, pp. 34–35).
> 5. GOPAC has not been involved in course fundraising and has never contributed any money or services to the course. (Ex. 140, p. 28).
> 6. Anticipating media or political attempts to link the course to GOPAC, course organizers went out of their way to avoid even the appearance of associating with GOPAC. Prior to becoming Course Project Director, Jeffrey Eisenach resigned his position at GOPAC and has not returned. (Ex. 140, p. 36).

The purpose of Mr. Baran's letter was to have the Committee dismiss the complaints against Mr. Gingrich. (11/13/96 Gingrich Tr. 35–36).

C. Subcommittee's Inquiry Into Statements Made to the Committee

On September 26, 1996, the Subcommittee expanded the scope of the Preliminary Inquiry to determine:

> [w]hether Representative Gingrich provided accurate, reliable, and complete information concerning the course entitled "Renewing American Civilization," GOPAC's relationship to the course entitled "Renewing American Civilization," or the Progress and Freedom Foundation in the course of communicating with the Committee, directly or through counsel * * *.

On October 1, 1996, the Subcommittee requested that Mr. Gingrich produce to the Subcommittee all documents that were used or relied upon to prepare the letters at issue—the letters dated October 4, 1994, December 8, 1994 and March 27, 1995. Mr. Gingrich responded to the Committee's request on October 31, 1996. (Ex. 141). In his response, Mr. Gingrich described how extremely busy he was at the time the October 4, 1994, and December 8, 1994 letters were prepared. He said, the October 4, 1994 letter was written "in [the] context of exhaustion and focused effort" on finishing a congressional session, traveling to over a hundred congressional districts, tending to his duties as Whip, and running for re-election in his district. (Ex. 141, p. 1). At the time of the December 8, 1994 letter, he said that he and his staff were "making literally hundreds of decisions" as part of the transition in the House from Democratic to Republican Control. (Ex. 141, p. 2; 11/13/96 Gingrich Tr. 6, 10, 26). With respect to his level of activity at the time the March 27, 1995 letter was created Mr. Gingrich said the following:

> [W]e were going through passing the Contract with America in a record 100 days in what many people believe was a forced march. I was, in parallel, beginning to lay out the base for the balanced budget by 2002, and I was, frankly, being too noisy publicly and damaging myself in the process.
>
> I had three projects—four; I was writing a book. So those four projects were ongoing as I was going home to report to my district, and we were being battered as part of this continuum by Bonior and others, and we wanted it handled in a professional, calm manner. We wanted to honor the Ethics process.

(11/13/96 Gingrich Tr. 33–34).

Mr. Gingrich wrote in his October 31, 1996 response to the Subcommittee that "although [he] did not prepare any of the letters in question, in each case [he] reviewed the documents for accuracy." (Ex. 141, p. 3). Specifically, with respect to the October 4, 1994 letter, his assistant, Annette Thompson Meeks, showed him the draft she had created and he "read it, found it accurate to the best of [his] knowledge, and signed it." (Ex. 141, p. 2). With respect to the December 8, 1994 letter, he wrote, "Again I would have read the

letter carefully and concluded that it was accurate to the best of my knowledge and then signed it." (Ex. 141, p. 2). With respect to the March 27, 1995 letter, he wrote that he "read [it] to ensure that it was consistent with [his] recollection of events at that time." (Ex. 141, p. 3).

D. Creation of the December 8, 1994 and March 27, 1995 Letters

Mr. Gingrich appeared before the Subcommittee on November 13, 1996 to testify about these letters.[78] He began his testimony by stating that the "ethics process is very important." (11/13/96 Gingrich Tr. 4). He then went on to state:

> On Monday I reviewed the 380-page [July 1996] interview with Mr. Cole, and I just want to begin by saying to the [C]ommittee that I am very embarrassed to report that I have concluded that reasonable people could conclude, looking at all the data, that the letters are not fully responsive, and, in fact, I think do fail to meet the standard of accurate, reliable and complete.

(11/13/96 Gingrich Tr. 5). Mr. Gingrich said several times that it was only on the Monday before his testimony—the day when he reviewed the transcript of his July interview with Mr. Cole—that he realized the letters were inaccurate, incomplete, and unreliable. (11/13/96 Gingrich Tr. 5, 8, 10, 149, 150, 195; 12/10/96 Gingrich Tr. 75). In his testimony before the Subcommittee the next month, Mr. Gingrich "apologized for what was clearly a failure to communicate accurately and completely with this [C]ommittee." (12/10/96 Gingrich Tr. 5). Mr. Gingrich said the errors were a result of "a failure to communicate involving my legal counsel, my staff and me." (12/10/96 Gingrich Tr. 5). Mr. Gingrich went on to say:

> After reviewing my testimony, my counsel's testimony, and the testimony of two of his associates, the ball appears to have been dropped between my staff and my counsel regarding the investigation and verification of the responses submitted to the [C]ommittee.
>
> As I testified, I erroneously, it turns out, relied on others to verify the accuracy of the statements and responses. This did not happen. As my counsel's testimony indicates, there was no detailed discussion with me regarding the submissions before they were sent to the [C]ommittee. Nonetheless, I bear responsibility for them, and I again apologize to the [C]ommittee for what was an inadvertent and embarrassing breakdown.
>
> * * * * * * *
>
> At no time did I intend to mislead the [C]ommittee or in any way be less than forthright.

(12/10/96 Gingrich Tr. 5–7). Of all the people involved in drafting, reviewing, or submitting the letters, the only person who had first-

[78] Mr. Gingrich appeared twice before the Subcommittee to discuss these letters. The first time was on November 13, 1996, in response to a request from the Subcommittee that he appear and testify about the matter under oath. The second time was on December 10, 1996, as part of his opportunity to address the Subcommittee pursuant to Rule 17(a)(3) of the Committee's Rules. Pursuant to Committee Rules, that appearance was also under oath.

hand knowledge of the facts contained within them with respect to the Renewing American Civilization course was Mr. Gingrich.

1. CREATION OF THE DECEMBER 8, 1994 LETTER

According to Mr. Gingrich, after he received the Committee's October 31, 1994 letter, he decided that the issues in the letter were too complex to be handled by his office and he sought the assistance of an attorney. (11/13/96 Gingrich Tr. 11). Mr. Gaylord, on behalf of Mr. Gingrich, contacted Jan Baran and the Mr. Baran's firm began representing Mr. Gingrich on November 15, 1994. (11/14/96 Gaylord Tr. 16;[79] 11/13/96 Baran Tr. 4;[80] 12/10/96 Gingrich Tr. 5). The response prepared by Mr. Baran's firm became the letter from Mr. Gingrich to the Committee dated December 8, 1994.

According to Mr. Baran, he did not receive any indication from Mr. Gaylord or Mr. Gingrich that Mr. Baran was to do any kind of factual review in order to prepare the response. (11/13/96 Baran Tr. 47–48).[81] Mr. Baran and his staff did not seek or review documents other than those attached to the complaint of Mr. Jones and the Committee's October 31, 1994 letter to Mr. Gingrich[82] and did not contact GOPAC, Kennesaw State College, or Reinhardt College. (11/13/96 Baran Tr. 13, 15, 18). Mr. Baran did not recall speaking to Mr. Gingrich about the letter other than possibly over dinner on December 9, 1994—one day after the letter was signed by Mr. Gingrich. (11/13/96 Baran Tr. 18, 33). Mr. Baran did contact Mr. Eisenach, but did not recall the "nature of the contact." (11/13/96 Baran Tr. 16). Mr. Eisenach said he had no record of ever having spoken to Mr. Baran about the letter and does not believe that he did so. (11/14/96 Eisenach Tr. 18–19, 22). The conversation he had with Mr. Baran concerned matters unrelated to the letter. (11/14/96 Eisenach Tr. 17–18). Mr. Eisenach also said that no one has ever given him a copy of the December 8, 1994 letter and asked him to verify its contents. (11/14/96 Eisenach Tr. 22).

The other attorney at Wiley, Rein and Fielding involved in preparing the response was Bruce Mehlman. (11/13/96 Baran Tr. 19; 11/19/96 Mehlman Tr. 17). He was a first-year associate who had been at Wiley, Rein and Fielding since September 1994. (11/19/96 Mehlman Tr. 5).[83] Mr. Mehlman's role was to create the first draft. (11/19/96 Mehlman Tr. 15). The materials Mr. Mehlman had available to him to prepare the draft were:

1. correspondence between Mr. Gingrich and the Committee, including the October 4, 1994 letter;
2. course videotapes;

[79] Mr. Gaylord was the one to contact the firm because his position was "advisor to Congressman Gingrich" and he coordinated "all of the activities that were outside the official purview of [Mr. Gingrich's] congressional responsibilities." (11/14/96 Gaylord Tr. 19; 11/13/96 Baran Tr. 7).

[80] Mr. Gingrich waived his attorney/client privilege and asked Mr. Baran to testify before the Committee. (11/13/96 Gingrich Tr. 5).

[81] Mr. Gaylord said that he did not give any instructions to Mr. Baran about how the response should be prepared. (11/14/96 Gaylord Tr. 16–17). Mr. Baran, however, recalled that Mr. Gaylord said that the response should be completed quickly "because there was hope that the Ethics Committee would meet before the end of the year to consider this matter" and that it should not be too expensive. (11/13/96 Baran Tr. 7, 46–48).

[82] The attachments to the October 31, 1994 letter were selected from materials that were part of the complaint filed by Mr. Jones.

[83] Mr. Mehlman left Wiley, Rein & Fielding in February 1996 and is now an attorney with the National Republican Congressional Committee. (11/19/96 Mehlman Tr. 5).

3. the book used in the course called "Renewing American Civilization";
4. a course brochure;
5. the complaint filed by Ben Jones against Mr. Gingrich; and
6. documents produced pursuant to a Georgia Open Records Act request.

(11/19/96 Mehlman Tr. 15–16, 20). Mr. Mehlman said that he did not attempt to gather any other documents because he did not see a need to go beyond these materials in order to prepare a response. (11/19/96 Mehlman Tr. 19–20). With the exception of contacting his brother, who had taken the course,[84] Mr. Mehlman did not make any inquiries of people regarding the facts of the matter. (11/19/96 Mehlman Tr. 18). He did not, for example, contact GOPAC or Mr. Eisenach. (11/19/96 Mehlman Tr. 28). After he completed his first draft, he gave it to Mr. Baran. (11/19/96 Mehlman Tr. 22). He assumed that Mr. Baran would make sure that any factual questions would have been answered to his satisfaction before the letter went out. (11/19/96 Mehlman Tr. 51). However, Mr. Mehlman did not know what, if anything, Mr. Baran did with the draft after he gave it to him. (11/19/96 Mehlman Tr. 22).

When Mr. Gaylord asked Mr. Baran to prepare the letter, it was Mr. Baran's understanding that Annette Thompson Meeks, an Administrative Assistant for Mr. Gingrich's office, would help. (11/13/96 Baran Tr. 5, 7). According to Mr. Baran, Ms. Meeks' role was:

> basically to take a draft product from us and review it for accuracy [from] her personal knowledge and basically make sure that it was acceptable. And in that regard, I believed that she may have spoken with other people to confirm that, but you will be talking to her, and you will have to confirm it with her. I tried to not talk to her about that.

(11/13/96 Baran Tr. 10). Mr. Baran described the process for reviewing the letter as follows:

> Well, you know, as a counsel who was retained relatively late in that process at that time and as someone who had no firsthand knowledge about any of the underlying activities and with a marching order of trying to prepare a draft that was usable by the staff, we were pretty much focused on getting something together and over to Annette Meeks so that it could be used. Verification was something that would have been available through those who had firsthand knowledge about these facts, who had reviewed the draft.

(11/13/96 Baran Tr. 15). Mr. Baran did not, however, know whether the letter was reviewed by others to determine its accuracy. (11/13/96 Baran Tr. 48).

---

[84] The information obtained from his brother used as the basis of the statement in Mr. Gingrich's response that the course contained "as many references to Franklin Roosevelt, Jimmy Carter, and Martin Luther King, Jr. as there are to Ronald Reagan or Margaret Thatcher." (11/19/96 Mehlman Tr. 20). Mr. Mehlman, however, personally reviewed only one course videotape. (11/19/96 Mehlman Tr. 21).

Ms. Meeks said that at the time the letter was being prepared, she had no knowledge of whether:

> 1. the course was a political or partisan activity by design or application;
> 2. GOPAC was involved in the course;
> 3. GOPAC was benefited by the course;
> 4. GOPAC created, funded, or administered the course;
> 5. the idea to teach the course arose wholly independent of GOPAC;
> 6. Mr. Gingrich's motivation for teaching the course arose not as a politician but rather as a historian;
> 7. Mr. Eisenach resigned his position at GOPAC.

(11/14/96 Meeks Tr. 45–47). Ms. Meeks also said she was unaware that GOPAC's theme was Renewing American Civilization. (11/14/96 Meeks Tr. 88).

Ms. Meeks said she had no role in drafting the letter, did not talk to anyone to verify that the facts in the letter were accurate, and had no knowledge of how the facts in the letter were checked for accuracy. (11/14/96 Meeks Tr. 39, 48, 51). She did not indicate to Mr. Baran that she had given the letter to anyone for the purpose of checking its accuracy. (11/14/96 Meeks Tr. 87). In this regard, Ms. Meeks said:

> I will be very frank and tell you I don't know how [Mr. Baran] composed this information as far as who he spoke with. I was not privy to any of that. The only thing I could add to my answer is that once counsel is retained, we were kind of out of the picture as far as the process, other than typing and transmitting.

(11/14/96 Meeks Tr. 92). She said her role was to provide Mr. Baran with: background information about Mr. McCarthy (the Committee's counsel who had conferred with Mr. Gingrich about the course in 1993); a copy of the October 4, 1994 letter from Mr. Gingrich to the Committee; copies of papers relating to Mr. Hanser's employment with Mr. Gingrich's congressional office; and copies of the course videotapes. (11/14/96 Meeks Tr. 36–37).

Mr. Gaylord had a similar expectation in that, by retaining Wiley, Rein and Fielding, the firm was:

> both protecting us and had done the proper and correct investigation in the preparation of the letters and that they, in fact, did their job because that's what they were paid to do. And I presumed that they had extracted the information from Dr. Eisenach and others who were involved specifically in the course.

(11/14/96 Gaylord Tr. 62). Mr. Gaylord, however, did not know what inquiry Mr. Baran made in order to prepare the letter. (11/14/96 Gaylord Tr. 17).

After Mr. Baran sent Ms. Meeks a draft of the letter, Ms. Meeks re-typed the letter and sent the new version to Mr. Baran to verify that it was identical to what he had sent her. She then recalled faxing a copy to Mr. Gaylord and to Mr. Gingrich's executive assistant "to get Newt to take a look at it." (11/14/96 Meeks Tr. 43–44). Mr. Gingrich said about his review of the letter:

> And I think in my head, I was presented a document—I am not trying to blame anybody, or I am not trying to avoid this, I am trying to explain how it happened. I was presented a document and told, this is what we have collectively decided is an accurate statement of fact. I read the document, and it did not at any point leap out to me and say, boy, you had better modify paragraph 3, or that this phrase is too strong and too definitive. I think I read it one time, so that seems right to me, and I signed it.

(11/13/96 Gingrich Tr. 11). See also 11/13/96 Gingrich Tr. 10 (at the time he read the letter, "nothing leaped out at [him] and said, 'this is wrong'") and 11/13/96 Gingrich Tr. 16 (the letter "seemed accurate" to him).[85]

Mr. Gaylord did not recall whether he reviewed the letter prior to its being sent to the Committee. (11/14/96 Gaylord Tr. 18). Mr. Gaylord said that the statement that GOPAC had no role in the administration of the course was incorrect. (11/14/96 Gaylord Tr. 30–31). Mr. Gaylord said that the statement that GOPAC employees contributed time as private, civic-minded people was incorrect. (11/14/96 Gaylord Tr. 31). Mr. Gaylord was not asked to verify the facts in the letters. (11/14/96 Gaylord Tr. 20, 33).

2. BASES FOR STATEMENTS IN THE DECEMBER 8, 1994 LETTER

During their testimony, those involved in the creation of the letter were unable to explain the bases for many of the statements in the letter. Explanations were, however, given for the bases of some of the statements. A summary of those bases is set forth below.

> 1. [The course] was, by design and application, completely non-partisan. It was and remains about ideas, not politics. (Ex. 138, p. 2).

Mr. Baran said that the basis for this statement was his review of the course tapes and course materials. (11/13/96 Baran Tr. 19). Mr. Mehlman said the following about his understanding of the basis of this statement:

> Well, I don't specifically recall. If I had to assume, it would be some of the [Georgia Open Records Act] documents or some of the course materials that purport to be nonpartisan, or to have created a course that was nonpartisan, that certainly would explain design.

---

[85] In early July 1993, Mr. Gingrich was interviewed about the course by a student reporter with the KSC newspaper. In that interview the following exchange took place:
Interviewer: And how is GOPAC involved in this?
Mr. Gingrich: It's not involved in this at all.
Interviewer: Are you going to bring a lot of your ideas to GOPAC though?
Mr. Gingrich: Absolutely. Every single one of them.
(Ex. 142, p. 10).
In other interviews over the past few years, Mr. Gingrich has made other statements about GOPAC's involvement in the course. They have included, for example, the following:
1."GOPAC had the most incidental involvement at the very beginning of the process." (Atlanta Constitution, section A, page 1 (Sept. 19, 1993)).
2."GOPAC provided some initial ideas on who might be interested in financing the course; that's all they did." (Associated Press, AM cycle, (Sept. 2, 1993)).
3."The initial work was done before we talked with Kennesaw State College at GOPAC in organizing our thoughts." (The Hotline, American Political Network, Inc. (Sept. 7, 1993)).

> As far as in application, probably the reference made by my brother who had seen the course, who had participated in it, I suppose, and my general basic review of the initial writings about the course and viewing the first videotape of the course, suggested that the course was nonpartisan.

(11/19/96 Mehlman Tr. 24–25).

According to Mr. Baran, the letter to the College Republicans—which was one of the attachments to the September 7, 1994 Jones complaint (Ex. 81)—did not raise a question in his mind that the course was partisan or about politics. (11/13/96 Baran Tr. 23).

> 2. "The idea to teach 'Renewing American Civilization' arose wholly independent of GOPAC, because the course, unlike the committee, is non-partisan and apolitical. My motivation for teaching these ideas arose not as a politician, but rather as a former educator and concerned American citizen * * *." (Ex. 138, p. 4).

Mr. Baran said that the basis of this statement was a review of the course tapes and the belief that the course had originated from a January 25, 1993 speech Mr. Gingrich had given on the House floor. (11/13/96 Baran Tr. 24–25). At the time the letter was drafted, Mr. Baran was unaware of Mr. Gingrich's December 1992 meeting with Owen Roberts where Mr. Gingrich first laid out his ideas for the Renewing American Civilization movement and course. (11/13/96 Baran Tr. 25). Mr. Mehlman did not speak with Mr. Gingrich about his motivations for the course and did not know if Mr. Baran had spoken with Mr. Gingrich about his motivations for teaching the course. (11/19/96 Mehlman Tr. 27).

> 3. "The fact is, 'Renewing American Civilization' and GOPAC have never had any official relationship." (Ex. 38, p. 4).

Mr. Baran said about this statement:

> Well, I think the basis of [this] statement[] [was] essentially the characterizations that had been placed on the relationship between the course and GOPAC by people like Jeff Eisenach[86] at that time, and it was consistent with my limited knowledge of GOPAC's association with the course at that time. . . .
>
> You know, the various materials, some of which we went through this morning, were items that came to my attention in the course of the document production, which commenced, I think, around April of this year and took quite a bit of time, or that came up in the course of your interviews with Mr. Gingrich.

* * * * * * *

[86] Earlier in his testimony and as described above, Mr. Baran said that he had contacted Mr. Eisenach at the time the letter was being prepared, but did not recall the "nature of the contact." (11/13/96 Baran Tr. 16). As also discussed above, Mr. Eisenach recalled having a discussion with Mr. Baran at the time the letter was being prepared, but about topics unrelated to the letter. (11/14/96 Eisenach Tr. 17–18).

> Well, I think the basis is that these statements were being reviewed by people who would presumably be in a position to correct me if there [sic] was wrong.

(11/13/96 Baran Tr. 36–37).

When asked about the appearance of GOPAC fax cover sheets on documents pertaining to the course, Mr. Baran said that such faxes raised questions in his mind but that he "had an understanding at that time that those questions were addressed by an explanation that there were either incidental or inadvertent uses of GOPAC resources or there were uses of GOPAC resources that were accounted for by Mr. Eisenach." (11/13/96 Baran Tr. 21). Mr. Baran could not recall how he came to this understanding. (11/13/96 Baran Tr. 21–22).

With respect to whether Mr. Baran knew that GOPAC was involved in raising funds for the course, Mr. Baran said:

> At that time my recollection of quote, GOPAC being involved in fund-raising [unquote] was focused on Ms. Prochnow, the finance director who I don't know and have never met, but whose role was characterized, I believe, by Jeff Eisenach to me at some point, as having helped raise a couple of contributions, I think, Cracker Barrel was one of them, that is a name that sticks in my mind. But it was characterized as being sort of ancillary and just really not material.

(11/13/96 Baran Tr. 41).

3. CREATION OF THE MARCH 27, 1995 LETTER

In addition to the associate, Mr. Mehlman, who had worked with Mr. Baran in drafting Mr. Gingrich's December 8, 1994 letter to the Committee, another associate, Michael Toner, helped Mr. Baran draft what became the March 27, 1995 letter.[87] (11/19/96 Toner Tr. 10–11). As with the December 8, 1994 letter, Mr. Baran did not receive any indication from Mr. Gaylord or Mr. Gingrich that Mr. Baran was to do any kind of factual review in order to prepare the March 27, 1995 letter. (11/13/96 Baran Tr. 48). Mr. Baran did not recall contacting anyone outside the law firm for facts relevant to the preparation of the letter with respect to the course. He said that "the facts about the course, frankly, didn't seem to have changed any from the December period to the March period. And our focus seemed to be elsewhere." (11/13/96 Baran Tr. 28). Both Mr. Mehlman and Mr. Toner said that they did not contact anyone with knowledge of the facts at issue in order to prepare the letter. (11/19/96 Toner Tr. 21–22, 38; 11/19/96 Mehlman Tr. 38).

Ms. Meeks said that she had no role in the preparation of the letter. (11/14/96 Meeks Tr. 50). She saw it for the first time one day prior to her testimony before the Subcommittee in November 1996. (11/14/96 Meeks Tr. 50). Mr. Eisenach said that he did not have any role in the preparation of the letter nor was he asked to review

[87] Mr. Toner has been an associate attorney with Wiley, Rein and Fielding since September 1992, except for a period during which we he worked with the Dole/Kemp campaign. (11/19/96 Toner Tr. 6).

it prior to its submission to the Committee. (11/14/96 Eisenach Tr. 24–25). Mr. Gaylord said that he had no role in the preparation of the letter and did not provide any information that is in the letter. (11/14/96 Gaylord Tr. 20). He also said that he did not discuss the letter with Mr. Gingrich or Mr. Baran at the time of its preparation. (11/14/96 Gaylord Tr. 21). Mr. Gaylord said that he did not know where Baran obtained the facts for the letter. He "presumed" that Mr. Baran and his associates had gathered the facts. (11/14/96 Gaylord Tr. 21–22).

Mr. Baran said that his role in creating the letter was to meet with Mr. Mehlman and Mr. Toner, review the status of their research and drafting and review their drafts. (11/13/96 Baran Tr. 28). Mr. Mehlman and Mr. Toner divided responsibility for drafting portions of the letter. (11/19/96 Toner Tr. 12–14; 11/19/96 Mehlman Tr. 36, 37, 40). Mr. Baran also made edits to the letter. (11/19/96 Mehlman Tr. 40). During his interview, Mr. Toner stressed that there were many edits to the letter by Mr. Baran, Mr. Mehlman, and himself and he could, therefore, not explain who had drafted particular sentences in the letter. (*see, e.g,* 11/19/96 Toner Tr. 34).

After the letter was drafted, Mr. Baran said that Mr. Baran and his associates then "would have sent a draft that they felt comfortable with over to the Speaker's office." (11/13/96 Baran Tr. 28). Mr. Baran, Mr. Toner, and Mr. Mehlman each said during their testimony that they assumed that Mr. Gingrich or someone in his office reviewed the letter for accuracy before it was submitted to the Committee. (11/19/96 Toner Tr. 16, 40, 44; 11/13/96 Baran Tr. 32–33, 37–38; Mehlman Tr. 41). They, however, did not know whether Mr. Gingrich or anyone in his office with knowledge of the facts at issue ever actually reviewed the letter prior to its submission to the Committee. (11/19/96 Toner Tr. 17, 40, 44; 11/13/96 Baran Tr. 37–38; Mehlman Tr. 41).

With respect to Mr. Baran's understanding of whether Mr. Gingrich reviewed the letter, the following exchange occurred:

> Mr. Cole: Did you have any discussions with Mr. Gingrich concerning this letter prior to it going to the committee?
>
> Mr. Baran: I don't recall any. I just wanted to make sure that he did review it before it was submitted.
>
> Mr. Cole: How did you determine that he had reviewed it?
>
> Mr. Baran: I don't recall today, but I would not file anything until I had been assured by somebody that he had read it.
>
> Mr. Cole: Would that assurance also have involved him reading it and not objecting to any of the facts that are asserted in the letter?
>
> Mr. Baran: I don't know what his review process was regarding this letter.
>
> * * * * * * *
>
> Mr. Cole: If he just read it, you may still be awaiting comments from him. Would you have made sure that he had read it and approved it, or just the fact that he read

it is all you would have been interested in, trying to make sure that we don't blur that distinction?

Mr. Baran: No, I would have wanted him to be comfortable with this on many levels.

Mr. Cole: And were you satisfied that he was comfortable with it prior to filing it with the committee?

Mr. Baran: Yes.

Mr. Cole: Do you know how you were satisfied?

Mr. Baran: I can't recall the basis upon which that happened.

(11/13/96 Baran Tr. 32–33).

4. BASES FOR STATEMENTS IN THE MARCH 27, 1995 LETTER

With respect to the bases for the statements in the letter in general, Mr. Baran said that it was largely based on the December 8, 1994 letter and any information he and his associates relied on to prepare it. (11/13/96 Baran Tr. 37–38).

IX. Analysis and Conclusion

A. Tax Issues

In reviewing the evidence concerning both the AOW/ACTV project and the Renewing American Civilization project, certain patterns became apparent. In both instances, GOPAC had initiated the use of the messages as part of its political program to build a Republican majority in Congress. In both instances there was an effort to have the material appear to be non-partisan on its face, yet serve as a partisan, political message for the purpose of building the Republican Party.

Under the "methodology test" set out by the Internal Revenue Service, both projects qualified as educational. However, they both had substantial partisan, political aspects. Both were initiated as political projects and both were motivated, at least in part, by political goals.

The other striking similarity is that, in both situations, GOPAC was in need of a new source of funding for the projects and turned to a 501(c)(3) organization for that purpose. Once the projects had been established at the 501(c)(3) organizations, however, the same people continued to manage it as had done so at GOPAC, the same message was used as when it was at GOPAC, and the dissemination of the message was directed toward the same goal as when the project was at GOPAC—building the Republican Party. The only significant difference was that the activity was funded by a 501(c)(3) organization.

This was not a situation where one entity develops a message through a course or a television program for purely educational purposes and then an entirely separate entity independently decides to adopt that message for partisan, political purposes. Rather, this was a coordinated effort to have the 501(c)(3) organization help in achieving a partisan, political goal. In both instances the idea to develop the message and disseminate it for partisan, political use came first. The use of the 501(c)(3) came second as a source of funding.

This factual analysis was accepted by all Members of the Subcommittee and the Special Counsel. However, there was a difference of opinion as to the result under 501(c)(3) when applying the law to these facts. Ms. Roady, the Subcommittee's tax expert, was of the opinion that the facts presented a clear violation of 501(c)(3) because the evidence showed that the activities were intended to benefit Mr. Gingrich, GOPAC, and other Republican candidates and entities. Mr. Holden, Mr. Gingrich's tax attorney, disagreed. He found that the course was non-partisan in its content, and even though he assumed that the motivation for disseminating it involved partisan, political goals, he did not find a sufficiently narrow targeting of the dissemination to conclude that it was a private benefit to anyone.

Some Members of the Subcommittee and the Special Counsel agreed with Ms. Roady and concluded that there was a clear violation of 501(c)(3) with respect to AOW/ACTV and Renewing American Civilization. Other Members of the Subcommittee were troubled by reaching this conclusion and believed that the facts of this case presented a unique situation that had not previously been addressed by the legal authorities. As such, they did not feel comfortable supplanting the functions of the Internal Revenue Service or the Tax Court in rendering a ruling on what they believed to be an unsettled area of the law.

B. Statements Made to the Committee

The letters Mr. Gingrich submitted to the Committee concerning the Renewing American Civilization complaint were very troubling to the Subcommittee. They contained definitive statements about facts that went to the heart of the issues placed before the Committee. In the case of the December 8, 1994 letter, it was in response to a direct request from the Committee for specific information relating to the partisan, political nature of the course and GOPAC's involvement in it.

Both letters were efforts by Mr. Gingrich to have the Committee dismiss the complaints without further inquiry. In such situations, the Committee does and should place great reliance on the statements of Members.

The letters were prepared by Mr. Gingrich's lawyers. After the Subcommittee deposed the lawyers, the reasons for the statements being in the letters was not made any clearer. The lawyers did not conduct any independent factual research. Looking at the information the lawyers used to write the letters, the Subcommittee was unable to find any factual basis for the inaccurate statements contained therein. A number of exhibits attached to the complaint were fax transmittal sheets from GOPAC. While this did not on its face establish anything more than GOPAC's fax machine having been used for the project, it certainly should have put the attorneys on notice that there was some relationship between the course and GOPAC that should have been examined before saying that GOPAC had absolutely no involvement in the course.

The lawyers said they relied on Mr. Gingrich and his staff to ensure that the letters were accurate; however, none of Mr. Gingrich's staff had sufficient knowledge to be able to verify the accuracy of

the facts. While Mr. Gaylord and Mr. Eisenach did have sufficient knowledge to verify many of the facts, they were not asked to do so. The only person who reviewed the letters for accuracy, with sufficient knowledge to verify those facts, was Mr. Gingrich.

The Subcommittee considered the relevance of the reference to GOPAC in Mr. Gingrich's first letter to the Committee dated October 4, 1994. In that letter he stated that GOPAC was one of the entities that paid people to work on the course. Some Members of the Subcommittee believed that this was evidence of lack of intent to deceive the Committee on Mr. Gingrich's part because if he had planned to hide GOPAC's involvement, he would not have made such an inconsistent statement in the subsequent letters. Other Members of the Subcommittee and the Special Counsel appreciated this point, but believed the first letter was of little value. The statement in that letter was only directed to establishing that Mr. Gingrich had not used congressional resources in developing the course. The first letter made no attempt to address the tax issues, even though it was a prominent feature of the complaint. When the Committee specifically focused Mr. Gingrich's attention on that issue and questions concerning GOPAC's involvement in the course, his response was not accurate.

During his testimony before the Subcommittee, Mr. Gingrich stated that he did not intend to mislead the Committee and apologized for his conduct. This statement was a relevant consideration for some Members of the Subcommittee, but not for others.

The Subcommittee concluded that because these inaccurate statements were provided to the Committee, this matter was not resolved as expeditiously as it could have been. This caused a controversy over the matter to arise and last for a substantial period of time, it disrupted the operations of the House, and it cost the House a substantial amount of money in order to determine the facts.

C. Statement of Alleged Violation

Based on the information described above, the Special Counsel proposed a Statement of Alleged Violations ("SAV") to the Subcommittee on December 12, 1996. The SAV contained three counts: (1) Mr. Gingrich's activities on behalf of ALOF in regard to AOW/ACTV, and the activities of others in that regard with his knowledge and approval, constituted a violation of ALOF's status under section 501(c)(3); (2) Mr. Gingrich's activities on behalf of Kennesaw State College Foundation, the Progress and Freedom Foundation, and Reinhardt College in regard to the Renewing American Civilization course, and the activities of others in that regard with his knowledge and approval, constituted a violation of those organizations' status under section 501(c)(3); and (3) Mr. Gingrich had provided information to the Committee, directly or through counsel, that was material to matters under consideration by the Committee, which Mr. Gingrich knew or should have known was inaccurate, incomplete, and unreliable.

1. DELIBERATIONS ON THE TAX COUNTS

There was a difference of opinion regarding whether to issue the SAV as drafted on the tax counts. Concern was expressed about deciding this tax issue in the context of an ethics proceeding. This led the discussion to the question of the appropriate focus for the Subcommittee. A consensus began to build around the view that the proper focus was on the conduct of the Member, rather than a resolution of issues of tax law. From the beginning of the Preliminary Inquiry, there was a desire on the part of each of the Members to find a way to reach a unanimous conclusion in this matter. The Members felt it was important to confirm the bipartisan nature of the ethics process.

The discussion turned to what steps Mr. Gingrich had taken in regard to these two projects to ensure they were done in accord with the provisions of 501(c)(3). In particular, the Subcommittee was concerned with the fact that: (1) Mr. Gingrich had been "very well aware" of the *American Campaign Academy* case prior to embarking on these projects; (2) he had been involved with 501(c)(3) organizations to a sufficient degree to know that politics and tax-deductible contributions are, as his tax counsel said, an "explosive mix;" (3) he was clearly involved in a project that had significant partisan, political goals, and he had taken an aggressive approach to the tax laws in regard to both AOW/ACTV; and (4) Renewing American Civilization projects. Even Mr. Gingrich's own tax lawyer told the Subcommittee that if Mr. Gingrich had come to him before embarking on these projects, he would have advised him to not use a 501(c)(3) organization for the dissemination of AOW/ACTV or Renewing American Civilization. Had Mr. Gingrich sought and followed this advice, he would not have used the 501(c)(3) organizations, would not have had his projects subsidized by taxpayer funds, and would not have created this controversy that has caused significant disruption to the House. The Subcommittee concluded that there were significant and substantial warning signals to Mr. Gingrich that he should have heeded prior to embarking on these projects. Despite these warnings, Mr. Gingrich did not seek any legal advice to ensure his conduct conformed with the provisions of 501(c)(3).

In looking at this conduct in light of all the facts and circumstances, the Subcommittee was faced with a disturbing choice. Either Mr. Gingrich did not seek legal advice because he was aware that it would not have permitted him to use a 501(c)(3) organization for his projects, or he was reckless in not taking care that, as a Member of Congress, he made sure that his conduct conformed with the law in an area where he had ample warning that his intended course of action was fraught with legal peril. The Subcommittee decided that regardless of the resolution of the 501(c)(3) tax question, Mr. Gingrich's conduct in this regard was improper, did not reflect creditably on the House, and was deserving of sanction.

2. DELIBERATIONS CONCERNING THE LETTERS

The Subcommittee's deliberation concerning the letters provided to the Committee centered on the question of whether Mr. Gingrich

intentionally submitted inaccurate information. There was a belief that the record developed before the Subcommittee was not conclusive on this point. The Special Counsel suggested that a good argument could be made, based on the record, that Mr. Gingrich did act intentionally, however it would be difficult to establish that with a high degree of certainty.

The culmination of the evidence on this topic again left the Subcommittee with a disturbing choice. Either Mr. Gingrich intentionally made misrepresentations to the Committee, or he was again reckless in the way he provided information to the Committee concerning a very important matter.

The standard applicable to the Subcommittee's deliberations was whether there is reason to believe that Mr. Gingrich had acted as charged in this count of the SAV. All felt that this standard had been met in regard to the allegation that Mr. Gingrich "knew" that the information he provided to the Committee was inaccurate. However, there was considerable discussion to the effect that if Mr. Gingrich wanted to admit to submitting information to the Committee that he "should have known" was inaccurate, the Subcommittee would consider deleting the allegation that he knew the information was inaccurate. The Members were of the opinion that if there were to be a final adjudication of the matter, taking into account the higher standard of proof that is involved at that level, "should have known" was an appropriate framing of the charge in light of all the facts and circumstances.

3. DISCUSSIONS WITH MR. GINGRICH'S COUNSEL AND RECOMMENDED SANCTION

On December 13, 1996, the Subcommittee issued an SAV charging Mr. Gingrich with three counts of violations of House Rules. Two counts concerned the failure to seek legal advice in regard to the 501(c)(3) projects, and one count concerned providing the Committee with information which he knew or should have known was inaccurate.

At the time the Subcommittee voted this SAV, the Members discussed the matter among themselves and reached a consensus that it would be in the best interests of the House for the matter to be resolved without going through a disciplinary hearing. It was estimated that such a hearing could take up to three months to complete and would not begin for several months. Because of this, it was anticipated that the House would have to deal with this matter for another six months. Even though the Subcommittee Members felt that it would be advantageous to the House to avoid a disciplinary hearing, they all were committed to the proposition that any resolution of the matter had to reflect adequately the seriousness of the offenses. To this end, the Subcommittee Members discussed and agreed upon a recommended sanction that was fair in light of the conduct reflected in this matter, but explicitly recognized that the full Committee would make the ultimate decision as to the recommendation to the full House as to the appropriate sanction. In determining what the appropriate sanction should be in this matter, the Subcommittee and Special Counsel considered the seriousness of the conduct, the level of care exercised by Mr. Gingrich, the disruption caused to the House by the conduct, the

cost to the House in having to pay for an extensive investigation, and the repetitive nature of the conduct.

As is noted above, the Subcommittee was faced with troubling choices in each of the areas covered by the Statement of Alleged Violation. Either Mr. Gingrich's conduct in regard to the 501(c)(3) organizations and the letters he submitted to the Committee was intentional or it was reckless. Neither choice reflects creditably on the House. While the Subcommittee was not able to reach a comfortable conclusion on these issues, the fact that the choice was presented is a factor in determining the appropriate sanction. In addition, the violation does not represent only a single instance of reckless conduct. Rather, over a number of years and in a number of situations, Mr. Gingrich showed a disregard and lack of respect for the standards of conduct that applied to his activities.

Under the Rules of the Committee, a reprimand is the appropriate sanction for a serious violation of House Rules and a censure is appropriate for a more serious violation of House Rules. Rule 20(g), Rules of the Committee on Standards of Official Conduct. It was the opinion of the Subcommittee that this matter fell somewhere in between. Accordingly, the Subcommittee and the Special Counsel recommend that the appropriate sanction should be a reprimand and a payment reimbursing the House for some of the costs of the investigation in the amount of $300,000. Mr. Gingrich has agreed that this is the appropriate sanction in this matter.

Beginning on December 15, 1996, Mr. Gingrich's counsel and the Special Counsel began discussions directed toward resolving the matter without a disciplinary hearing. The discussions lasted through December 20, 1996. At that time an understanding was reached by both Mr. Gingrich and the Subcommittee concerning this matter. That understanding was put on the record on December 21, 1996 by Mr. Cole follows:

> Mr. Cole: The subcommittee has had an opportunity to review the facts in this case, and has had extensive discussion about the appropriate resolution of this matter.
>
> Mr. Cardin: If I might just add here to your next understanding, the Members of the subcommittee, prior to the adoption of the Statement of Alleged Violation, were concerned that the nonpartisan deliberations of the subcommittee continue beyond the findings of the subcommittee. Considering the record of the full Ethics Committee in the 104th Congress and the partisan environment in the full House, the Members of the subcommittee felt that it was important to exercise bipartisan leadership beyond the workings of the subcommittee. * * *
>
> Mr. Cole: It was the opinion of the Members of the subcommittee and the Special Counsel, that based on the facts of this case as they are currently known, the appropriate sanction for the conduct described in the original Statement of Alleged Violations is a reprimand and the payment of $300,000 toward the cost of the preliminary inquiry.
>
> In light of this opinion, the subcommittee Members and the Special Counsel intend to recommend to the full committee that this be the sanction recommended by the full

committee to the House. The Members also intend to support this as the sanction in the committee and on the Floor of the House.

However, if new facts are developed or brought to the attention of the Members of the subcommittee, they are free to change their opinions.

The Subcommittee, through its counsel, has communicated this to Mr. Gingrich, through his counsel. Mr. Gingrich has agreed that if the subcommittee will amend the Statement of Alleged Violations to be one count, instead of three counts, however, still including all of the conduct described in the original Statement of Alleged Violations, and will allow the addition of some language which reflects aspects of the record in this matter concerning the involvement of Mr. Gingrich's counsel in the preparation of the letters described in the original Count 3 of the Statement of Alleged Violations,[88] he will admit to the entire Statement of Alleged Violation and agree to the view of the subcommittee Members and the Special Counsel as to the appropriate sanction.

In light of Mr. Gingrich's admission to the Statement of Alleged Violation, the subcommittee is of the view that the rules of the committee will not require that an adjudicatory hearing take place; however, a sanction hearing will need to be held under the rules.

The subcommittee and Mr. Gingrich desire to have the sanction hearing concluded as expeditiously as possible, but it is understood that this will not take place at the expense of orderly procedure and a full and fair opportunity for the full committee to be informed of any information necessary for each Member of the full committee to be able to make a decision at the sanction hearing.

After the subcommittee has voted a new Statement of Alleged Violation, Mr. Gingrich will file his answer admitting to it. The subcommittee will seek the permission of the full committee to release the Statement of Alleged Violation, Mr. Gingrich's answer, and a brief press release which has been approved by Mr. Gingrich's counsel. At the same time, Mr. Gingrich will release a brief press release that has been approved by the subcommittee's Special Counsel.

Both the subcommittee and Mr. Gingrich agree that no public comment should be made about this matter while it is still pending. This includes having surrogates sent out to comment on the matter and attempt to mischaracterize it.

Accordingly, beyond the press statements described above, neither Mr. Gingrich nor any Member of the subcommittee may make any further public comment. Mr. Gingrich understands that if he violates this provision, the subcommittee will have the option of reinstating the origi-

[88] These changes included the removal of the word "knew" from the original Count 3, making the charge read that Mr. Gingrich "should have known" the information was inaccurate.

nal Statement of Alleged Violations and allowing Mr. Gingrich an opportunity to withdraw his answer.

And I should note that it is the intention of the subcommittee that "public comments" refers to press statements; that, obviously, we are free and Mr. Gingrich is free to have private conversations with Members of Congress about these matters.[89]

After the Subcommittee voted to issue the substitute SAV, the Special Counsel called Mr. Gingrich's counsel and read to him what was put on the record concerning this matter. Mr. Gingrich's counsel then delivered to the Subcommittee Mr. Gingrich's answer admitting to the Statement of Alleged Violation.

D. Post-December 21, 1996 Activity

Following the release of this Statement of Alleged Violation, numerous press accounts appeared concerning this matter. In the opinion of the Subcommittee Members and the Special Counsel, a number of the press accounts indicated that Mr. Gingrich had violated the agreement concerning statements about the matter. Mr. Gingrich's counsel was notified of the Subcommittee's concerns and the Subcommittee met to consider what action to take in light of this apparent violation. The Subcommittee determined that it would not nullify the agreement. While there was serious concern about whether Mr. Gingrich had complied with the agreement, the Subcommittee was of the opinion that the best interests of the House still lay in resolving the matter without a disciplinary hearing and with the recommended sanction that its Members had previously determined was appropriate. However, Mr. Gingrich's counsel was informed that the Subcommittee believed a violation of the agreement had occurred and retained the right to withdraw from the agreement with appropriate notice to Mr. Gingrich. To date no such notice has been given.

X. Summary of Facts Pertaining To Use of Unofficial Resources

The Subcommittee investigated allegations that Mr. Gingrich had improperly utilized the services of Jane Fortson, an employee of the Progress in Freedom Foundation ("PFF"), in violation of House Rule 45, which prohibits the use of unofficial resources for official purposes.

Ms. Fortson was an investment banker and chair of the Atlanta Housing Project who had experience in urban and housing issues. In January 1995 she moved to Washington, D.C., from Atlanta to work on urban and housing issues as a part-time PFF Senior Fellow and subsequently became a full-time PFF Senior Fellow in April, 1995.

The Subcommittee determined that Mr. Gingrich sought Ms. Fortson's advice on urban and housing issues on an ongoing and meaningful basis. During an interview with Mr. Cole, Mr. Gingrich stated that although he believed he lacked the authority to give

[89] It was also agreed that in the private conversations Mr. Gingrich was not to disclose the terms of the agreement with the Subcommittee.

Ms. Fortson assignments, he often requested her assistance in connection with urban issues in general and issues pertaining to the District of Columbia in particular. The investigation further revealed that Ms. Fortson appeared to have had unusual access to Mr. Gingrich's official schedule and may have occasionally influenced his official staff in establishing his official schedule.

In her capacity as an unofficial policy advisor to Mr. Gingrich, Ms. Fortson provided ongoing advice to Mr. Gingrich and members of Mr. Gingrich's staff to assist Mr. Gingrich in conducting official duties related to urban issues. Ms. Fortson frequently attended meetings with respect to the D.C. Task Force during which she met with Members of Congress, officials of the District of Columbia, and members of their staffs. Although Mr. Gingrich and principal members of his staff advised the Subcommittee that they perceived Ms. Fortson's assistance as limited to providing information on an informal basis, the Subcommittee discovered other occurrences which suggested that Mr. Gingrich and members of his staff specifically solicited Ms. Fortson's views and assistance with respect to official matters.

The Subcommittee acknowledges that Members may properly solicit information from outside individuals and organizations, including nonprofit and for-profit organizations. Regardless of whether auxiliary services are accepted from a nonprofit or for-profit organization, Members must exercise caution to limit the use of outside resources to ensure that the duties of official staff are not improperly supplanted or supplemented. The Subcommittee notes that although Mr. Gingrich received two letters of reproval from the Committee on Standards regarding the use of outside resources, Ms. Fortson's activities ceased prior to the date the Committee issued those letters to Mr. Gingrich. While the Subcommittee did not find that Ms. Fortson's individual activities violated House Rules, the Subcommittee determined that the regular, routine, and ongoing assistance she provided Mr. Gingrich and his staff over a ten-month period could create the appearance of improper commingling of unofficial and official resources. The Subcommittee determined, however, that these activities did not warrant inclusion as a Count in the Statement of Alleged Violation.

XI. Availability of Documents to Internal Revenue Service

In light of the possibility that documents which were produced to the Subcommittee during the Preliminary Inquiry might be useful to the IRS as part of its reported ongoing investigations of various 501(c)(3) organizations, the Subcommittee decided to recommend that the full Committee make available to the IRS all relevant documents produced during the Preliminary Inquiry. It is the Committee's recommendation that the House Committee on Standards of Official Conduct in the 105th Congress establish a liaison with the IRS to fulfill its recommendation and that this liaison be established in consultation with Mr. Cole.

APPENDIX

SUMMARY OF LAW PERTAINING TO ORGANIZATIONS EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE

A. Introduction

Section 501(a) of the Internal Revenue Code generally exempts from federal income taxation numerous types of organizations. Among these are section 501(c)(3) organizations which include corporations: Organized and operated exclusively for religious, charitable, scientific * * * or educational purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, * * * and which does not participate in, or intervene in * * * any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. § 501(c)(3). Organizations described in section 501(c)(3) are generally referred to as "charitable" organizations and contributions to such organizations are generally deductible to the donors. I.R.C. § 170(a)(1), (c)(2).

B. The Organizational Test and the Operational Test

The requirement that a 501(c)(3) organization be "organized and operated exclusively" for an exempt purpose has given rise to an "organizational test" and an "operational test." Failure to meet either test will prevent an organization from qualifying for exemption under section 501(c)(3). Treas. Reg. § 1.501(c)(3)–1(a); *Levy Family Tribe Foundation* v. *Commissioner*, 69 T.C. 615, 618 (1978).

1. ORGANIZATIONAL TEST

To satisfy the organizational test, an organization must meet three sets of requirements. First, its articles of organization must: (a) limit its purposes to one or more exempt purposes, and (b) not expressly permit substantial activities that do not further those exempt purposes. Treas. Reg. §1.501(c)(3)–1(b)(1). Second, the articles must not permit: (a) devoting more than an insubstantial part of its activities to lobbying, (b) any participation or intervention in the campaign of a candidate for public office, and (c) objectives and activities that would characterize it as an "action" organization. Treas. Reg. §1.501(c)(3)–1(b)(3). Third, the organization's assets must be dedicated to exempt purposes. Treas. Reg. §1.501(c)(3)–

1(b)(4). The IRS determines compliance with the organizational test solely by reference to an organization's articles of organization.

2. OPERATIONAL TEST

To satisfy the operational test, an organization must be operated "exclusively" for an exempt purpose. Though "exclusively" in this context does not mean "solely," the presence of a substantial non-exempt purpose will cause an organization to fail the operational test. Treas. Reg. §1.501(c)(3)–1(c)(1); *The Nationalist Movement* v. *Commissioner,* 102 T.C. 558, 576 (1994). The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. *Better Business Bureau of Washington, D.C.* v. *United States,* 326 U.S. 276, 283 (1945); *Manning Association* v. *Commissioner,* 93 T.C. 596, 611 (1989).

To meet the operational test under section 501(c)(3) organization, the organization must satisfy the following requirements:[90]

1. The organization must be operated for an exempt purpose, and must serve a public benefit, not a private benefit. Treas. Reg. §1.501(c)(3)–1(d)(1)(ii).
2. It must not be an "action" organization. Treas. Reg. §1.501(c)(3)–1(c)(3). An organization is an "action" organization if:
   a. it participates or intervenes in any political campaign (Treas. Reg. §1.501(c)(3)–1(c)(3)(iii));
   b. a substantial part of its activities consists of attempting to influence legislation (Treas. Reg. §1.501(c)(3)–1(c)(3)(ii)); or
   c. its primary objective may be attained: only by legislation or defeat of proposed legislation, and it advocates the attainment of such primary objective (Treas. Reg. §1.501(c)(3)–1(c)(3)(iv)).
3. Its net earnings must not inure to the benefit of any person in a position to influence the organization's activities. Treas. Reg. §1.501(c)(3)–1(c)(2).

"[F]ailure to satisfy any of the [above] requirements is fatal to [an organization's] qualification under section 501(c)(3)." *American Campaign Academy* v. *Commissioner,* 92 T.C. 1053, 1062 (1989).

The application of these requirements, moreover, is a factual exercise. *Id.* at 1064; *Christian Manner International* v. *Commissioner,* 71 T.C. 661, 668 (1979). Thus, in testing compliance with the operational test, courts look "beyond the four corners of the organization's charter to discover 'the actual objects motivating the organization and the subsequent conduct of the organization.'" *American Campaign Academy,* 92 T.C. at 1064 (citing *Taxation with Representation* v. *United States,* 585 F.2d 1219, 1222 (4th Cir. 1978)); *see also Sound Health Association* v. *Commissioner,* 71 T.C. 158, 184 (1978) ("It is the purpose toward which an organization's activities are directed that is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization.")

[90] 501(c)(3) organizations must also: (a) not be operated primarily to conduct an unrelated trade or business (Treas. Reg. §1.501(c)(3)–1(e)(1)), and (b) not violate "public policy." *See Bob Jones University* v. *United States,* 461 U.S. 574 (1983) (educational organization's tax-exempt status denied because of its racially discriminatory policies).

"What an organization's purposes are and what purposes its activities support are questions of fact." *American Campaign Academy,* 92 T.C. at 1064 (citing *Christian Manner International* v. *Commissioner,* 71 T.C. 661, 668 (1979)). Courts may "draw factual inferences" from the record when determining whether organizations meet the requirements of the tax-exempt organization laws and regulations. *Id.* (citing *National Association of American Churches* v. *Commissioner,* 82 T.C. 18, 20 (1984)).

a. "Educational" Organizations May Qualify for Exemption Under Section 501(c)(3)

As discussed above, an organization may qualify for exemption under section 501(c)(3) if it is "educational."[91] The Regulations define the term "educational" as relating to:

> (a) [t]he instruction or training of the individual for the purpose of improving or developing his capabilities; or
> (b) [t]he instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. §1.501(c)(3)–1(d)(3)(i). The Regulations continue:

> An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Id. Guidance on the phrase "advocates a particular position or viewpoint" can be found in the preceding section in the Regulations pertaining to the definition of "charitable."

> The fact that an organization, in carrying out its primary purpose, advocates social or civil changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization.* * *

Treas. Reg. §1.501(c)(3)–1(d)(2).

In applying the Regulations under section 501(c)(3) pertaining to educational organizations, the IRS has stated that its goal is to eliminate or minimize the potential for any public official to impose his or her preconceptions or beliefs in determining whether the particular viewpoint or position is educational. Rev. Proc. 86–43, 1986–2 C.B. 729. IRS policy is to "maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization." *Id.* The focus of the Regulations pertaining to educational organizations and of the IRS's application of these Regulations "is not upon the viewpoint or position, but instead upon the

[91] An organization may also qualify for section 501(c)(3) exemption if it is organized and operated for, *e.g.,* "religious," "charitable," or "scientific" purposes. The other methods by which an organization can qualify for exemption are not discussed in this summary.

method used by the organization to communicate its viewpoint or positions to others." *Id.*

Two court decisions considered challenges to the constitutionality of the definition of "educational," in the Regulations cited above. One decision held that the definition was unconstitutionally vague. *Big Mama Rag, Inc.* v. *United States,* 631 F.2d 1030 (D.C. Cir. 1980). In *National Alliance* v. *United States,* 710 F.2d 868 (D.C. Dir. 1983), the court upheld the IRS's position that the organization in question was not educational. Without ruling on the constitutionality of the "methodology test" used by the IRS in that case to determine whether the organization was educational, the court found that the application of that test reduced the vagueness found in *Big Mama Rag.* The IRS later published the methodology test in Rev. Proc. 86–43 in order to clarify its position on how to determine whether an organization is educational when it advocates particular viewpoints or positions. As set forth in the Revenue Procedure:

> The presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its viewpoints or positions is not educational.
>
> (a) The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.
>
> (b) The facts that purport to support the viewpoints or positions are distorted.
>
> (c) The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations.
>
> (d) The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

According to Rev. Proc. 86–43, the IRS uses the methodology test in all situations where the educational purpose of an organization that advocates a viewpoint or position is in question. However, "[e]ven if the advocacy undertaken by an organization is determined to be educational under [the methodology test], the organization must still meet all other requirements for exemption under section 501(c)(3) * * *" Rev. Proc. 86–43. That is, organizations deemed to be "educational" must also abide by the section 501(c)(3) prohibitions on: (a) private benefit, (b) participating or intervening in a political campaign, (c) engaging in more than insubstantial lobbying activities, and (d) private inurement.

b. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Benefit" Prohibition

Section 501(c)(3) requires, inter alia, that an organization be organized and operated exclusively for one or more exempt purposes. Treas. Reg. 1.501(c)(3)–1(d)(1)(ii) provides that an organization does not meet this requirement:

> unless it serves a public rather than a private purpose. Thus, * * * it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The "private benefit" prohibition serves to ensure that the public subsidies flowing from section 501(c)(3) status, including income tax exemption and the ability to receive tax-deductible charitable contributions, are reserved for organizations that are formed to serve public and not private interests. Treas. Reg. 1.501(c)(3)–1(c)(1) defines the application of the private benefit prohibition in the context of the operational test:

> An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The Regulations and cases applying them make it clear that the private benefit test focuses on the purpose or purposes served by an organization's activities, and not on the nature of the activities themselves. See, e.g., *B.S.W. Group, Inc.* v. *Commissioner,* 70 T.C. 352 (1978). Where an organization's activities serve more than one purpose, each purpose must be separately examined to determine whether it is private in nature and, if so, whether it is more than insubstantial. *Christian Manner International* v. *Commissioner,* 71 T.C. 661 (1979).

The leading case on the application of the private benefit prohibition in the context of an organization whose activities served both exempt and nonexempt purposes is *Better Business Bureau* v. *United States,* 326 U.S. 279 (1945). Better Business Bureau was a nonprofit organization formed to educate the public about fraudulent business practices, to elevate business standards, and to educate consumers to be intelligent buyers. The Court did not question the exempt purpose of these activities. The Court found, however, that the organization was "animated" by the purpose of promoting a profitable business community, and that such business purpose was both nonexempt and more than insubstantial. The Court denied exemption, stating (in language that is cited in virtually all later private benefit cases), that:

> [I]n order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

Id. at 283.

Many of the cases interpreting the private benefit prohibition involve private benefits that are provided in a commercial context—as in the *Better Business Bureau* case. Impermissible private benefit, however, need not be financial in nature. *Callaway Family Association* v. *Commissioner,* 71 T.C. 340 (1978), involved a family as-

sociation formed as a nonprofit corporation to study immigration to and migration within the United States by focusing on its own family history and genealogy. The organization's activities included researching the genealogy of Callaway family members in order to publish a family history. The organization argued that its purposes were educational and intended to benefit the general public, asserting that its use of a research methodology focusing on one family's development was a way of educating the public about the country's history.

In *Callaway,* the court noted (and the IRS conceded) that the organization's activities served an educational purpose. The issue was not whether the organization had any exempt purposes, but whether it also engaged in activities that furthered a nonexempt purpose more than insubstantially. Agreeing with the IRS that "petitioner aimed its organizational drive at Callaway family members, and appealed to them on the basis of their private interests," the court concluded that the organization "engages in nonexempt activities serving a private interest, and these activities are not insubstantial." *Id.* at 343–44. Accordingly, the court held that the organization did not qualify for exemption under section 501(c)(3).

Kentucky Bar Foundation v. *Commissioner,* 78 T.C. 921 (1982), is one of the relatively few cases in which a court found private benefit to be insubstantial and therefore not to preclude exemption under section 501(c)(3). The Kentucky Bar Foundation was formed to conduct a variety of activities recognized by the IRS to serve exclusively educational purposes, including a continuing legal education program and the operation of a public law library. The IRS, however, asserted that the Foundation's operation of statewide lawyer referral service also served private purposes. Through the referral service, a person seeking a lawyer was referred to an attorney selected on a rotating basis within a convenient geographic area. The fee for an initial half-hour consultation was $10; any charge for further consultation or work had to be agreed upon by the attorney and the client. The court found that the purposes of the referral service were to assist the general public in locating an attorney to provide a consultation for a reasonable fee, to encourage lawyers to recognize the obligation to provide legal services to the general public, and to acquaint people in need of legal services with the value of consultation with a lawyer to identify and solve legal problems.

The IRS asserted that a purpose of the referral service was to benefit lawyers, particularly to help young law school graduates establish a practice, and that this was a substantial nonexempt purpose. Based on a careful examination of the facts, however, the court found that:

> [t]he referral service is open to all responsible attorneys, and there is no evidence a selected group of attorneys are the primary beneficiaries of the service. The referral service is intended to benefit the public and not to serve as a source of referrals. We find any nonexempt purpose served by the referral service and any occasional economic benefit

> flowing to individual attorneys through a referral incidental to the broad charitable purpose served.

Id. at 926.

Reiterating the proposition that "the proper focus is the purpose or purposes toward which the activities are directed," the court found that the purpose of the legal referral service was to benefit the public, that any private benefit was broadly distributed, not conferred on any select group of attorneys and incidental to the public purpose, and that the organization qualified for exemption under section 501(c)(3). *Id.* at 923, 925–26 (citing *B.S.W. Group* v. *Commissioner,* 70 T.C. 352, 356–57 (1978)).

As the cases described above show, the determination as to whether private benefit is incidental (and therefore permissible) or more than incidental (and therefore prohibited) is inherently factual, and each case must be decided on its own facts and circumstances. See also *Manning Association* v. *Commissioner,* 93 T.C. 596 (1989). The IRS has issued several published and private rulings and general counsel memoranda[92] that further explain the private benefit prohibition. For example, in Rev. Rul. 70–186, 1970–1 C.B. 128, an organization was formed to preserve a lake as a public recreational facility and to improve the lake water's condition. Although the organization's activities benefited the public at large, there were necessarily significant benefits to the individuals who owned lake-front property. The IRS, however, determined that the private benefit to the lake-front property owners was incidental because:

> [t]he benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by the lakefront property owners do not lessen the public benefits flowing from the organization's operations. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lakefront property owners.

Id.

In Rev. Rul. 75–196, 1975–1 C.B. 155, the IRS ruled that a 501(c)(3) organization operating a law library whose rules essentially limited access and use to local bar association members conferred only incidental benefits to the bar association members. The library's availability only to a designated class of persons was not a bar to recognition of exemption because:

> [w]hat is of importance is that the class benefited be broad enough to warrant a conclusion that the educational facility or activity is serving a broad public interest rather

[92] Private letter rulings and general counsel memoranda are made available to the public under section 6110 of the Code. These documents are based on the facts of particular cases, and may not be relied on as precedent. However, they provide useful insights as to how the IRS interprets and applies the law in particular factual situations.

> than a private interest, and is therefore exclusively educational in nature.

Id. The library was available to a significant number of people, and the restrictions on the library's use were due to the limited size of its facilities. Although attorneys who used the library might derive personal benefit in their practice, the IRS ruled that this benefit was incidental to the library's exempt purpose and a "logical by-product of an educational process."

Id.

Two other revenue rulings with similar fact patterns are also helpful in understanding the application of the "incidental benefits" concept. In one ruling, the IRS ruled that an organization that limited membership to the residents of one city block did not qualify as a 501(c)(3) organization because the organization's members benefited directly, thus not incidentally, from the organization's activities. Rev. Rul. 75–286, 1975–2 C.B. 210. In another, the IRS ruled that an organization dedicated to beautification of an entire city qualified as a 501(c)(3) organization because benefits flowed to the city's entire population and were not targeted to the organization's members. Rev. Rul. 68–14, 1968–1 C. B. 243. The benefits to the organization's members of living in a cleaner city were considered incidental.

The IRS issued a recent warning about the importance of the private benefit prohibition in Rev. Proc. 96–32, 1996–20 I.R.B. 14, a Revenue Procedure issued for the purpose of establishing standards as to whether organizations that own and operate low income housing (an activity conducted by both nonprofit and for-profit organizations) may qualify for exemption under section 501(c)(3). After reviewing the substantive criteria that must be present to establish that the organization is formed for a charitable purpose, the IRS added a final caution:

> If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

Id.

One of the most detailed explanations of the private benefit prohibition is contained in G.C.M. 39862 (Nov. 22, 1991), involving the permissibility of a hospital's transaction with physicians. In the G.C.M., the IRS explained the prohibition as follows:

> Any private benefit arising from a particular activity must be "incidental" in both a qualitative and quantitative sense to the overall public benefit achieved by the activity if the organization is to remain exempt. To be qualitatively incidental, a private benefit must occur as a necessary concomitant of the activity that benefits the public at large; in other words, the benefit to the public cannot be

> achieved without necessarily benefiting private individuals. Such benefits might also be characterized as indirect or unintentional. To be quantitatively incidental, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity.

Id.

The IRS also explained that the insubstantiality of the private benefit is measured only in relationship to activity in which the private benefit is present, and not in relation to the organization's overall activities:

> It bears emphasis that, even though exemption of the entire organization may be at stake, the private benefit conferred by an activity or arrangement is balanced only against the public benefit conferred by that activity or arrangement, not the overall good accomplished by the organization.

Id.

In G.C.M. 39862, the IRS balanced the private benefits to the physicians from the transaction at issue with the public purposes served by that particular activity—and not the public purposes served by the hospital as a whole. Finding the private purposes from the activity at issue to be more than incidental in relation to the public purposes, the IRS determined that the hospital had jeopardized its exemption under section 501(c)(3).

Although most of the cases and IRS rulings (both public and private) follow the general analysis described above in determining whether or not private benefit is insubstantial, a fairly recent Tax Court case, *American Campaign Academy* v. *Commissioner,* 92 T.C. 1053 (1989) adopts a slightly different approach. In that case, the primary activity of American Campaign Academy ("ACA" or "the Academy") was the operation of a school to train people to work in political campaigns. The IRS denied ACA's application for exemption under section 501(c)(3), and ACA appealed the denial to the Tax Court. The Tax Court upheld the IRS's denial of ACA's application for exemption because ACA's activities conferred an impermissible private benefit on Republican candidates and entities.

The school operated by ACA was an "outgrowth" of programs the National Republican Congressional Committee ("NRCC") once sponsored to train candidates and to train campaign professionals for Republican campaigns. The Academy program, however, differed from its NRCC predecessor in that it limited its students to "campaign professionals." *Id.* at 1056. Without discussion, the IRS stated that the Academy did not train candidates, participate in any political campaign or attempt to influence legislation. *Id.* at 1056–57. The Academy did not use training materials developed by the NRCC, generally did not use NRCC faculty, and developed its own courses. *Id.* at 1057. Students were not explicitly required to be affiliated with any particular party, nor were they required to take positions with partisan organizations upon graduation. *Id.* at 1058.

The Academy had a number of direct and indirect connections to Republican organizations. The NRCC contributed furniture and computer hardware to the Academy. *Id.* at 1056. One of the Acad-

emy's three directors, Joseph Gaylord, was the Executive Director of the NRCC; another director, John McDonald, was a member of the Republican National Committee. *Id.* Jan Baran, General Counsel of the NRCC at the time of the Academy's application to IRS, incorporated the Academy. *Id.* at 1070. The National Republican Congressional Trust funded the Academy. *Id.* The Academy curriculum included studies of the "Growth of NRCC, etc." and "Why are people Republicans," but did not contain comparable studies pertaining to the Democratic or other political parties. *Id.* at 1070–71. People on the admissions panel were affiliated with the Republican Party. *Id.* at 1071. Furthermore, while the applicants were not required to declare a party affiliation on their application, the political references students were required to submit "often permit[ted] the admission panel to deduce the applicant's political affiliation." *Id.* Finally, the Court found that all but one of the Academy graduates who could be identified as later serving in political positions ended up serving Republican candidates or Republican organizations. *Id.* at 1060, 1071, 1072.

In light of these facts, the Tax Court upheld the IRS's denial of the Academy's application for exemption under section 501(c)(3) because the Academy "conducted its educational activities with the partisan objective of benefiting Republican candidates and entities." *Id.* at 1070. Any one of the facts listed in the previous paragraph did not alone support the IRS's finding or the court's holding that the Academy was organized for a non-exempt purpose. The IRS did not argue, and the court did not hold, for example, that individuals who are all members of the same political party are prohibited from operating a 501(c)(3) organization, or that an organization may not receive an exemption under section 501(c)(3) if a partisan organization funds it. Rather, the Tax Court focused on the purpose behind ACA's activities. In determining this, it drew "factual inferences" from the record to discern that purpose. Those inferences led to the court's conclusion that the Academy "targeted Republican entities and candidates to receive the secondary benefit through employing its alumni * * *." *Id.* at 1075.

The Tax Court's analysis distinguished between "primary" private benefit and "secondary" private benefit, and made clear that the latter can be a bar to section 501(c)(3) qualification. In this case, the students received the primary private benefit of the Academy, and this benefit was permissible and consistent with the Academy's educational purposes. The students' ultimate employers, Republican candidates and entities, received the secondary benefits of the Academy. "[W]here the training of individuals is focused on furthering a particular targeted private interest [e.g., Republican candidates and entities], the conferred secondary benefit ceases to be incidental to the providing organization's exempt purposes." *Id.* at 1074.

For the Academy to have prevailed, according to the Tax Court, it needed to demonstrate: (1) that the candidates and entities who received the benefit of trained campaigned workers possessed the characteristics of a "charitable class,"[93] and (2) that it did not dis-

[93] This part of the Tax Court's analysis in *American Campaign Academy* has been criticized by a few commentators, who have disagreed with the court's application of the "charitable class" doctrine in the context of an educational organization. See, e.g., Bruce R. Hopkins, Republican

tribute benefits among that class in a select manner. *Id.* at 1076. The Academy argued that Republican candidates and entities were "charitable" because the Republican party consists of millions of people with "like 'political sympathies'" and their activities benefited the community at large. *Id.* The Court ruled, however, that size alone does not transform a benefited class into a charitable class and that ACA had failed to demonstrate that political entities and candidates possessed the characteristics of a charitable class. *Id.* At 1077. Moreover, the Tax Court held that even if political candidates and entities could be found to constitute a "charitable class," ACA's benefits were distributed in a select manner to Republican candidates and entities. *Id.*

Finally, the Academy argued that although it hoped that alumni would work in Republican organizations or for Republican candidates, it had no control over whether they would do so. Absent an ability to control the students' employment, the Academy argued, it lacked the ability to confer secondary benefits to Republican candidates and entities. *Id.* at 1078. The Court found that there was no authority for the proposition that the organization must be able to control non-incidental benefits. Furthermore, the Court reiterated that the record supported the IRS's determination that the Academy was formed "with a substantial purpose to train campaign professionals for service in Republican entities and campaigns, an activity previously conducted by NRCC." *Id.* According to the Court, accepting the Academy's argument regarding its inability to control non-incidental benefits would "cloud the focus of the operational test, which probes to ascertain the purpose towards which an organization's activities are directed and not the nature of the activities themselves." *Id.* at 1078–79 (citing *B.S.W. Group* v. *Commissioner,* 70 T.C. 352, 356–57 (1978)). The Court noted that had the record demonstrated that "the Academy's activities were nonpartisan in nature and that its graduates were not intended to primarily benefit Republicans," the Court would have found for the Academy. *Id.* at 1079.

The *American Campaign Academy* case follows existing precedent. In reaching its decision, the court relies on *Better Business Bureau* and *Kentucky Bar Foundation,* among other cases, for the legal standards governing the private benefit prohibition. The court recognizes that the ACA's activities were intended to serve multiple purposes, including the education of students (the permissible primary benefit) and the provision of trained campaign professionals for candidates and entities (the secondary benefit). Finding the secondary benefit to be targeted to a select group—Republican candidates and entities—the court concludes that such benefit is more

---

Campaign School Held Not Tax Exempt, The Nonprofit Counsel, July 1989, at 3; Laura B. Chisolm, Politics and Charity: A Proposal for Peaceful Coexistence, 58 Geo. Wash. L. Rev. 308, 344 n.159 (1990).

Typically an educational organization is expected to serve a broad class representative of the public interest, but not a "charitable class" per se. The court's consideration of the question as to whether political candidates and entities could constitute a charitable class might be misplaced, but is not critical to its holding. As the court notes, "even were we to find political entities and candidates to generally comprise a charitable class, petitioner would bear the burden of proving that its activities benefited the members of the class in a nonselect manner." The court's finding that such benefits were conferred in a select manner—to Republican candidates and entities—was the basis for its holding that the organization served private purposes more than incidentally and, therefore, failed to qualify for exemption under section 501(c)(3).

than incidental and therefore precludes exemption under section 501(c)(3).

c. To Satisfy The Operational Test, An Organization Must Not Be An "Action" Organization

An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization. Treas. Reg. §1.501(c)(3)–1(c)(3). Such an organization cannot qualify for exemption under section 501(c)(3). Treas. Reg. §1.501(c)(3)–1(c)(3)(v). An organization is an action organization if:

> (i) It "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office;"
>
> (ii) a "substantial part" of its activities consists of "attempting to influence legislation by propaganda, or otherwise;" or
>
> (iii) its primary objective may be attained "only by legislation or a defeat of proposed legislation," and "it advocates, or campaigns for, the attainment" of such primary objective.

Treas. Reg. §1.501(c)(3)–1(c)(3).

(i) If an Organization Participates in a Political Campaign, It is an Action Organization Not Entitled to Exemption Under Section 501(c)(3)

Section 501(c)(3) provides that an organization is not entitled to exemption if it "participate[s] in, or intervene[s] in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office." The reason for this prohibition is clear. Contributions to section 501(c)(3) organizations are deductible for federal income tax purposes, but contributions to candidates and political action committees ("PACs") are not. The use of section 501(c)(3) organizations to support or oppose candidates or PACs would circumvent federal tax law by enabling candidates or PACs to attract tax-deductible contributions to finance their election activities. As the U.S. Court of Appeals for the Tenth Circuit explained, "[t]he limitations in Section 501(c)(3) stem from the congressional policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to * * * affect a political campaign should not be subsidized." *Christian Echoes National Ministry, Inc.* v. *United States,* 470 F.2d 849, 854 (1972), *cert. denied,* 419 U.S. 1107 (1975) (emphasis in original).

The prohibition on political campaign intervention was added to the Internal Revenue Code as a floor amendment to the 1954 Revenue Act offered by Senator Lyndon Johnson, who believed that a section 501(c)(3) organization was being used to help finance the campaign of an opponent. In introducing the amendment, Senator Johnson said that it was to "deny[] tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office." 100 Cong. Rec. 9604 (1954) (discussed in Bruce R. Hopkins, "The Law of Tax-Exempt Organizations," 327 (6th ed. 1992)). No congressional hearing was held on the subject and the conference report did not contain any analysis of the provision. Ju-

dith E. Kindell and John F. Reilly, "Election Year Issues," 1993 Exempt Organizations Continuing Professional Education Technical Instruction Program 400, 401 (hereinafter "IRS CPE Manual").[94]

Although the prohibition on political campaign intervention was not formally added to section 501(c)(3) until 1954, the concept that charities should not participate in political campaigns was not new. As the Second Circuit noted, "[t]his provision merely expressly stated what had always been understood to be the law. Political campaigns did not fit within any of the specified purposes listed in [Section 501(c)(3)]." *The Association of the Bar of the City of New York* v. *Commissioner,* 858 F.2d 876, 879 (2d Cir. 1988) (hereinafter "*New York Bar*") (quoting 9 Mertens, Law of Federal Income Taxation §34.05 at 22 (1983)).[95] Furthermore, congressional concerns that the government not subsidize political activity have existed since at least the time when Judge Learned Hand wrote "[p]olitical agitation * * * however innocent the aim * * * must be conducted without public subvention * * *." *Slee* v. *Commissioner,* 42 F.2d 184, 185 (2d Cir. 1930), quoted in *New York Bar,* 858 F.2d at 879.

In 1987, Congress amended section 501(c)(3) to clarify that the prohibition on political campaign activity applied to activities in opposition to, as well as on behalf of, any candidate for public office. Omnibus Budget Reconciliation Act, Pub. L. No. 100–203, §10711, 101 Stat. 1330, 1330–464 (1987). The House Report accompanying the bill stated that "[t]he prohibition on political campaign activities * * * reflect[s] congressional policies that the U.S. Treasury should be neutral in political affairs * * *." H.R. Rep. No. 100–391, at 1625 (1987); see also S. Rep. No. 91–552, at 46–49 (Tax Reform Act of 1969) (interpreting section 501(c)(3) to mean that "no degree of support for an individual's candidacy for public office is permitted").

The scope of the prohibition on political campaign intervention has been the subject of much discussion. While certain acts are clearly proscribed, others may be permissible or prohibited, depending on the purpose and effect of the activity. The regulations interpreting the prohibition add little to the statutory definition:

> Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Treas. Reg. §1.501(c)(3)–1(c)(3)(iii). Under this provision, a section 501(c)(3) organization is prohibited from making a written or oral endorsement of a candidate and from distributing partisan cam-

[94] The 1993 Exempt Organizations Continuing Professional Education (CPE) Technical Instruction Program text was prepared by the IRS Exempt Organizations Division for internal training purposes.

[95] Indeed, under the common law of charitable trusts—the genesis of modern day section 501(c)(3)—it was recognized that "a trust to promote the success of a particular political party is not charitable," for the reason that "there is no social interest in the underwriting of one or another of the political parties." Restatement (Second) of Trusts §374 (1959). The continued importance of the common law doctrine of "charitability" to the standards for exemption under section 501(c)(3) is reflected in the Supreme Court decision in *Bob Jones University* v. *United States,* 461 U.S. 574 (1983), in which the Supreme Court denied exemption to a private university that practiced racial discrimination, on the ground that racial discrimination was contrary to public policy and therefore inconsistent with the common law standards for charitability.

paign literature. IRS CPE Manual at 410. Following the enactment of section 527 of the Code in 1974 (governing the federal tax treatment of PACs), the prohibition also prevents section 501(c)(3) organizations from establishing or supporting a PAC. IRS CPE Manual at 437. (The application of the prohibition in this context is discussed further below.)

It is clear, however, that section 501(c)(3) organizations also may violate the prohibition by engaging in activity that falls short of a direct endorsement, and even may—on its face—appear neutral, if the purpose or effect of the activity is to support or oppose a candidate. The IRS CPE Manual describes a variety of situations in which section 501(c)(3) organizations may violate the prohibition without engaging in a direct candidate endorsement, including inviting a particular candidate to make an appearance at an organization event, holding candidate forums or distributing voter guides which evidence a bias for or against a candidate, and similar activities that may support or oppose a particular candidate. IRS CPE Manual at 419–424, 430–432. In a recent election year news release, the IRS reminded 501(c)(3) organizations of the breadth of the prohibition, stating not only that they cannot endorse candidates or distribute statements in support of or opposition to candidates, but also that they cannot "become involved in any other activities that may be beneficial or detrimental to any candidate." IRS News Release IR–96–23 (Apr. 24, 1996).

While it is easy for the IRS to determine whether the prohibition on political campaign intervention has been violated when a section 501(c)(3) organization endorses a candidate or distributes partisan campaign literature, it is more difficult to determine whether there is a violation if the activity at issue is not blatant or serves a nonpolitical purpose as well. The IRS relies on a "facts and circumstances" test in analyzing ambiguous behavior to determine whether there has been a violation. According to the IRS:

> [i]n situations where there is no explicit endorsement or partisan activity, there is no bright-line test for determining if the IRC 501(c)(3) organization participated or intervened in a political campaign. Instead, all the facts and circumstances must be considered.

IRS CPE Manual at 410.

Despite the lack of bright-line standards concerning all aspects of the prohibition, there is a substantial body of authority concerning what section 501(c)(3) organizations can and cannot do, and many section 501(c)(3) organizations have little difficulty applying existing precedents to develop internal guidelines for what activities are permissible and prohibited. For example, the Office of General Counsel of the United States Catholic Conference issued guidelines on political activities to Catholic organizations on February 14, 1996, in anticipation of the 1996 election season.[96] The guidelines outline the parameters of permissible activity, including unbi-

[96] Some churches assert that they have a First Amendment right to participate in political campaign activities where doing so furthers their religious beliefs. However, courts have ruled that tax exemption is a privilege and not a right, and that section 501(c)(3) does not prohibit churches from participating in political campaigns but merely provides that they will not be entitled to tax exemption if they do so. See, e.g., *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849 (10th Cir. 1972).

ased voter education, nonpartisan get-out-the-vote drives, and nonpartisan public forums. They also describe what activity is prohibited, including the endorsement of candidates, the distribution of campaign literature in support or opposition to candidates, and the provision of financial and in-kind support to candidates or PACs. With respect to the latter, the guidelines state flatly that:

> [A] Catholic organization may not provide financial support to any candidate, PAC, or political party. Likewise, it may not provide or solicit in-kind support, such as free or selective use of volunteers, paid staff, facilities, equipment, mailing lists, etc.

"Political Activity Guidelines for Catholic Organizations" (United States Catholic Conference, Office of the General Counsel, Washington, D.C.), Feb. 14, 1996, reprinted in Paul Streckfus' EO Tax Journal, November 1996 at 35, 42.

The generally accepted aspects of the campaign intervention prohibition, as well as some areas of uncertainty, are discussed below.

(a) The Prohibition Is "Absolute"

The prohibition on political campaign intervention or participation is "absolute." IRS CPE Manual at 416. Unlike the prohibition on lobbying, there is no requirement that political campaign participation or intervention be substantial. *New York Bar,* 858 F.2d at 881. It is, therefore, irrelevant that the majority, or even all but a small portion, of an organization's activities would, by themselves, support exemption under section 501(c)(3). *United States* v. *Dykema,* 666 F.2d 1096, 1101 (7th Cir. 1981); see also G.C.M. 39694 (Jan. 22, 1988) ("An organization described in section 501(c)(3) is precluded from engaging in any political campaign activities") and P.L.R. 9609007 (Dec. 6, 1995). ("For purposes of section 501(c)(3), intervention in a political campaign may be subtle or blatant. It may seem to be justified by the press of events. It may even be inadvertent. The law prohibits all forms of participation or intervention in 'any' political campaign.")[97]

Although the prohibition on political campaign intervention under section 501(c)(3) is absolute, Congress recognized that the sanction of loss of tax exemption could, in some cases, be disproportionate to the violation. In 1987, Congress added section 4955 to the Code, which imposes excise tax penalties on section 501(c)(3) organizations that make "political expenditures" in violation of the prohibition, as well as organization managers who knowingly approve such expenditures. The legislative history provides that the enactment of section 4955 was not intended to modify the absolute

[97] See also G.C.M. 38137 (Oct. 22, 1979): [T]he prohibition on political activity makes no reference to the intent of the organization. An organization can violate the proscription even if it acts for reasons other than intervening in a political campaign. For example, an organization that hires a political candidate to do commercials for its charity drive and runs the commercials frequently during the political campaign may have no interest in supporting the candidate's campaign. Nevertheless, its action would constitute, at least, indirect intervention or support of the political campaign.

However, the same G.C.M. goes on to say:

We do not mean to imply that every activity that has an effect on a political campaign is prohibited political activity. We recognize that organizations may inadvertently support political candidates. In these instances the organizations have not "intervened" or "participated" in political campaigns. A hospital that provides emergency health care for a candidate acts on behalf of the candidate during the election, but only inadvertently supports his campaign.

prohibition of section 501(c)(3), but to provide an alternative remedy that could be used by the IRS in cases where the penalty of revocation seems disproportionate to the violation:

> i.e., where the expenditure was unintentional and involved only a small amount and where the organization subsequently has adopted procedures to assure that similar expenditures would not be made in the future.

H.R. Rep. No. 100–391, at 1623–24 (1987).

The legislative history also provides that the excise tax may be imposed in cases involving significant, uncorrected violations of the prohibition, where revocation alone may be ineffective because the organization has ceased operations after diverting its assets to an improper purpose. In these cases, the excise tax penalty on organization managers may be the only effective way to penalize the violation. *Id*. at 1624–25.

The IRS has shown an inclination to impose the excise tax under section 4955 in lieu of revocation of exemption in cases where the violation appears to be minor in relation to the organization's other exempt purpose activities.[98] For example, P.L.R. 9609007 (Dec. 6, 1995) involved a section 501(c)(3) organization that sent out a fundraising letter linking the organization to issues raised in the particular campaigns. The IRS concluded that the letters evidenced a bias for one candidate over the other. The organization sought to defend itself by saying only a few of the letters were sent to the states whose elections were mentioned in the letters. The IRS rejected this defense, stating that:

> [I]t is common knowledge that in recent times the primary source of a candidate's support in such elections is often derived from out-of-state sources. Although a particular reader may not have been eligible to actually vote for the described candidate, he or she could have been charged by [the organization], in our view, to participate in the candidate's campaign through direct monetary or in-kind support, volunteerism, molding of public opinion, or the like.

Id. The IRS found that the organization violated the political campaign intervention prohibition and imposed an excise tax on the organization under section 4955; it did not, however, propose revocation of the organization's exemption under section 501(c)(3).

---

[98] Prior to the enactment of section 4955 in 1987, the IRS was reluctant to impose revocation in cases where the violation was not blatant and the organization had a record of otherwise charitable activities. For example, P.L.R. 8936002 (May 24, 1989) involved a section 501(c)(3) organization that engaged in voter education and issue advocacy relating to the 1984 Presidential election. Describing the case as "a very close call," the IRS "reluctantly" concluded that the organization's voter education activities did not constitute prohibited political campaign intervention, despite the use of "code words" that could be viewed as evidencing support for a particular candidate.

The IRS appeared unwilling to seek revocation with respect to the organization, probably because of its history of legitimate educational activities. Had section 4955 been in effect when the activity took place, the IRS would have had another enforcement alternative: it could have imposed excise tax penalties on the organization's expenditures for the activities it found so troublesome.

(b) Section 501(c)(3) Organizations May Not Establish or Support a PAC

Although organizations exempt from tax under some categories of section 501(c) are permitted to establish or support PACs,[99] those exempt under section 501(c)(3) are not. When section 527 (governing the tax treatment of PACs) was added to the Code in 1974, the legislative history provided that "this provision is not intended to affect in any way the prohibition against certain exempt organizations (*e.g.,* sec. 501(c)(3)) engaging in 'electioneering' * * *" S. Rep. No. 93–1357 (1974), *reprinted* in 1975–1 C.B. 517, 534. The regulations under section 527 reflect this congressional intent:

> Section 527(f) and this section do not sanction the intervention in any political campaign by an organization described in section 501(c) if such activity is inconsistent with its exempt status under section 501(c). For example, an organization described in section 501(c)(3) is precluded from engaging in any political campaign activities. The fact that section 527 imposes a tax on the exempt function income (as defined in section 1.527–2(c)) expenditures of section 501(c) organizations and permits such organizations to establish separate segregated funds to engage in campaign activities does not sanction the participation in these activities by section 501(c)(3) organizations.

Treas. Reg. §1.527–6(g).

Since the enactment of section 527 in 1974, it has been clear that a section 501(c)(3) organization will violate the prohibition on political campaign intervention by providing financial or nonfinancial support for a PAC. IRS CPE Manual at 438–40. While the use of a section 501(c)(3)'s facilities, personnel, or other financial resources for the benefit of a PAC is impermissible, the prohibition does not stop there. In its CPE Manual, the IRS also noted that "[a]n IRC 501(c)(3) organization's resources include intangible assets, such as its goodwill, that may not be used to support the political campaign activities of another organization." *Id.* at 440. Some leading practitioners have interpreted this provision to prohibit a charity from allowing its name to be used by a PAC, even if the charity provides no financial support or assistance; by allowing a PAC to use its name, the charity implies to its employees and to the public that it endorses the activity of the PAC. *See* Gregory L. Colvin *et al., Commentary on Internal Revenue Service 1993 Exempt Organizations Continuing Professional Education Technical Instruction Program Article on "Election Year Issues*," 11 Exempt Org. Tax Rev. 854, 871 (1995) [hereinafter "EO Comments"].

(c) "Express Advocacy" is Not Required, and Issue Advocacy is Prohibited if Used to Convey Support for or Opposition to a Candidate

An organization does not need to violate the "express advocacy" standard applied under federal election law for it to violate the po-

[99] For example, section 501(c)(4) and (6) organizations are permitted to establish and/or support PACs. If these exempt organizations provide support for PACs, they are subject to tax, under section 527, on the lesser of their net investment income or their "exempt function" income.

litical campaign prohibition of section 501(c)(3).[100] T.A.M. 8936002 (May 24, 1989). That is, it is not necessary to advocate the election or defeat of a clearly identified candidate to violate the prohibition. IRS CPE Manual at 412–13.

Moreover, an organization may violate the prohibition even if it does not identify a candidate by name. The IRS has stated that "issue advocacy" may serve as "the opportunity to intervene in a political campaign in a rather surreptitious manner" if a label or other coded language is used as a substitute for a reference to identifiable candidates. *Id.* at 411.

> The concern is that an IRC 501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate's name in its messages, such as "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," "Democrat," etc., coupled with a discussion of the candidacy or the election. When this occurs, it is quite evident what is happening—an intervention is taking place.

Id. 411–412. Furthermore:

> [a] finding of political campaign intervention from the use of coded words is consistent with the concept of "candidate"—the words are not tantamount to advocating support for or opposition to an entire political party, such as "Republican," or a vague and unidentifiably large group of candidates, such as "conservative" because the sender of the message does not intend the recipient to interpret them that way. Code words, in this context, are used with the intent of conjuring favorable or unfavorable images—they have pejorative or commendatory connotations.

Id. at 412 n. 6.

(d) Educational Activities May Constitute Participation or Intervention

As discussed above, the IRS considers activities that satisfy the "methodology test" to be "educational." Just as educational activities may result in impermissible private benefit, however, so too may they violate the prohibition on political campaign intervention. The IRS takes the position that "[a]ctivities that meet the methodology test * * * may nevertheless constitute participation or intervention in a political campaign." IRS CPE Manual at 415.

New York Bar, 858 F.2d 876 (2d Cir. 1988), referred to above, is the leading case on point. In that case, a bar association published ratings of judicial candidates. The ratings were distributed to bar members and law libraries. The Association also issued press releases regarding its ratings, but did not conduct publicity campaigns to announce its ratings. *Id.* at 877. The Second Circuit held

[100] The FEC's "express advocacy" standard came into being because the Supreme Court held a provision of the Federal Elections Campaign act relating to contributions "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *See* IRS CPE Manual at 412 (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 77 (1976)). Examples of "express advocacy" include "vote for," "elect," and "Smith for Congress" or "vote against," "defeat," and "reject." *Id.* at 413 (referring to 11 C.F.R. § 109.1(b)(2)).

that although the Association's publications were educational, the distribution of the publications constituted prohibited campaign intervention. By disseminating the educational publications with the hope that they would "'ensure' that candidates whom [the Association] consider[ed] to be 'legally and professionally unqualified'" would not be elected, the court held that the Association "indirectly" participated in a political campaign on behalf of or in opposition to a candidate for public office. *Id.* at 881.

An implication of the holding in *New York Bar* is that one must consider not only whether the activity itself, *e.g.*, publishing educational materials such as candidate ratings, violates the political campaign prohibition, but also whether the intended consequences of the activity violates the prohibition.[101] The need to consider the consequences of an otherwise educational activity is clear from a review of several IRS rulings finding that an organization violated the prohibition by disseminating material that was deemed educational, but nonetheless affected voter preferences in violation of the prohibition.

For example, in Rev. Rul. 67–71, 1967–1 C.B. 125, the IRS ruled that a 501(c)(3) organization created to improve the public educational system by engaging in campaigns on behalf of candidates for school board was not exempt. Every four years, when the school board was to be elected, the organization considered the qualification of the candidates and selected those it thought most qualified. The organization then "engage[d] in a campaign on their behalf by publicly announcing its slate of candidates and by publishing and distributing a complete biography of each." *Id.* Although the selection process "may have been completely objective and unbiased and was intended primarily to educate and inform the public about the candidates," the IRS nonetheless ruled it to be intervention or participation in a political campaign. *Id.*

In Rev. Rul. 76–456, 1976–2 C.B. 151, the IRS ruled that an organization formed for the purpose of elevating the morals and ethics of political campaigning was nevertheless intervening in a political campaign when it solicited candidates to sign a code of fair campaign practices and released the names of those candidates who signed and those candidates who refused to sign. The IRS stated that this was done to educate citizens about the election process and so that they could "participate more effectively in their selection of government officials." *Id.* at 152. Nonetheless, such activity, although educational, "may result * * * in influencing voter opinion" and thus constituted a prohibited participation or intervention in a political campaign. *Id.*

---

[101] *See also* T.A.M. 9635003 (Apr. 19, 1996). T.A.M. 9635003 involved a section 501(c)(3) organization that conducted "citizens' juries," a form of voter education in which a cross-section of citizens are selected to determine which issues are most relevant in the context of a particular campaign, to hear presentations by candidates on those issues, and to rate the candidates' positions on the issues. The section 501(c)(3) organization disseminated the citizen jury's report, including the candidate ratings. In its dissemination, the organization made it clear that it did not support or oppose any candidate, and that the views expressed were those of the citizen jurors and not the organization. The IRS found that the dissemination of the report constituted impermissible participation in a political campaign, and that all expenditures in connection with the conduct of the citizens' jury—and not just the expenditures of the dissemination—constituted "political expenditures" under section 4955: This culmination shows that all the activity of the organization leading up to the final report is intimately connected with and a part of the process to put on the [citizens' jury], and thus publication of the final report makes the entire process with respect to the [citizens' jury] a proscribed political activity.

(e) Nonpartisan Activities May Constitute Prohibited Political Campaign Participation

The IRS takes the position that the nonpartisan motivation for an organization's activities is "irrelevant when determining whether the political campaign prohibition" has been violated. IRS CPE Manual at 415. As support for this position, the IRS cites Rev. Rul. 76–456 and *New York Bar,* both of which are discussed above. In those cases, the court or the IRS found that the activities in question were nonpartisan, but nevertheless held that they constituted participation in a political campaign. As noted by the IRS in its CPE Manual, the court in *New York Bar* "made the rather wry observation [that] [a] candidate who receives a 'not qualified' rating will derive little comfort from the fact that the rating may have been made in a nonpartisan manner." IRS CPE Manual at 416. Similarly, in G.C.M. 35902 (July 15, 1974), the IRS stated:

> The provision in the Code prohibiting participation or intervention in "any political campaign" might conceivably be interpreted to refer only to participation or intervention with a partisan motive; but the provision does not say this. It seems more reasonable to construe it as referring to any statements made in direct relation to a political campaign which affect voter acceptance or rejection of a candidate * * *

(f) The IRS Has Found Violations of the Prohibition on Political Campaign Participation When an Activity Could Affect or Was Intended to Affect Voters' Preferences

As discussed above, the courts and the IRS have found prohibited political campaign intervention when the activity in question, although educational, affected or could reasonably be expected to affect voter preferences, even where the organization's motives in undertaking the activity were nonpartisan. G.C.M. 35902 is to similar effect. In that case, the IRS held that a public broadcasting station's nonpartisan educational motivation was irrelevant in determining whether its provision of free air time to candidates for elective office was permissible under section 501(c)(3). The IRS found that the station's procedures for providing air time, including an equal time doctrine for all candidates and an on-air disclaimer of support for any particular candidate, were sufficient to ensure that the activity would not constitute an impermissible political campaign intervention. The fact that the station's motivation was to educate the public and not to influence an election, however, was deemed to be irrelevant.

The cases and rulings cited above make it clear that simply having an educational or nonpartisan motive for engaging in prohibited political activity is not a defense to a finding of violation. The relevance and irrelevance of motive is sometimes misstated, however. While the absence of an improper political motivation is irrelevant, evidence showing the existence of a political motivation is relevant and one of the facts and circumstances that the IRS will consider in determining whether there is a violation. Indeed, the IRS has found the existence of evidence showing an intent to participate in a political campaign to be sufficient to support a finding

of violation, despite the lack of evidence that the activity achieved the intended results.

For example, in G.C.M. 39811 (Feb. 9, 1990), a religious organization encouraged its members to seek election to positions as precinct committee-persons in the Republican or Democratic Party structures. Although none of the organization's members actually ran for such positions, the IRS found that urging its members to become involved in the local party organizations was part of the organization's larger plans to "someday control the political parties."

> The first step in the Foundation's long-term strategy was to encourage members to be elected as precinct committeemen. These individuals could then exert influence within the party apparatus, beginning with the county central committee. Precinct committeemen could sway the precinct caucuses, a step in the selection of delegates to the party's presidential nominating convention. * * * Intervention at this early stage in the elective process in order to influence political parties to nominate such candidates is, we believe, sufficient to constitute intervention in a political campaign.

Id. The IRS went on to say:

> In its discussion of the Tax Court opinion [in *New York Bar*], the [Second Circuit] observed that the ratings of candidates were "published with the hope that they will have an impact on the voter." The effort, and not the effect, constituted intervention in a political campaign. Therefore, whether anyone heeded the call to run for precinct committee, whether that individual was elected, and if so, what he or she subsequently did are all immaterial.

Id.

In G.C.M. 39811, the IRS did not contend that the organization's urging of members to run for office alone constituted the violation. Rather, the organization's "long-term strategy" of seeking to influence the political parties' nomination of candidates by having its members elected to office, and its urging of members to run for office so as to carry out that strategy, were sufficient to support a finding of impermissible campaign participation, despite the fact that the effort was not successful.

Other cases and rulings have also looked to an organization's intent as an important element of a finding of prohibited participation or intervention. In 1972, a court held that an organization violated the participation or intervention prohibition when it "used its publications and broadcasts to attack candidates and incumbents who were considered too liberal." *Christian Echoes National Ministry, Inc.* v. *United States,* 470 F.2d 849, 856 (10th Cir. 1972). The court did not discuss whether the activities actually influenced voters or were reasonably likely to do so. Rather, it concluded that the organization's "attempts to elect or defeat certain political leaders reflected [the organization's] objective to change the composition of the federal government." *Id.*

The IRS also found an organization's intent relevant in P.L.R. 9117001 (Sept. 5, 1990). As described in that ruling, an organiza-

tion mailed out material indicating that it was intending to help educate conservatives on the importance of voting in the 1984 general election. According to facts stated in the ruling letter, the material contained language "intended" to induce conservative voters to vote for President Reagan, even though his name was not included in the materials. The IRS thus concluded that "the material was targeted to influence a segment of voters to vote for President Reagan." *Id.*

Based on the above, the IRS position is that an organization can violate the political campaign prohibition by either: (a) conducting activities that could have the effect of influencing voter acceptance or rejection of a candidate or group of candidates (the "effect" standard), or (b) engaging in activities that are intended to influence voter acceptance or rejection of a candidate or group of candidates, whether they do so or not (the "effort" standard). Most of the uncertainty over the scope of the prohibition on political campaign intervention relates to the "effect" standard—the possibility that an organization may, without intending to do so, engage in an activity that could have the effect of influencing voter acceptance of a candidate and, as a result, place its tax exemption in jeopardy and/or risk incurring excise tax penalties under section 4955. The legislative history of section 4955 makes it clear that an inadvertent action may indeed violate section 501(c)(3), and suggests that the IRS may appropriately apply the excise tax penalty rather than revocation as a sanction in such situations. Nevertheless, some practitioners have expressed the view that, in interpreting whether ambiguous behavior is violative of the campaign intervention prohibition, primary reliance should be placed on whether there was a political purpose to the behavior at issue. *See* EO Comments at 856–57. In other words, "to violate the 501(c)(3) prohibition, the organization's actions have to include an intentional 'tilt' for or against one or more people running for public office." *Id.* at 857. In this regard, it was noted that:

> In most cases, the presence of a political purpose will be clear from the charity's paper trail, because organizational activities in the political arena are usually accompanied by assertive behavior, much internal discussion, and explicit written communications. * * *

Id.

To date, the IRS has shown no intention to abandon its position that an organization may violate the prohibition against political campaign intervention based on the unintended or inadvertent effect of its actions, as well as by an engaging in activities with "an intentional tilt" in favor of a candidate or in support of a PAC. Indeed, its recent election year warning to section 501(c)(3) organizations not to "become involved in any other activities that may be beneficial or detrimental to any candidate" (discussed above) evidences an apparent intention to adhere to a broad interpretation of the prohibition. IRS News Release IR–96–23 (Apr. 24, 1996).

(ii) If a Substantial Part of an Organization's Activities is Attempting to Influence Legislation, or its Primary Goal can only be Accomplished through Legislation, it is an "Action" Organization

Section 501(c)(3) provides that an organization cannot be tax-exempt if a "substantial part" of its activities is "carrying on propaganda, or otherwise attempting, to influence legislation." Although there is virtually no legislative history on the prohibition, courts have declared that the limitations in section 501(c)(3) "stem from the policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to influence legislation should not be subsidized." *Haswell* v. *United States,* 500 F.2d 1133, 1140 (Ct. Cl. 1974), *cert. denied,* 419 U.S. 1107 (1975). (The court also noted that "[t]ax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." *Id.*)

The Regulations provide that an organization is an "action" organization if "a substantial part of its activities is attempting to influence legislation by propaganda or otherwise." Treas. Reg. § 1.501(c)(3)–1(c)(3)(ii). The Regulations also provide that an organization is an "action" organization if it has the following two characteristics:

> (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objective) may be attained only by legislation or a defeat of proposed legislation; and
>
> (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

Treas. Reg. § 1.501(c)(3)–1(c)(3)(iv).

To determine whether a substantial part of an organization's activities is attempting to influence legislation, two alternative tests exist. Each test contains its own definition of "legislation" and what constitutes an attempt to influence legislation. The two tests also contain different ways of determining substantiality. One test is referred to as the "substantial-part test." The other test, referred to as the "expenditure test,"[102] was added to tax law in 1976 at sections 501(h) and 4911 as a result of uncertainty over the meaning of the word "substantial."

The "expenditure test" sets forth specific, dollar levels of permissible lobbying expenditures. Section 501(h) did not amend section 501(c)(3), but rather provided charitable organizations an alternative to the vague "substantial-part" limitations of section 501(c)(3). A charitable organization may elect the "expenditure test" as a substitute for the substantial-part test. A public charity that does not elect the expenditure test remains subject to the sub-

[102] As stated in the legislative history with respect to I.R.C. § 501(h): "The language of the lobbying provision was first enacted in 1934. Since that time neither Treasury regulations nor court decisions gave enough detailed meaning to the statutory language to permit most charitable organizations to know approximately where the limits were between what was permitted by the statute and what was forbidden by it. This vagueness was, in large part, a function of the uncertainty in the meaning of the terms 'substantial part' and 'activities'. * * * Many believed that the standards as to the permissible level of activities under prior law was too vague and thereby tended to encourage subjective and selective enforcement."

stantial part test. Treas. Reg. § 1.501(h)–1(a)(4). Joint Committee in its General Explanation of the Tax Reform Act of 1976, 1976–3 C.B. (Vol. 2) 419.

The substantial-part test is applied without regard to the provisions of section 501(h). The law, regulations and rulings regarding the expenditure test may not be used to interpret the law, regulations and rulings of the substantial-part test. Section 501(h)(7) ("nothing [in section 501(h)] shall be construed to affect the interpretation of the phrase 'no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation,' under [section 501(c)(3)]").

Determining whether an organization violated the lobbying limitation requires an understanding of what constitutes: i. "legislation;" ii. an attempt to "influence" legislation; and iii. a "substantial" part of an organization's activities. It is also necessary to understand the circumstances under which an organization's "objectives can be achieved only through the passage of legislation."

(a) Definition of "Legislation"

The Regulations define "legislation" to include "action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." Treas. Reg. § 501(c)(3)–1(c)(3)(ii). "Action by the Congress" includes the "introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items." G.C.M. 39694 (Jan. 22, 1988). This definition does not include Executive Branch actions, or actions of independent agencies. P.L.R. 6205116290A (May 11, 1962). Requesting executive bodies to support or oppose legislation, however, is prohibited. The IRS does not recognize a distinction between "good" legislation and "bad" legislation. For example, in Rev. Rul. 67–293, 1967–2 C.B. 185, the IRS ruled that an organization substantially engaged in promoting legislation to protect animals was not exempt even though the legislation would have benefited the community.

(b) Definition of "attempting to influence legislation"

Under the Regulations, an organization will be regarded as "attempting to influence legislation" if it:

> (a) contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation (Treas. Reg. § 1.501(c)(3)–1(c)(3)(ii)(a)) (referred to as "direct lobbying");
>
> (b) urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation (*id.*) (referred to as "grassroots lobbying"); or
>
> (c) advocates the adoption or rejection of legislation (Treas. Reg. § 1.501(c)(3)–1(c)(3)(ii)(b)).

Section 4945(e) of the Internal Revenue Code provides additional guidance regarding the meaning of "attempting to influence legisla-

tion."[103] According to that provision, a taxable expenditure includes any amount paid or incurred for:

> (a) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and
>
> (b) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a government body or to a committee or other subdivision thereof in response to a written request by such body or subdivision . * * *) other than through making available the results of nonpartisan analysis, study, or research.

Treas. Reg. § 53.4945–2(d)(4), which is applicable to non-electing public charities,[104] discusses "nonpartisan analysis, study, or research" as follows:

> Examinations and discussions of broad social, economic, and similar problems are [not lobbying communications] even if the problems are of the type with which government would be expected to deal ultimately * * * For example, [an organization may discuss] problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.[105]

Even if specific legislation is not mentioned, however, an indirect campaign to "mold public opinion" may violate the legislative lobbying prohibition. In *Christian Echoes National Ministry, Inc.* v. *United States,* 470 F.2d 849 (10th Cir. 1972), the organization in question produced religious radio and television broadcasts, distributed publications, and engaged "in evangelistic campaigns and meetings for the promotion of the social and spiritual welfare of the community, state and nation." *Id.* at 852. The court found the publications attempted to influence legislation "by appeals to the public to react to certain issues." *Id.* at 855.[106]

---

[103] I.R.C. §§ 4945(d) and (e) contain definitions of "attempting to influence legislation" with respect to taxable expenditures by private foundations, not public charities. However, "[a]ctivities which constitute an attempt to influence legislation under Code § 4945 * * * also constitute an attempt to influence legislation under Code § 501(c)(3)." G.C.M. 36127 (Jan. 2, 1975). Congress viewed section 4945(e) as a clarification of the phrase "attempting to influence legislation" in tax-exempt law generally, not just with respect to private foundations. *Id.*

[104] See G.C.M. 36127 (Jan. 2, 1975) and *Haswell* v. *United States,* 500 F.2d 1133 (Ct. Cl. 1974).

[105] See also G.C.M. 36127 (Jan. 2, 1975).

[106] For example, the publications urged its readers to: "write their Congressmen in order to influence the political decisions in Washington;" "work in politics at the precinct level;" "maintain the McCarran-Walter Immigration law;" "reduce the federal payroll by discharging needless jobholders, stop waste of public funds and balance the budget;" "stop federal aid to education, socialized medicine and public housing;" "abolish the federal income tax;" and "withdraw from the United Nations." *Christian Echoes National Ministry,* 470 F.2d at 855. In light of these facts, the court upheld the IRS position that the organization failed to qualify as a 501(c)(3) organization.

Under the expenditure test, "grassroots lobbying" is "any attempt to influence legislation through an attempt to affect the opinions of the general public or any segment thereof." Treas. Reg. § 56.4911–2(b)(2)(i). Such a communication will be considered grassroots lobbying if it: (a) refers to specific legislation, (b) reflects a view on such legislation, (c) [e]ncourages the recipient to take action with respect to such legislation.

Treas Reg. § 56.4911–2(b)(2)(ii).[107]

(c) Definition of "Substantial"

A bright-line test for determining when a "substantial" part of an organization's activities are devoted to influencing legislation does not exist. Neither the regulations nor case law provide useful guidance as to whether the determination must be based on activity or expenditures or both. In *Seasongood* v. *Commissioner,* 227 F.2d 907 (6th Cir. 1955), the court held that attempts to influence legislation that constituted less than five percent of total activities were not substantial. The percentage test of *Seasongood* was, however, explicitly rejected in *Christian Echoes National Ministry, Inc.*

> The political [i.e. legislative] activities of an organization must be balanced in the context of the objects and circumstances of the organization to determine whether a substantial part of its activities was to influence legislation. (citations omitted.) A percentage test to determine whether the activities were substantial obscures the complexity of balancing the organization's activities in relation to its objects and circumstances.

Id. at 855. Yet in *Haswell* v. *United States,* 500 F.2d 1133, 1145 (Ct. Cl. 1974), the court determined that while a percentage test is not the only measure of substantiality, it was a strong indication that the organization's purposes were no longer consistent with charity. In that case, the court concluded that approximately 20 percent of the organization's total expenditures were attributable to attempts to influence legislation, and they were found to be substantial. *Id.* at 1146.

The IRS has characterized the ambiguity over the meaning of "substantial" as a "problem [that] does not lend itself to ready numerical boundaries." G.C.M. 36148 (January 28, 1975). In attempting to give some guidance on the subject, however, the IRS said:

> [t]he percentage of the budget dedicated to a given activity is only one type of evidence of substantiality. Others are the amount of volunteer time devoted to the activity, the amount of publicity the organization assigns to the activity, and the continuous or intermittent nature of the organization's attention to it.

[107] The IRS has also concluded that an organization formed to "facilitate" the inauguration of a state's governor-elect and the "orderly transition of power from one political party to another by legislative and personnel studies" violated the prohibition on attempting to influence legislation. G.C.M. 35473 (Sept. 10, 1973). The IRS "saw no logical way to avoid concluding that [the organization's] active advocacy of a proposed legislative program requires it to be [classified as an action organization. * * *]" *See also* Rev. Rul. 74–117, 1974–1 C.B. 128.

(d) Circumstances under which an organization's "objectives can be achieved only through the passage of legislation"

The Regulations require that when determining whether an organization's objectives can be achieved only through the passage of legislation that "all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered." Treas. Reg. §1.501(c)(3)–1(c)(3)(iv). There is little additional IRS or court guidance on the subject. In one of the few comments on this section of the Regulations, the IRS said in G.C.M. 33617 (Sep. 12, 1967) that an organization that was "an active advocate of a political doctrine" was an action organization because its objectives could only be attained by legislation. In its publications, the organization stated that its objectives included:

> the mobilization of public opinion; resisting every attempt by law or the administration of law which widens the breach in the wall of [redacted by IRS] working for repeal of any existing state law which sanctions the granting of public aid to [redacted by IRS]; and uniting all 'patriotic' citizens in a concerted effort to prevent the passage of any federal law [redacted by IRS]. * * *"
>
> By advocating its position to others, thereby attempting to secure general acceptance of its beliefs; by engaging in general legislative activities to implement its views; by urging the enactment or defeat of proposed legislation which was inimical to its principles: the organization ceased to function exclusively in the educator's role of informant in that its advocacy was not merely to increase the knowledge of the organization's audience, but was to secure acceptance of, and action on, the organization's views concerning legislative proposals, thereby encroaching upon the proscribed legislative area.

In Rev. Rul. 62–71, 1962–1 C.B. 85, an organization was formed "for the purpose of supporting an educational program for the stimulation of interest in the study of the science of economics or political economy, particularly with reference to a specified doctrine or theory." It conducted research, made surveys on economic conditions available, moderated discussion groups and published books and pamphlets. The research activities were principally concerned with determining the effect various real estate taxation methods would have on land values with reference to the "single tax theory of taxation." "It [was] the announced policy of the organization to promote its philosophy by educational methods as well as by the encouragement of political action." *Id.* The tax theory advocated in the publications, although educational within the meaning of section 501(c)(3), could be put into effect only by legislative action. Without further elaboration of the facts involved or how the theory could only be put into effect through legislative action, the IRS ruled the organization was an action organization, and thus not operated exclusively for an exempt purpose.

In G.C.M. 37247 (Sept. 8, 1977), the IRS discussed whether a organization whose guiding doctrine was to propagate a "nontheistic, ethical doctrine" of volunteerism could be considered a 501(c)(3) or-

ganization. The "ultimate goal" of the guiding doctrine was "freedom from governmental and societal control." According to the IRS:

> [t]his objective can obviously only be attained legally through legislation, including constitutional amendments, or illegally through revolution. If [the organization] should advocate illegal activities, then it is not charitable; if it advocates legal attainment of its doctrine's goal through legislation, then it is an action organization.

The IRS did not conclude that organization was an action organization, only that there was such a possibility and further investigation was warranted. Research has not uncovered further information about this case.

d. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Inurement" Prohibition

To qualify for tax-exempt status, section 501(c)(3) provides that an organization must be organized and operated so that "no part of [its] net earnings * * * inures to the benefit of any private shareholder or individual." The Regulations add little clarification to this provision other than saying that "[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals." Treas. Reg. §1.501(c)(3)–1(c)(2).

Although the private benefit and private inurement prohibitions share common and often overlapping elements, the two are distinct requirements which must be independently satisfied. *American Campaign Academy,* 92 T.C. at 1068. The private inurement prohibition may be "subsumed" within the private benefit analysis, but the reverse is not true. "[W]hen the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred." *Id.* at 1069. It should be noted that the private inurement prohibition pertains to net earnings of an organization, while the private benefit prohibition can apply to benefits other than those that have monetary value. Furthermore, unlike with the private benefit prohibition, the prohibition on private inurement is absolute. "There is no de minimis exception to the inurement prohibition." G.C.M. 39862 (Nov. 22, 1991).

The IRS has described "private shareholders or individuals" as "persons who, because of their particular relationship with an organization, have an opportunity to control or influence its activities." *Id.* "[I]t is generally accepted that persons other than employees or directors may be in a position to exercise the control over an organization to make that person an insider for inurement purposes." Hill, F. and Kirschten, B., *Federal and State Taxation of Exempt Organizations* 2–85 (1994). "The inurement prohibition serves to prevent anyone in a position to do so from siphoning off any of a charity's income or assets for personal use." G.C.M. 39862 (Nov. 22, 1991). Furthermore, the IRS has stated that:

> [I]nurement is likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individual's

> relationship with the organization, and without regard to accomplishing exempt purposes.

G.C.M. 38459 (July 31, 1980). *Also* IRS Exempt Organizations Handbook (IRM 7751) §381.1(4) ("The prohibition of inurement in its simplest terms, means that a private shareholder or individual cannot pocket the organization's funds except as reasonable payment for goods or services"); and Hopkins, *supra*, at 267 (Proscribed private inurement "involves a transaction or series of transactions, such as unreasonable compensation, unreasonable rental charges, unreasonable borrowing arrangements, or deferred or retained interests in the organization's assets").