

BY HAND-DELIVERY

November 16, 2011

The Honorable Jo Bonner
Chairman
The Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515

The Honorable Linda T. Sanchez
Ranking Member
The Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515

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COMMITTEE ON ETHICS

RE: Response to the Office of Congressional Ethics' Report Concerning Review No. 11-6736

Dear Chairman Bonner and Ranking Member Sanchez:

I appreciate the opportunity to respond to the Report regarding Review No. 11-6736 ("Report") of the Office of Congressional Ethics ("OCE"), adopted September 27, 2011.

Since this matter came to my attention, I have repeatedly expressed my dismay at the allegations that now have been referred by OCE to the Committee on Ethics ("Committee"). In the strongest possible terms, I deny the allegations made by Winsome Packer (the "complainant") and am deeply saddened and frustrated that this inquiry has progressed to this point. I have cooperated fully with every investigative body that has reviewed the complainant's allegations because I have nothing to hide. While I have stated it many times, it bears repeating: the complainant's accusations that I sexually harassed her are absolutely false. I never have had a romantic or sexual interest in the complainant, nor did I ever express or otherwise intimate that I had any such interest in her; and her suggestions to the contrary are, to be blunt, fictitious. I am extremely disappointed that OCE now has referred this matter for further review despite the ample evidence contradicting the complainant's spurious allegations.

As disheartening as the baseless allegations made by the complainant, however, is the manner in which OCE investigated the matter and decided that a referral was appropriate. OCE justifies its referral by noting that four witnesses apparently declined to submit to an interview, but gives short shrift to the fact that most, if not all, of the witnesses were interviewed previously by an independent body investigating the complainant's allegations and that two of the four witnesses are involved in parallel litigation concerning these allegations – one as a defendant and the other as General Counsel for a defendant. Nor does OCE acknowledge that, during its investigation, it failed even to attempt to interview certain key witnesses. For example, OCE's so-called "findings" reference Alex Johnson no fewer than nine times, but nowhere does OCE suggest that it called Mr. Johnson for an interview. OCE failed to contact Mr. Johnson, a witness that the complainant herself identified as having observed, first-hand, essential elements of her story – yet credits the testimony of an unnamed "FBI agent" who, in a classic example of

unreliable hearsay, merely heard the complainant's biased re-telling of events that only she maintains occurred. And if that were not enough, the Report fails to note the multitude of inconsistencies in the complainant's narratives, and the many instances in which her allegations were contradicted by unbiased third parties. To be blunt, OCE conducted a shoddy investigation, and now I am left to pay the price for its lack of diligence and poor investigative techniques.

I urge the Committee to dismiss this matter because, despite having almost five months to perform its investigation, OCE was unable to develop *any* evidence that substantiates the complainant's allegations of harassment and retaliation. To the contrary, the Report is rife with evidence that contradicts the complainant's claims. OCE did not give proper consideration to this evidence, nor did it faithfully perform its duties to examine critically the available evidence. If the Committee reviews the information that was before OCE, I am confident that it will conclude that the record is sufficient to dismiss the matter. Indeed, other House entities, including the Office of House Employment Counsel ("OHEC") and the Office of the House General Counsel, already have reviewed the complainant's allegations and concluded that they are meritless. Indeed, in a communication to the U.S. Department of Justice, OHEC and the House General Counsel wrote that the complainant "grossly distorts the events and circumstances in order to support the fiction that she experienced unlawful sexual harassment and retaliation. . . . We do not believe that [the complainant] experienced sexual harassment." (Report, Exhibit 15, at 11-6736_0103.) They continued: "[W]hile some of [the complainant's] allegations begin with a kernel of truth, when looked at in context, [the complainant] grossly distorts the events and circumstances in order to support a fiction that she experienced unlawful sexual harassment and retaliation." (Report, Exhibit 15, at 11-6736-0103.) On the record already developed by OCE, the Committee has before it the evidence to conclude, as others before it have, that the complainant's charges lack credibility.

Further, as described in more detail below, OCE abandoned the standard requiring a finding that there is "substantial reason to believe the allegations" before referring a matter to the Committee. (OCE Rule 9(A).) Rather, it has referred the matter on the far lesser showing of probable cause, and on the tenuous ground that it had to do so because certain information apparently was unavailable to it. In truth, no credible evidence supports the complainant's story, and several unbiased sources completely undermine it. Based on the record that OCE advances, not only is there no "substantial reason to believe the allegations," there also is no probable cause. For this additional reason, I urge the Committee to dismiss the referral.

I. OCE Abandoned The Standard Requiring "Substantial Reason" To Believe That Wrongdoing Has Occurred And Referred The Matter To The Committee On A Far Lesser Showing.

Typically, OCE makes a referral to the Committee if it finds that there is "*substantial reason* to believe the allegations." OCE Rule 9(A). They failed to do so in this case. Despite having almost five months to consider the matter, OCE did not find substantial reason to believe the allegations. Instead, its referral cites the lower "*probable cause* to believe" standard, which allows OCE to refer a matter to the Committee only in the event that OCE is "unable to obtain information necessary to reach th[e] determination" that "there is a substantial reason to believe

the allegations.” (OCE Rule 9(A).) And, as discussed in more detail below, even OCE’s application of this lower “probable cause” standard is riddled with error.

As an initial matter, it bears emphasis that OCE did *not* find substantial reason to believe the complainant’s allegations, notwithstanding that it interviewed her for over three hours and reviewed all of the documents and evidence she submitted. The “substantial reason” standard is not difficult to meet. Under OCE’s Rules, “[a] substantial reason to believe exists where there is such relevant evidence a reasonable mind *might accept as adequate* to support a conclusion.” (OCE Rule 9(A) (emphasis added).) By relying on the lower “probable cause” standard, the Report makes clear that the complainant’s own testimony and evidence do not allow a reasonable person to conclude that her allegations are true. OCE nevertheless recommends further review, and the Report provides three reasons to support OCE’s use of the lower standard: *first*, that “the refusal of key witnesses to cooperate *may* have left it without a complete and accurate factual record of the interactions between [the complainant] and Representative Hastings” (Report ¶ 3 (emphasis added)); *second*, that “some of [the complainant’s] allegations [were] corroborated by other evidence” (Report ¶ 4); and *third*, “in view of the seriousness of the allegations.” (Report ¶ 4.) None of these reasons permit the referral, and OCE has completely misapplied the provision that allows it to refer a matter on the basis of probable cause alone.

First, the Rules do not permit OCE to refer a matter merely because it believes that the Committee may be able to produce a more “complete and accurate factual record.” (Report ¶ 3.) If that were an appropriate standard for referral, every matter investigated by OCE would warrant referral for the simple reason that the Committee’s process allows it to obtain more information than OCE. Instead, in order to refer a matter for further review based on the lower probable cause standard, OCE Rule 9(A) requires that OCE identify information that is both (a) unobtainable by OCE and (b) “necessary to reach th[e] determination” that “there is a substantial reason to believe the allegations.” (OCE Rule 9(A).) As explained below, OCE did not, and cannot, satisfy the second requirement.

With respect to the refusal of key witnesses to cooperate, the Report identifies four non-cooperating witnesses. (Report ¶ 15.) But the Report does not even purport to explain how the testimony of the four witnesses identified as non-cooperating was necessary to a determination that there exists a substantial reason to believe the complainant’s allegations. Indeed, no one maintains that these four witnesses would corroborate the complainant’s story. To the contrary, most, if not all, of these witnesses (and several others) were interviewed by OHEC when it “investigated the substantive allegations [the complainant] presented.” (Report, Exhibit 15, at 11-6736_0102.) Based upon its review, OHEC concluded that “[the complainant] did not experience conduct that rises to the level of sexual harassment.” (Report, Exhibit 15, at 11-6736_0103.) Importantly, OHEC also noted that its investigation, including its interview of these witnesses, did not “result[] in the identification of any witness who corroborates [the complainant’s] substantive allegations that she experienced legally-actionable harassing or retaliatory conduct.” (Report, Exhibit 15, at 11-6736_0103.) Moreover, all four of the allegedly non-cooperating witnesses are employees of the U.S. Commission on Security and Cooperation in Europe (“Commission”), which is a co-defendant along with Fred Turner and me in the civil lawsuit filed by the complainant. The Commission, following its own investigation of her

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claims, filed an Answer in the lawsuit. Although the Report does not even mention the Commission's Answer (even though it was available to OCB), that document is replete with denials of various allegations in the complaint. (Answer of Defendant Commission on Security and Cooperation in Europe to Plaintiff's Complaint for Declaratory and Monetary Relief and Jury Demand, *Packer v. U.S. Commission on Security and Cooperation in Europe, et al.*, (D.D.C., 2011) (No. 1:11-cv-00485).) Accordingly, by every indication, the testimony of these four witnesses would contradict rather than support the complainant's substantive allegations.

Of course, OCB never actually claims that the testimony of these witnesses would support the complainant's allegations. Instead, OCB uses these witnesses' refusal to be interviewed yet again by another House authority to draw a negative inference against me. But that negative inference is both illogical and unjust. It is illogical for the reasons already noted — an adverse inference only makes sense where there is a reasonable basis to conclude that the testimony being withheld would support the complainant's position, and here it plainly does not do so. It is unjust because I have cooperated fully with OCE's investigation¹ — supplying documents in response to its overbroad requests and agreeing to be interviewed — and never have discouraged anyone from submitting to OCE's request for an interview. Yet, for reasons that are beyond my control and because of actions taken by others, OCE has drawn a negative inference against me, with no consideration of the fairness or appropriateness of such an action. Federal courts reject the use of a negative inference where, as here, the party against whom the inference is to be drawn does not control the non-cooperating witness. *See, e.g., U.S. ex rel Hockett v. Columbia/HCA Healthcare Corp.*, 498 F. Supp. 2d 25, 61 n.25 (D.D.C. 2007). Yet, OCE unapologetically embraces such a practice.

Although OCE is indeed permitted under Rule 6 to draw such a negative inference against a non-cooperating witness, the Rules do not permit OCE to find—as it did here—that other witnesses' non-cooperation is grounds to make a negative inference against me. In short, what OCE ultimately has done is to conflate Rule 9(A), which allows for a referral to the Committee where OCE identifies information that it was unable to obtain and that is necessary to a finding that the allegations were adequately proven, with Rule 6, which permits OCE to draw a negative inference against a non-cooperating witness. Under Rule 9(A), OCE is not permitted to

¹ I cooperated fully with OCE throughout the course of its investigation despite my deep reservation that OCE's process undermined my ability to properly defend the civil lawsuit filed by the complainant. Indeed, at the start of OCE's review, my litigation counsel wrote to OCE regarding our concern that its parallel investigation would impair my ability to mount a proper defense to the litigation. (See Letter from Tonya Robinson to Paul J. Solis, Investigative Counsel, Office of Congressional Ethics, May 13, 2011, attached hereto as Exhibit A.) To prevent any prejudice to my defense, we requested that OCE stay its investigation until the conclusion of the judicial action. OCE declined to stay its investigation. Notwithstanding the concerns regarding my defense of the civil action, I participated in an extensive in-person interview with OCE and produced numerous documents to assist their investigation. I did so both because I have nothing to hide and because OCE's investigation placed me in the untenable position of being forced to respond on the record in this investigation or be subjected to the negative inference with which OCE repeatedly threatened me and others. It should also be noted that OCE's statement (Report ¶ 92) that I did not submit the False Statements Act certification form is misleading, since I expressly included in my September 23, 2011 submission to OCE an acknowledgment that I understand that 18 U.S.C. § 1001 applies to my statement. (Letter from Alee L. Hastings to Paul J. Solis, Investigative Counsel, Office of Congressional Ethics, September 23, 2011, attached hereto as Exhibit B.)

make a referral on the basis of a negative inference against witnesses other than me. Rather, it was required to consider whether the testimony it believed was unobtainable was necessary to determine that there is a substantial reason to believe the complainant's allegations. If Rule 9(A) were as OCB suggests, any complainant could manipulate the process badly by naming a number of supposed witnesses whom he/she also encourages to decline to cooperate with OCB; under OCB's apparent view of the Rule, a referral to the Committee would be guaranteed, and only the Member under investigation would be penalized for the non-cooperating witnesses' lack of cooperation. Of course, in this case, all indications suggest that the testimony of the so-called "non-cooperating witnesses" would support my position; yet, here too, OCB uses events entirely out of my control to make determinations against me and guarantee a referral. It is patently unfair to penalize me for the conduct of others.²

Lastly, OCB's reliance on the refusal of four witnesses to cooperate is particularly troublesome in light of the fact that OCB did not even attempt to meet with numerous witnesses identified by the complainant during her interview or in her civil complaint. *See* Report, Exhibit 8. For example, OCB failed to interview Alex Johnson (Complaint ¶¶ 28, 29, 36, 47, 55), Janice Helwig (Complaint ¶ 28), Edward Joseph (Complaint ¶ 48), Orest Deychakiwsky (Complaint ¶ 55), Carol Fuller (Complaint at ¶ 56), Sam Lauechly (Report, Exhibit 1, at 11-6736_0006), and Anna Chernova (Report, Exhibit 1, at 11-6736_0009)—all of whom were known to OCB. In light of the significance placed on the existence of so-called non-cooperating witnesses, one would assume that OCB, in the interest of fairness, would have attempted to interview the relevant witnesses. It did not.

Second, OCB maintains that its referral is justified because "some of [the complainant's] allegations [were] corroborated by other evidence." (Report ¶ 4.) As I explain in greater detail below, *none* of the complainant's substantive allegations have been corroborated, and most have been shown to be spurious. That said, it is not at all clear that OCB is even referring to actionable allegations—meaning, allegations that would constitute a violation of any rule, standard of conduct, or law, assuming they were true. Instead, OCB appears to base its referral

² I must also respond to the suggestion that Mr. Turner and Ms. Marlene Kaufmann somehow impeded OCB's investigation, which is completely unfounded and based on factual inaccuracies. Foremost, the accusations that Mr. Turner refused to return his Commission laptop and that Ms. Kaufmann returned her laptop with its hard drive completely erased (Report ¶ 15) are patently false. Indeed, according to Ms. Kaufmann, she did not have a Commission laptop, and she communicated as much by email to the Commission's chief of staff. The so-called "finding" suggesting that Mr. Turner refused to return his Commission laptop also is untrue, as evidenced by the attached letter from Mr. Turner's litigation counsel outlining the actual series of events. (Letter from Charles S. Leeper, Counsel for Mr. Turner to Tonya Robinson, Counsel for Mr. Hastings, November 15, 2011, attached hereto as Exhibit C.) With respect to their cooperation generally, it must be appreciated that Mr. Turner and Ms. Kaufmann are a party and the General Counsel of a party, respectively, in the pending civil lawsuit filed by the complainant. It is not only understandable, but it would be expected, that Mr. Turner would not provide testimony to OCB, so as not to prejudice his defense in the pending lawsuit. As noted, when I agreed to be interviewed by OCB, I was well aware that doing so may undermine my defense in the civil lawsuit. Similarly, any testimony that Ms. Kaufmann could provide would be heavily circumscribed by her ethical obligations to protect any information covered by the attorney-client privilege or attorney work product doctrines. It is, to put it mildly, unfair and misleading to taint these individuals as "non-cooperating" and imply that their conduct is obstructionist under these circumstances.

on the fact that some of the completely *innocuous* allegations made by the complainant have been corroborated. Although I appreciate that OCE may be unfamiliar with investigating allegations of harassment, common sense and fair play dictate that the evidence must be judged in light of the violation alleged, and the corroboration of allegations other than those which amount to sexual harassment (e.g., taking a picture, offering an "air" greeting, giving a colleague a gift) cannot warrant a referral.

Third, the final basis on which OCE makes the referral is "the seriousness of the allegations." (Report ¶ 4.) Here, again, OCE grounds its decision on an improper basis, as neither Rule 9(A) nor any other provision allows for referral based merely on the "seriousness" of the allegations. More importantly, referring the matter based on the seriousness of the allegations turns Rule 9(A) on its head: the standard of proof exists to ensure that the most serious of allegations do *not* get referred unless the required level of proof is established. If OCE's position is to be credited, any complainant could assert serious but outlandish charges and be assured a referral – indeed, the more troublesome the charges, the more likely a referral.

In short, none of the grounds on which OCE justifies its use of the probable cause standard is proper. For that reason, I urge the Committee to dismiss the referral as improvidently made and in violation of the Rules.

II. The Evidence Does Not Show Probable Cause To Believe the Allegations.

Even assuming that OCE could properly rely on the probable cause standard in this instance, the allegations that have been referred to the Committee do not satisfy even that standard and consequently do not warrant further review. For that reason, the Committee should dismiss the matter on the record already developed by OCE.

OCE conducted its inquiry from May 3, 2011 to September 27, 2011, yet it found no evidence to support the complainant's accusations apart from the allegations themselves. No witnesses or documents corroborated the substantive allegations made by the complainant. (See Report ¶ 2 ("no third party witness testimony was available to directly ... confirm *any* of [the complainant's] allegations with first-hand observations" (emphasis added)).) Instead, the most that any witness could say in support of the complainant's allegations was that the complainant had told the witness the allegations at some point, or the witness had heard that the complainant made the allegations. Nor did OCE make any credibility determination regarding the testimony provided. To the contrary, the Report expressly notes that its "findings" are merely the complainant's "account of the events forming the basis of her allegations ... compared, chronologically, with witness testimony from other sources." (Report ¶ 22 n.17.) Where, as here, there is no third-party confirmation of the complainant's allegations and no crediting of her testimony as truthful, even the lower probable cause standard cannot be met. (See Rule 8(A) ("Probable cause exists if the evidence is sufficient to lead a *person of ordinary caution and prudence* to believe or entertain a strong suspicion that a Member, officer or employee committed a violation." (emphasis added)).) For that reason alone, the Committee should dismiss the matter.

In any event, there is ample evidence in the record contradicting the complainant's allegations and casting doubt on her credibility. OCE completely failed to assess that evidence. Thus, when the Report states that "no third party witness testimony was available to directly rebut or confirm any of [the complainant's] allegations" (Report ¶ 2), that only gets it half right: although no third party testimony confirmed the complainant's allegations, there was plenty of testimony to rebut these allegations. For example, the only two witnesses who were interviewed by OCE and had an opportunity to observe my interactions with the complainant directly undermined the complainant's allegations. The testimony of those witnesses, which was based on personal observation rather than hearsay, was described by OCE as follows:

- The witness "never noticed any unusual interactions between [the complainant] and Representative Hastings." (Report, Exhibit 11, at 11-6736_0083.)
- "[I]n his travel with Representative Hastings and [the complainant] he did not see Representative Hastings make any sexual advances or make sexually related comments towards [the complainant] ... [or] towards anyone else." (Report, Exhibit 7, at 11-6736_0036.)
- "Representative Hastings' interactions with [the complainant] were no different than with any other staffer, cordial and professional, sometimes laid back." (Report, Exhibit 7, at 11-6736_0036.)
- "[I]f [the complainant] felt uncomfortable around Representative Hastings, she had a weird way of showing it and ... she was certainly not trying to disengage in the situation." (Report, Exhibit 7, at 11-6736_0038.)

Similarly, Senator Ben Cardin's Chief of Staff directly contradicted the complainant's allegations in a number of respects. First, the complainant claims in her complaint that she reported the harassment to Edward Joseph, who was the Deputy Staff Director of the Commission and was appointed by Senator Cardin. (Complaint ¶ 48.) According to the complaint, Mr. Joseph later told the complainant that he had reported the alleged harassment to Senator Cardin's Chief of Staff, who recommended that the complainant contact the Office of Compliance. (Complaint ¶ 64.) In his interview with OCE, however, Senator Cardin's Chief of Staff stated that he was "next to sure" that Mr. Joseph never spoke with him about the complainant's allegations. (Report, Exhibit 3, at 11-6736_0023.) Second, in her complaint, the complainant alleges that, as a result of making her complaints about me known, she was retaliated against, and that one manner of this retaliation was that she was not allowed to return to her position as Policy Advisor in Washington, D.C. at the time that she wanted. (Complaint ¶ 98.) Senator Cardin's Chief of Staff told OCE, however, that the complainant "was allowed to move back to Washington, DC at the *exact time she preferred*." (Report, Exhibit 3, at 11-6736_0023 (emphasis added).) Third, the complainant claimed that another form of retaliation she suffered was her being intentionally marginalized from the rest of the U.S. Mission to the Organization for Security and Co-operation in Europe. (Complaint ¶ 98.) Senator Cardin's Chief of Staff, who was intimately aware of the circumstances of the complainant's employment,

told OCE that she "has not suffered in terms of her job assignment or pay," and he "stated that he felt no retaliation occurred against [the complainant]." (Report, Exhibit 3, at 11-6736_0023.)

OCE also failed to give proper consideration to the testimony of third parties regarding some of the complainant's most absurd charges: namely, that I singled her out with gifts, that I pressured her to give me gifts, and that her being asked to take a picture with me in my signature pose was somehow sexual or even unique. Although I frequently present gifts to my staff, male and female, from my travels as a token of my appreciation, I have never pressured a staff member to give me a gift. Thus, David Goldenberg told OCE that, although he and I bought each other small gifts (e.g., books, ties), it was reciprocal and I "never pressured him to buy gifts or asked him to." (Report, Exhibit 7, at 11-6736_0037.) And my pose, the wide-armed pose that the complainant and I struck for a picture, is my trademark. I invented the pose years ago after my late mother advised me that, as I traveled around the world, I should do something that distinguished me. In my many years in public life, I have struck that pose with countless men and women. As Mr. Goldenberg told OCE, "that is just how Representative Hastings takes pictures." (Report, Exhibit 7, at 11-6736_0037.) And although OCE omits the fact from its Report, during OCE's interview of me, I showed OCE's counsel dozens of pictures of me striking that very signature pose. The suggestion that such an innocent pose is sexual or somehow unique to the complainant is absurd. The allegation concerning the picture is not unlike the complainant's allegations regarding my hugging her. In truth, I have greeted numerous people, including staff members, constituents, and heads of state, male and female alike, with a hug or cheek-to-cheek greeting. When a gift I would buy any staffer, a pose I strike in any location with any person and my typical greeting are construed as sexual in nature, it is clear that the complainant has taken simple everyday encounters and twisted them into something unrecognizable and untrue.

OCE also failed to give sufficient weight to the prior, thorough investigation into the matter by OHEC, and the resulting conclusions of OHEC and the General Counsel of U.S. House of Representatives that the complainant's allegations lack merit. In connection with the complainant's administrative claims, OHEC "investigated the substantive allegations," including conducting witness interviews of me and others and reviewing emails and documents. Following that investigation, House General Counsel and House Employment Counsel issued a joint letter to the U.S. Department of Justice on February 15, 2011, in which they concluded:

- "Based on OHEC's review to date, we do not believe that [the complainant] experienced sexual harassment." (Report, Exhibit 15, at 11-6736_0103.)
- "[W]hile some of [the complainant's] allegations begin with a kernel of truth, when looked at in context, [the complainant] grossly distorts the events and circumstances in order to support a fiction that she experienced unlawful sexual harassment and retaliation." (Report, Exhibit 15, at 11-6736_0103.)
- "[The complainant's] view of reality is skewed. Indeed, there are communications over the course of [the complainant's] employment with the Helsinki Commission that contradict a number of her allegations." (Report, Exhibit 15, 11-6736_0103.)

Surprisingly, OCE did not even mention these strong statements contradicting the complainant's story in its Report. Worse yet, there is no indication that OCE made any inquiry regarding the investigation performed by OHEC or the witnesses and evidence on which its conclusions were based.

Not only did OCE fail to critically assess the third-party testimony and prior investigation that contradict the complainant's allegations, OCE also failed to independently assess the complainant's credibility. As should have been readily apparent to OCE if it compared the complainant's testimony with the lawsuit she filed previously, the changing nature of her narrative casts considerable doubt on her honesty. For example:

- The complainant claimed in her complaint that in Vienna in May 2008, I told her that I had been dating one of my former staff members but she was "not worthy." In response, the complainant claims she changed the subject of conversation. (Complaint at ¶ 27.) In her interview with OCE, however, she claimed that she responded by telling me "that the conversation was not appropriate," at which point she says that I got frustrated and told her to leave. (Report, Exhibit 1, at 11-6736_0006.)
- The complainant claimed in her complaint that following a dinner in Vienna in May 2008, after commenting that I did not understand how Members of Congress could wear the same underwear from the time the House of Representatives went into session in the morning until it recessed late at night, I asked the complainant, in front of Ms. Thompson and Mr. Johnson, what kind of underwear she was wearing. (Complaint ¶ 29.) In her interview with OCE, she described the conversation but did not state that I asked her what kind of underwear she was wearing (which I of course did not). (Report, Exhibit 1, at 11-6736_0006.)
- In her complaint, the complainant described a conversation in Sintra, Portugal in April 2009, during which I allegedly told her I liked her. She claims that, after telling me that she did not want an intimate relationship, "Mr. Turner then arrived and the conversation ended." (Complaint ¶ 42) In contrast, in her OCE interview, she stated that, after Mr. Turner arrived, she said we should get back to Lisbon, and I then "exploded" and got very angry. (Report, Exhibit 1, at 11-6736_0009.)
- In her complaint, the complainant alleges that Mr. Turner began to retaliate against her in the fall of 2009. (Complaint ¶ 50.) In her OCE interview, the complainant alleged that the retaliation by Mr. Turner began in April 2009. (Report, Exhibit 1, at 11-6736_0010.)

Indeed, this list does not include the other inconsistencies showing the complainant's tendency to embellish. For example, the complainant claimed that my former Chief of Staff "took many trips to Vienna" (Report, Exhibit 1, at 11-6736_0006), when in fact he has only been there "once in his life" (Report, Exhibit 7, at 11-6736_0036). Or, as another example, the complainant claimed

in her complaint that, in March 2007, she met me on the street and I told her that I "was in a position to appoint her to the Commission staff" (Complaint at ¶ 11), whereas she allegedly told OCE that I only said "the Commission was hiring" and she thought I "would make a call to an NGO or some similar organization" (Report, Exhibit 1, at 11-6736_0003).

Nor is this the first instance in which such inconsistencies in the complainant's various narratives have been noticed. In the letter that House General Counsel and House Employment Counsel sent to the U.S. Department of Justice, they noted that the complainant's initial written narrative was "not identical" to a subsequent list of allegations. (Report, Exhibit 15, at 11-6736_0102 n.7.) Indeed, I too had noticed the inconsistencies between the complainant's initial version of events and her subsequent allegations, and for that reason I made OCE aware of such inconsistencies during my interview with OCE. (See Report, Exhibit 2, at 11-6736_0019.)

OCE also failed to properly evaluate some of the documentary evidence provided by the complainant. For example, OCE implies that the complainant took notes of our interactions in response to advice received from Ms. Jony Madden, a personal friend of the complainant who also apparently is an agent of the FBI. The complainant claims that Ms. Madden advised her to document my supposed harassment. (Report ¶¶ 39-41.) But Ms. Madden evidently could not recall giving the complainant that advice, saying only that "it sounded like something she would have told someone to do." (Report ¶ 40(f).) Moreover, even if the notes were in fact taken in response to what the complainant perceived as actual events, these notes primarily serve to illustrate the degree to which the complainant has fabricated and embellished. The majority of the allegations in the complainant's civil complaint are *not* in her notes, which take up only a page, as compared to the more than thirty-three pages of allegations in her complaint.

OCE further failed to critically examine the complainant's own statements and conduct. Indeed, the Report presents evidence, not previously known to me, that the complainant wrote to Mr. Turner in November 2007 that she "had a crush on [me] since [she] first met [me]." (Report, Exhibit 4, at 11-6736_0026.) In another email included in the Report, the complainant, after meeting with me in March 2009, told Mr. Turner that I was "truly amazing." (Report, Exhibit 10, at 11-673_0080.) Nevertheless, OCE never asked the complainant about either statement. Although OCE claims that the statements were only provided to it after OCE already had interviewed the complainant (Report ¶ 28 n.32; *id.* ¶ 61 n.182), OCE does not even attempt to explain why it could not have scheduled another meeting with the complainant. OCE's failure to question the complainant about these statements underscores the recklessness and lack of diligence with which it investigated this matter.

OCE also failed to independently assess the complainant's motivations. Others familiar with the complainant's allegations have questioned, as I do, whether her motivation is connected to her self-published book titled *A Personal Agenda*, which she has stated was "inspired by her own experiences" and "seeks to provoke its readers by examining ... sexual harassment in Congress."³ In fact, OHRC's investigation found that the complainant began publicizing her book in June 2010, shortly before she lodged her administrative complaint against me. (Report,

³ See <http://www.mmdnewswire.com/winsome-paoker-8783.html>.

Exhibit 15, at 11-6736_0104.) When interviewed on *Smile Jamaica* in December 2010, the complainant explained that she was aggressively marketing her book, which she hoped would provide her with the financial flexibility to retire in Jamaica.⁴ Thus, OHEC suggested that the complainant's true motivation was to promote her own "personal agenda," including increasing sales of her novel. (Report, Exhibit 15, at 11-6736_0104.) OCE does not appear to have explored the connection between the complainant's allegations and her side career as a novelist. Indeed, when I asked Mr. Paul Solis, OCE's lead investigative counsel, if he had read the complainant's novel, which again by her own account "examin[es]... sexual harassment in Congress," I was stunned when he replied that he had not.

It should also be considered that the complainant is represented by Judicial Watch, a self-described conservative organization, which has targeted Democrats in general and me in particular. This lawsuit marks Judicial Watch's fourth attempt to malign me. In 2007, Judicial Watch sued me for an alleged due process violation, when I and other Helsinki Commissioners insisted that personnel selections be made consistent with the legislation establishing the Commission. Ultimately, that action was voluntarily dismissed with prejudice. Judicial Watch also has targeted me in other ways: the organization lobbied against my ascendancy to the chairmanship of the Intelligence Committee, and also called for an ethics investigation into my *per diem* use during international travel. As the Committee is well aware, it did investigate the *per diem* allegations and found no violation of any law, regulation, rule, or other applicable standard of conduct.⁵

Ultimately, OCE failed to assess the evidence in its possession—evidence that contradicts the complainant's allegations, supports my testimony, and casts doubt on the complainant's credibility and motivations. I do not know whether OCE's recommendation of further review results from an uncritical investigative and review process, OCE's lack of experience with issues of harassment and retaliation, or a desire to pass the buck to the Committee. What is clear from the record developed by OCE, however, is that the allegations warrant no further action by the Committee. For that reason, I urge the Committee to dismiss the matter on the record before it.

III. If The Committee Does Not Dismiss The Action, Which Is Warranted Here, It Should Defer Any Review By An Investigative Subcommittee.

The Committee should dismiss this matter for the reasons described above. If, however, the Committee does not vote to dismiss the referral, I strongly urge it to defer the matter until the complainant's civil lawsuit is resolved or, at a minimum, is at a more advanced stage. The U.S. District Court for the District of Columbia has under review my motion to dismiss the claims against me, which means that I am under no obligation to answer the complainant's allegations until the Court rules on my motion. While I fully expect that the Court will dismiss the

⁴ See televisionjamaica.com/vd-1000-WINSOMEPACKER.aspx and televisionjamaica.com/vd-1303-PROFILE-WINSOMBAPACKER.aspx.

⁵ See Staff of H. Comm. On Standard of Official Conduct, Report in the Matter of Allegations Relating to the Use of Per Diem on Official Trips, at 2, 111th Cong., 2d Sess. (Dec. 30, 2010), www.ethics.house.gov/Media/PDF/Per_Diem_Report.pdf (last visited July 8, 2011).

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complainant's baseless claims against me, a parallel investigation by the Committee will unfairly jeopardize my defense of the litigation by forcing me to provide testimony and other information before I am required to do so in the civil litigation.

These concerns are particularly acute in this instance because the complainant and Judicial Watch have asserted legal claims for money damages against me in my personal capacity. To commence an investigation before the Court has the opportunity to evaluate the legal sufficiency of the complainant's claims against me in my personal capacity would be unfair and unjust.

Please do not hesitate to contact me if you have further questions or need clarification. Thank you for your consideration.

Sincerely,


Alcee L. Hastings
Member of Congress

Cc: Dan Schwager, Esq., Staff Director & Chief Counsel, Committee on Ethics