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Beyond a “Partisan-Ethics-Wars” Interpretation of Congressional Ethics Investigations: The Cases of James Wright, Newt Gingrich, and Tom DeLay

Beth Rosenson

University of Florida
Email: rosenson@ufl.edu

Abstract

This article examines three high-profile House ethics cases involving former Speakers James Wright (1988–1989) and Newt Gingrich (1994–1997) and former House Majority Leader Tom DeLay (1997–2004). The analysis of the filing and disposition of charges in the three cases provides some evidence for the “politics-by-other-means” or “partisan-ethics-wars” framework that is sometimes used to evaluate ethics enforcement in Congress. However, the analysis also provides evidence of bipartisan agreement both in the ethics committee and on the floor. The article highlights the areas of bipartisan consensus and the principles behind that consensus. In paying attention to the content of the cases, it also highlights an important change in ethics investigations over time, specifically an increase in “political gain” cases. The article thus calls attention to aspects of House ethics investigations that are undervalued and inadequately addressed by the partisan-ethics-wars framework.

Keywords: partisan ethics wars; James Wright; Newt Gingrich; Tom Delay; congressional polarization; US congressional ethics investigations

Introduction

Since the establishment in 1967 of a standing ethics committee in the US House, the committee has conducted over 200 ethics investigations into the behavior of various members.¹ Well-known investigations include those into Representatives James Wright, Newt Gingrich, Charles Rangel, John Conyers, and more recently Matt Gaetz and Katie Hill. The charges have encompassed activities such as financial gain, improper receipt and disclosure of campaign contributions, sexual gain, and, in the past few years, not wearing a mask on the floor of the House during the COVID-19 pandemic. These investigations have targeted rank-and-file members and in some cases high-ranking party leaders and committee

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chairs whose careers have been challenged and even ended by revelations of unethical behavior. Cases involving leadership are particularly important to consider because they affect the careers of the particular members and power dynamics within the House, but they can also have more wide-ranging effects on public trust in the institution.

This article examines three major ethics investigations of House leaders. It evaluates the extent to which a “partisan-ethics-wars” framework explains the investigations but goes beyond the partisan aspect of the investigations. It highlights a certain degree of bipartisan agreement on what constitutes unacceptable behavior by members of Congress and sheds light on the historically evolving nature of the kinds of activities that have come under investigation.

Literature Review and Perspectives on Ethics Investigations

Many good-government groups and organizations that address ethics and conflicts of interest involving legislators focus on the passage of ethics codes and rules as a way of constraining officials’ behavior. National and international organizations such as Common Cause, OECD, the World Bank, and Transparency International argue that ethics rules—such as mandatory financial disclosure, limits on gifts, and postgovernment employment restrictions—are desirable and, in general, should be strengthened because they “set benchmarks for acceptable behavior.”² Indeed the trend in most countries has been to add to existing ethics codes and rules to reduce corruption. Not only good-government groups but also scholars who have written on legislative ethics regulations often point to weaknesses or loopholes in the laws and suggest that the laws and their enforcement need to be strengthened to improve legislative behavior.³ According to this framework, ethics rules are a positive thing that should be adopted and made stronger.

In response to this dominant and idealistic conception of ethics codes and rules that stresses their benefits, an alternative framework exists as a sort of “corrective,” which instead focuses on the negative aspects of ethics codes, in particular their potential for partisan abuse. Political scientists have documented an increase in Congressional polarization or partisanship since the 1970s, evidenced by committee and floor voting.⁴ A growing body of literature posits that this increased partisanship has permeated the realm of ethics investigations. Various authors have argued that both Congressional and executive branch ethics investigations into allegations of misconduct should be viewed primarily through a “politics-by-other-means” or partisan-warfare framework.⁵ This framework focuses on the political use of the investigations but pays little attention to the details, or content, of the charges. Ethics investigations are conceptualized as convenient tools by which each party seeks to weaken the other through the ethics process—namely, the ethics committees for Congress and the special prosecutor or independent counsel for the executive branch.

For example, Susan and Martin Tolchin comment, “The only consistent theme [in congressional ethics cases] is partisanship.”⁶ Randall Strahan similarly remarks, “This has now become a ... standard aspect of congressional politics,

that you attack the opposition party's leaders on ethics issues. There's a kind of tit-for-tat quality to it."⁷ From this perspective, ethics investigations in Congress are simply weapons of combat against one's adversaries; there is little else to say besides the conclusion that partisanship looms large in the filing, investigation, and disposition of the cases. Targets of the investigations also typically promote this partisanship-centered perspective as they seek to minimize the damage to their reputations.

A smaller number of scholars has de-emphasized partisanship in the ethics process.⁸ Jacob Straus argues that partisanship does not generally play a role in decision making by the House Ethics Committee, which unlike most congressional committees is composed of an equal number of members from each party. Charles Stewart concurs that the bipartisan committee "[strives] to bring in unanimous decisions [and] "seek out a weak middle ground" on which both parties can agree.⁹

Three Cases: Expectations and Case Selection

This article looks closely at the ethics committee investigations of three legislative leaders. It probes to see whether the evidence from these cases supports the partisan-warfare framework or the perspective that de-emphasizes partisanship. Why might we expect to find more bipartisanship than the partisan-warfare framework allows in cases involving powerful members? The assumption that ethics committee investigations involving a high-profile member will elicit completely partisan behavior is problematic. As noted above, the strictly bipartisan composition of the committee tends to mute partisanship in decision making. Indeed, in recent years highly partisan ethics votes on the House floor, such as those involving Marjorie Taylor Greene, Paul Gosar, and Adam Schiff have tended to arise as a result of floor resolutions that bypassed the ethics committee entirely. In addition, when an ethics case involves a high-ranking member and therefore draws heavy media attention, copartisans of the member being investigated can be expected to consider not just the merits of the charges but the party's reputation more generally. Although committee members (and members on the floor, if it comes to a floor vote) may instinctually want to defend a fellow party member who is accused of wrongdoing, the calculation should be somewhat different when it involves a party leader. A leader's alleged misdeeds affect the party's image and reputation more than those of a rank-and-file member.

Where the alleged wrongdoing clearly violates House ethics rules or federal law, copartisans are unlikely to vocally defend a leader whose actions reflect poorly on the party as a whole. Certain activities may so obviously breach ethics rules or laws (and the broader democratic principles behind them) that there is no (or little) disagreement across party lines. This article seeks to establish what sorts of activities fell into this category in the three cases examined.

In so doing, I challenge the claim that ethics investigations are substantively unimportant. The partisan-warfare framework suggests that because congressional ethics charges are primarily motivated by partisanship, they are rarely if

ever justified on the merits and are damaging rather than beneficial to the democratic process.¹⁰ This literature on congressional ethics investigations emphasizes their costs rather than their benefits. This approach captures important truths about the modern ethics process and is not wholly misguided. As Canon and Mayer note, some investigations of the last 20 years have at times involved “indisputably absurd” charges that “trivialize” the ethics process, with little obvious benefit.¹¹ However, a focus solely on partisanship and the negative aspects of ethics investigations is likely to be incomplete as an approach to understanding their significance. Notably, such a focus pays inadequate attention to the *content* of what is being investigated and how certain content may entail widespread agreement within Congress regarding what activities are worthy of condemnation. This article seeks to fill that gap by taking seriously the content as well as the partisanship of the investigations.

The first case examined is that of former Speaker James Wright in the 1980s. The partisan-warfare perspective on ethics investigations is frequently applied to this case. Indeed, it was the Wright investigation that sparked much of the literature on partisan ethics wars. Two scholars who exemplify this perspective are Denis Saint-Martin and Julian Zelizer.¹² Zelizer states, “The campaign against Speaker Wright (initiated by Gingrich) was all about politics, not good government”¹³ and refers to it as a political “takedown.”¹⁴

This article presents an in-depth analysis of this case and two other House ethics cases involving legislative leaders between 1988 and 2004: Speaker Newt Gingrich and House Majority Leader Tom DeLay. These three investigations represent “ideal cases” for examining the claim about the centrality of partisanship in ethics investigations, as all are generally considered highly partisan, and for examining the content of the cases, which has received short shrift in previous work. Although the latter two cases have received less attention than the first, they are still considered classic examples of partisan ethics wars.¹⁵ For all three cases, I examine the degree of partisanship in the filing of charges, ethics committee votes, and floor votes. I also pay attention to the specific *content* of the charges against the three leaders, using Dennis Thompson’s (1995) typology as a springboard for the analysis.¹⁶

The Wright Case

Texan James Wright was selected into the Democratic leadership in 1976, becoming House Majority Leader by a one-vote margin. Chosen as Speaker of the House in 1987, he made it clear from the start that he would pursue an aggressive partisan agenda of legislative priorities in the House. More than his predecessors, Wright employed procedural tools that amplified the voice of the majority party in the House and decreased the voice of the minority party.¹⁷

Chafing under this situation, House Republicans went on the offensive. When Wright became speaker, Georgia Republican Newt Gingrich was already working to strengthen the conservative movement and to foster unabashed partisan confrontation.¹⁸ This concerted attack strategy included portraying the Democratic party, particularly its top House lieutenant, as corrupt.¹⁹ Gingrich viewed

ethics charges as a legitimate political weapon and argued that members of Congress should be held to the highest ethical standards. In asserting that the Democratic leadership was unfit to rule, Gingrich attacked existing congressional norms such as courtesy and reciprocity.²⁰

In May 1988, Gingrich filed a complaint against Wright with the House Committee on Standards of Official Conduct (ethics committee), composed of 12 members, by law half Democrats and half Republicans. The complaint was accompanied by a letter signed by 77 House Republicans and by the nonpartisan good-government group Common Cause. The complaint charged that Wright had violated the Code of Official Conduct for the House. There were five main charges raised: (1) the circumstances surrounding Wright's lobbying efforts on behalf of a constituent with whom he had a joint financial interest in a gas-well venture, (2) whether campaign funds were used to pay for the publication of his book from which he received a 55% royalty, (3) whether government resources were used improperly for work on his book, (4) the use of a condominium provided by a Texas businessman to Wright for free, and (5) the possible exercise of undue influence when Wright intervened before the Federal Home Loan Board on behalf of four Texas businessmen who had contributed to his campaign.²¹

A month later, the House Ethics Committee announced its unanimous vote to conduct an inquiry into the allegations and appointed a special (outside) counsel, Richard Phelan. After a seven-month investigation, Phelan submitted a written report to the committee, concluding that the speaker had broken the House rules on 116 occasions.²²

The Committee Report and Wright's Resignation

On April 13, 1989, the ethics committee voted on the findings presented by Phelan and issued a report four days later. In this first stage of the ethics process, the committee's task is simply to determine whether there is reason to believe the accused has violated the House rules. If the committee determines that there is "clear and convincing proof" of a violation, the process culminates in a punishment phase. Punishment in congressional ethics cases ranges from verbal chastisement in a letter of reproof, also known as a rebuke or admonishment—a step requiring no further action—to more severe action such as a reprimand, censure, or expulsion from the House, all of which require a vote by the full chamber.²³

The Wright report was a unanimous statement by the committee's six Democrats and six Republicans that Wright had violated the House code of official conduct and other House rules 69 times, in two areas. These were (1) House limits on outside earned income and (2) House limits on gifts. Although the committee's bipartisan unanimity was indeed striking, in a series of preliminary votes on individual allegations, all six Republicans had found reason to believe a violation had occurred, whereas the number of Democrats voting against the speaker ranged from one to six.²⁴ Thus the bipartisanship of the vote masked some underlying partisan divisions.

The report suggested that Wright's "finances seemed intentionally rigged to skirt the House rules limiting outside earnings by members."²⁵ Speaking fees or

honoraria were limited by the House and Senate ethics codes and by the 1978 Ethics in Government Act to 15% of a member's official salary. The 1977 House ethics code also specifically limited congressional honoraria to \$1,000 per payment and \$10,000 total per year. Book royalties were not limited. Wright received \$55,000 in royalties from the sale of his book. Virtually all the sales were in bulk to businesses, universities, and political interest groups that had invited him to speak. The committee said it had found "clear reason" to believe that the book sales were substituting for payment of a speaking fee, as Wright had reached the honoraria limits, and that the royalties should have been subject to the honoraria limits.²⁶

The committee also said that \$145,000 in salary and benefits received by the speaker and his wife were actually gifts from a Texas developer named George Mallick. The Wrights and Mallick had jointly created a company that was "designed and used to give cash to the Wrights, and not as a legitimate business venture."²⁷ From the start, the Wrights were borrowing from the company while the Mallicks were lending to it. For three years, Wright's wife received an \$18,000 annual salary from it. The committee stated, "During this four year period, there was no evidence ... that the money paid to Mrs. Wright was in return for identifiable service or work products."²⁸ Thus the salary should have been reported as a gift, along with the free use of a condominium and a car.

Wright said that his wife had worked for the salary and that Mallick was a personal friend of about 30 years with no direct interest in legislation.²⁹ The committee initially split on the question of whether Mallick had a direct interest in legislation. House rules prohibited members from taking over a gift worth over \$100 from a person with a direct interest but not gifts from personal friends or acquaintances without a direct interest. In a preliminary vote, all six Republicans and two of the six Democrats on the committee said Mallick had a direct interest. The final report concluded unanimously that he did have such an interest.³⁰

The committee dismissed allegations that Wright had exerted undue influence over federal regulators on behalf of bank officials who had contributed to his campaign. The committee report said that although Wright may have been "intemperate" in his dealings with the Bank Board, he had not violated House guidelines on legislators' relations with federal agencies.³¹

Although he insisted that he had done no wrong, Wright announced soon after that he would resign his speakership and seat. He thus ended the ethics process before it had reached the sanctions stage.

The Wright case had several political effects. Beyond its effects on Wright's political career and the boost it gave to the GOP minority's effort to displace the Democrats, it fueled the push for new ethics regulation. The case shone a spotlight on the practice of members receiving speaking fees from interest groups, already controversial due to the perception that it was a way for groups to gain undue influence over lawmakers. Congress banned honoraria later that year as part of the 1989 Ethics Act. Members can still give speeches for pay but must donate the money to charity.

Analysis of the Wright Case: Partisanship, Bipartisanship, and Content

With respect to the charges that brought down Wright, several points are worth noting. First, the problematic activities the committee identified were *not* those initially raised by Gingrich, except for those related to the free condo from a Texas businessman. The committee's findings grew out of the initial scope of the investigation, as happens in many ethics investigations, such as Bill Clinton's. Although this led some observers to conclude that the investigation was a baseless fishing expedition, political theorist Dennis Thompson disagrees: "The fact remains that at least some of the charges ... deserved serious investigation. Gingrich, the special counsel, and the committee—whatever their motives—did not bring down a public official who was completely innocent."³² The fact that the committee agreed unanimously regarding unreported gifts and evasion of honoraria limits suggests that the case cannot be explained by simple, raw partisanship. It is undeniable that Gingrich, the initiator of the investigation, was a highly partisan individual, and the committee broke on partisan lines in one preliminary vote. But partisanship was not the only significant element in how the committee addressed the case.

The ethics committee in the Wright case expressed across party lines a commitment to limiting members' outside income activities to promote two principles identified by Dennis Thompson: (1) legislative autonomy, or "deciding on the merits," and (2) accountability, or acting in a way that promotes public confidence.³³ Autonomy refers to independence from influences that should be irrelevant to the merits of the decisions that legislators make. Improper personal financial gain has historically been considered the primary threat to autonomy, evidenced by bribery laws dating back to the colonial era. Violating existing outside income limits contradicted the principle of autonomy that lay behind House ethics rules and federal law. In doing so, Wright also failed to uphold Thompson's principle of accountability by giving citizens grounds to doubt whether he was fundamentally serving himself or his constituents.

By being dishonest about his outside income, Wright also violated a third principle: transparency. Transparency entails providing accurate and complete information to the public about activities such as outside income. This principle is at the heart of personal financial disclosure requirements and campaign finance disclosure requirements. A unanimous committee expressed a commitment to the principle of transparency and the importance of public disclosure of information for helping citizens judge public officials' fitness to hold office.

The charges that ultimately led to Wright's downfall centered on his receiving improper financial gain from public office or receiving something of value on the private market such as cash, condos, or cars. In contrast, political gain refers to receiving benefits of value only in the *political* marketplace such as campaign contributions or endorsements.³⁴ The specter of improper political gain was also raised in the Wright case. The political gain charge regarding questionable intervention before a federal agency on behalf of a campaign contributor was dismissed. As I discuss later, political-gain charges have become increasingly common since the 1970s. The increase in this type of case reflects a change in federal laws and ethics rules implemented to address political gain in the

aftermath of Watergate.³⁵ Improper intervention before a federal agency for political gain would also be a central element of the DeLay case, discussed below.

The Gingrich Case

First elected to the House in 1978, Newt Gingrich served as minority whip from 1989 until he became Speaker of the House in 1995. In the 1990s, he spearheaded the development of the Contract with America that unified Republicans under a clear, simple programmatic umbrella. He also used the organization Grand Old Party Action Committee (GOPAC) to disseminate campaign funds and advice to House candidates. GOPAC was Gingrich's primary vehicle for the effort that culminated in the 1994 Republican takeover of the House. One innovative activity that GOPAC engaged in was sponsoring a television program centered on the theme of reforming government. The show was expensive to produce, so the organization—with Gingrich's knowledge and approval—decided to fund it through tax-deductible contributions. As an explicitly political organization, GOPAC could not legally take such donations. So, the show's production was transferred to a nonprofit group founded to raise money for inner city youth, which *could* receive them. However, the show continued to have the same goals and employees.³⁶

Gingrich's experience with tax-deductible donations dated back at least to 1984, when he established the American Opportunity Forum, an ostensibly nonpartisan research organization. Such groups, known as 501(c)(3)s, can receive such donations only if they are operated exclusively for nonpolitical purposes. In the late 1980s, the IRS had denied a tax exemption requested by a group formed by several Gingrich advisers to train political operatives. A US Tax Court judge upheld the IRS, saying that the group "served the private interests of the Republican party."³⁷

In 1992, GOPAC became involved in a movement developed by Gingrich known as Renewing American Civilization. This was also the name he gave to a college course he taught. He sought permission from the House ethics committee in 1993 to teach the course. But he did not disclose in his meeting with an ethics committee lawyer that the course was directed at disseminating his political message and unseating the House Democratic majority because, he later said, "the course itself was non-partisan ... I don't believe I had an obligation to tell the (committee) what my political strategies were."³⁸

In January 1993, Gingrich met with GOPAC charter members—individuals who gave at least \$10,000 per year—to discuss the Renewing American Civilization concept and seek funding for the course. Gingrich wanted to televise it nationally using satellite uplinks and produce videotapes that could be widely distributed. Funding came from tax-deductible contributions, many of them from GOPAC donors and Gingrich supporters. GOPAC employees helped develop, raise funds for, and market the course. After complaints about political overtones to the course, it was moved to a different college. Another nonprofit group started by a former GOPAC official picked up the course's funding and spent

about \$900,000 in tax-deductible donations over the next two years, with many of those donations coming from Gingrich supporters.³⁹

The Tables Are Turned: Democrats File Complaints

Gingrich's combining of tax-deductible nonprofit activity with political activity would become the center of a congressional ethics investigation against him. In September 1994, Congressman Ben Jones, a Democrat running against Gingrich for his House seat, filed a complaint against Gingrich with the ethics committee, now composed of 10 rather than 12 members, half from each party. The first issue raised was whether the financing of Gingrich's college course violated federal tax law. Second, Jones charged that Gingrich violated House rules by using congressional office equipment to prepare the course. Gingrich acknowledged using the equipment and reimbursed the Treasury about \$20; the ethics committee recommended no further action on that matter. Finally, Jones charged that Gingrich had violated House rules by accepting a \$25,000 contribution for the class from an individual for whom he had helped arrange an appearance before a House committee. The committee also dismissed this third charge.⁴⁰

Jones filed a second complaint in January 1995. The first issue raised was whether Gingrich's acceptance of a \$4.5 million advance for his book *To Renew America* violated House rules. The committee dismissed this complaint, saying that Gingrich's contract was in "technical compliance" with House rules but added, "The committee strongly questions the appropriateness of what some could describe as an attempt by you to capitalize on your office."⁴¹ Gingrich decided to forego the \$4.5 million advance, taking a \$1 advance instead.

A second issue raised was whether Gingrich's book contract with Harper Collins, owned by publisher Rupert Murdoch, violated House rules. Murdoch, also the owner of the Fox TV Network, was pressing for legislation to deregulate the broadcast industry. The committee also dismissed that allegation and one that said Gingrich had improperly intervened with the Food and Drug Administration on behalf of a contributor to the group funding his college course.

Democrats filed over 70 additional complaints against Gingrich in 1995 and 1996, often backed by nonpartisan good-government groups such as Common Cause and the Congressional Accountability Project. As with James Wright, then, partisanship in the filing of the complaints was accompanied by nonpartisan support.⁴² The vast majority of these cases was dismissed, although in a few cases the committee found that Gingrich had violated House rules even while not recommending any sanctions such as a reprimand or fine.

House Minority Whip David Bonior (D-MI) also filed several complaints against Gingrich. One alleged that Gingrich had violated House rules by using a speech on the House floor to promote a televised town meeting run by GOPAC. The committee agreed that Gingrich had violated House rules 12 times by "using the House floor for political purposes" but took no further action.⁴³

The Complaint That Wouldn't Go Away

Although most of the complaints against Gingrich were either dismissed or did not lead to a sanction recommendation, the issue raised in the first complaint about using tax-exempt contributions for his college course was not resolved so easily. On December 6, 1995, the ethics committee voted unanimously to hire an outside counsel to investigate whether the speaker had violated tax laws in financing the college course. On June 28, 1996, the House voted along partisan lines, 229-170, to block a Democratic resolution giving Cole additional jurisdiction to investigate allegations that Gingrich had used at least \$6 million in donations from six nonprofit organizations to advance his political views. Three months later, however, the ethics committee voted unanimously to expand Cole's investigation in a different direction, to look at whether Gingrich had provided the committee with "false information" about GOPAC's relationship with his college course."⁴⁴

The Committee's Report

In December 1996, the committee's investigative subcommittee released its findings. Its report said that Gingrich should have sought legal advice about using tax-deductible donations for the college course. On whether the tax laws actually had been violated, the ethics committee's attorney said he believed that they had; Gingrich's expert disagreed. Ultimately, in 1999 the IRS would vindicate Gingrich, ruling that he had *not* violated the tax laws.⁴⁵ The report also concluded that Gingrich had given the committee inaccurate information by making numerous statements that GOPAC was not involved in the college course and that the course did not benefit the political organization.⁴⁶

The committee combined its charges from three initial counts into one count of engaging in "conduct that did not reflect creditably on the House," a general prohibition contained in the House ethics rules. Special counsel Cole stated that Gingrich had been sufficiently involved with nonprofit organizations "to know that politics and tax-deductible contributions ... are an explosive mix. And he was clearly involved with a project that had significant partisan goals.... He was ... going right up to the edge with regard to the tax code." Gingrich himself had told a reporter in 1995, "Goes right up to the edge, but not over the edge ... It's aggressive, it's entrepreneurial, it's risk-taking."⁴⁷

Gingrich admitted to two violations: (1) that he should have sought tax advice and (2) that he provided inaccurate information to the committee. He said, "I did not seek personal gain, but my actions did not reflect creditably on the House.... I deeply regret it."⁴⁸ Later he was less repentant, claiming the charges against him were 99% partisan, and blaming his lawyer for his misstatements to the committee.

The committee voted 7-1 to recommend a reprimand and a \$300,000 penalty. One Democrat and one Republican recused themselves. The one Republican member voting against these sanctions called them too harsh. Thus, three of

four committee Republicans who voted and all four voting Democrats approved of the sanctions. Despite the overall bipartisanship of the vote, partisanship was evident in the public comments or interpretations of committee members. A *Washington Post* reporter commented, “Republican (members) sought to minimize the speaker’s misdeeds while Democrats tried to make them more sinister.”⁴⁹

If agreed to by a vote of the full House, the reprimand would not require the speaker to give up his post, unlike a vote for censure, according to ethics committee rules. Another important distinction was that the \$300,000 penalty was, in the words of the committee, not a fine but a “cost assessment” to cover the additional work prompted by the inaccurate information Gingrich had provided. GOP leaders emphasized the distinction, saying that ethics rules call for fines only in cases where the violator was seeking “personal financial benefit.”⁵⁰

On the House Floor: A Historic Vote

On January 21, 1997, the full House voted 395-28 to approve the ethics committee’s recommendation of a reprimand and a \$300,000 penalty. It was the first time in the House’s 208-year history that it had disciplined a Speaker of the House for ethical wrongdoing. Twenty-six of the 28 members voting no were Republicans who called the punishment too severe; however, 196 Republicans voted yes. Of 200 Democrats, 198 voted yes and only two voted no. Five Democrats voted present, saying the punishment was not severe enough.⁵¹

It is noteworthy that 89% of the Republicans voted for the recommended sanction of their party leader, making the vote less partisan than a typical vote in that Congress.⁵² Thus the final vote to support the committee’s recommendations was strongly bipartisan and reflects a minimum threshold of acceptable behavior on which Democrats and Republicans could agree.

In October 1998, the ethics committee dropped the last of 84 charges pending against Gingrich. Gingrich noted that most of the Democrats’ complaints had been dismissed, saying this proved that they were baseless attempts to get partisan revenge. However, as mentioned earlier, on some of the dismissed charges the committee stated that Gingrich’s actions violated House rules, even while declining to take further action.

Analysis of the Gingrich Case: Partisanship, Bipartisanship, and Political Gain

Partisanship was a factor in the filing of complaints against Gingrich by his fellow House members, although nonpartisan groups also signed on to the complaints. Partisanship also colored some votes, such as the House floor vote not to expand the scope of the ethics investigation against him. Yet there was also strong evidence of bipartisan agreement. This consensus was clear in the committee’s unanimous vote to expand Cole’s investigation, in the 7-1 committee vote to sanction Gingrich, and in the overwhelmingly bipartisan floor vote in favor of sanctions.

Of the two charges on which the ethics committee ultimately agreed, perhaps the more important for Gingrich's reputation was providing false information. As a *Washington Post* article noted, "While tax law questions are inherently complicated, the suggestion that Mr. Gingrich did not provide the subcommittee with the truth is both easily understood and singularly menacing to his career."⁵³ As with President Bill Clinton, he was damaged not just by his actions *prior* to the investigation but also his lack of truth-telling *during* the investigation. Gingrich's public image suffered, and he received blame for the GOP's poor electoral showing in 1998. He announced that he would not take the seat in Congress to which he had been reelected.

An important aspect of the case—the content—was highlighted by Gingrich himself. The case was not, fundamentally, about the pursuit of personal financial gain. Rather, it centered on Gingrich's aggressive pursuit of partisan goals, using tax-exempt organizations. The distinction drawn by Dennis Thompson regarding improper political gain, versus improper "personal" (typically financial) gain, fits well. Although political gain generally benefits an individual's career, it is not fundamentally about reaping financial benefits. Gingrich sought no less than a radical transformation in American politics: a shift in party control of the House and in public policy. The Gingrich investigation centered on his attempt to achieve gain in the political arena by pushing the boundaries of federal law and House ethics rules.

Another important consequence of the Gingrich investigation was that it led to an "ethics truce" that held for seven years. House members made a "gentleman's agreement" not to pursue ethics charges against members of the other party.⁵⁴ But the truce would ultimately unravel. The primary target of the complaint that broke the truce was Tom DeLay.

The DeLay Case

Tom DeLay (R-TX) was elected to the House in 1984. He became Majority Whip in 1995 and Majority Leader in 2000. Like Wright and Gingrich, DeLay had a zest for partisan confrontation. Upon becoming Whip, he and conservative activist Grover Norquist initiated the "K Street Project," a plan to pressure lobbying firms to hire only Republicans and fund-raise only for Republican candidates.⁵⁵ DeLay also founded a political action committee called Americans for a Republican Majority Political Action Committee in 1994. It became the leading House Republican political action committee after Gingrich resigned, raising \$14.3 million between 1998 and 2004, which it gave to the National Republican Congressional Committee and to individual House members.

But DeLay chafed under the legal requirement that Americans for a Republican Majority Political Action Committee had to disclose its contributors and was restricted in the size of the "hard money" donations it could take. In a move reminiscent of Gingrich, in 1998 DeLay and three of his political associates set up two tax-exempt organizations. The US Family Network and Americans for Economic Growth did not have to report their contributions, but they had to devote the bulk of their time to nonpolitical activities to maintain their

tax-exempt status. They also set up an organization called the Republican Majority Issues Committee, which could participate in politics but not back specific candidates. In 1999, the National Republican Congressional Committee sent \$50,000 to the US Family Network, most of which went for ads in congressional races. The Federal Elections Commission ruled that the National Republican Congressional Committee was trying to avoid rules on the use of corporate money by laundering it through tax-exempt organizations and fined it \$280,000.⁵⁶ DeLay shut down the three nonprofits shortly after the 2000 election. But he would come under fire for other activities that allegedly violated the law and House ethics rules.

In 2001, DeLay and Americans for a Republican Majority Political Action Committee Director Jim Ellis established Texas for a Republican Majority Political Action Committee (TRMPAC). The goal of TRMPAC was to help elect Republican candidates to the Texas House of Representatives, in part so that they could vote for a congressional redistricting plan directed at replacing seven Democratic incumbents with Republicans. At least \$600,000 of the funds TRMPAC raised came from corporations, which violated the Texas law banning corporations from funding candidates for state office. DeLay denied knowledge of TRMPAC's corporate fund-raising, but publicized documents suggested otherwise. He was indicted in fall 2005 on charges of criminal conspiracy to violate state laws and money laundering. A Texas judge dismissed the first charge but upheld the second. DeLay stepped down from his leadership post in accordance with House rules governing felony indictments.⁵⁷ DeLay's actions with respect to the Texas redistricting also became part of an ethics complaint against him.

Ethics Complaints against DeLay

Even before the ethics truce between the parties ended in 2004, good-government groups that were exempt from the truce had filed ethics complaints against DeLay. In 1997, the ethics committee rebuked DeLay in a letter for creating the impression that campaign contributions would bring "official action or access" and for doing improper favors for his brother, a registered lobbyist. In 1999, the committee rebuked him for his threats against a trade association for hiring a former Democratic congressman as its president.⁵⁸ Both these rebukes (known as admonishments) centered on DeLay's questionable methods of pursuing political gain. Improper political gain would also be at the heart of another complaint against DeLay filed in June 2004.

The filer of that complaint, Christopher Bell, was a freshman Democrat. Bell had lost his primary reelection bid in a congressional district that had been redrawn by the Texas legislature. His complaint had three parts. The first part accused DeLay of wrongdoing in his dealings with the Westar Energy Corporation, which had contributed over \$50,000 in campaign donations to Republicans in hopes of "get(ting) a seat at the table."⁵⁹ DeLay had attended a company golf fund-raiser at a time when Congress was about to consider major energy legislation. The complaint alleged that this had created the appearance of giving special access to donors. Second, the complaint accused DeLay of funneling illegal corporate contributions to candidates for state political offices in Texas

(the TRMPAC activities). Finally, it alleged that DeLay had improperly used his political influence to have Federal Aviation Agency officials track a plane carrying Texas Democratic state legislators fleeing the state to avoid the redistricting vote noted earlier.

The ethics committee voted unanimously to admonish DeLay on two of the three matters raised by Bell. In a letter sent October 6, 2004, the committee stated, "A Member should not participate in a fundraising event that even gives an appearance that donors will receive or are entitled to either special treatment or special access ... your (actions) created such an improper appearance."⁶⁰ It noted the presence of two key DeLay staffers and the fact that one Westar executive shared a golf cart with DeLay himself) and added, "Individuals ... active on Westar's behalf (believed) that the company's participation in the fundraiser provided special access to you." The committee also admonished DeLay about his "use of governmental resources for a political undertaking.... House standards of conduct prohibit Members from taking (or withholding) any official action on the basis of ... partisan affiliation of the individuals involved.... Your intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency ... raises serious concerns."⁶¹

The committee deferred action regarding TRMPAC because of the criminal investigation. It concluded, "In view of the number of instances to date in which the Committee has found it necessary to comment on (your) conduct ... it is clearly necessary for you to temper your future actions to assure that you are in full compliance ... with ... House Rules and standards of conduct."

A month later, however, the ethics committee found, in DeLay's favor, that there was no evidence to support one key claim made in Bell's complaint: that Westar gave \$25,000 to DeLay's political action committee to influence energy legislation. The committee only felt comfortable concluding that the fund-raiser that DeLay had attended had created an "improper appearance." The committee stated that actual facts "did not even come close to supporting (his) extremely serious claim (that DeLay had in effect solicited a bribe)."⁶²

The partial vindication did not put an end to DeLay's ethics troubles, however. First, the committee had a week earlier admonished DeLay in response to a separate complaint filed by a member of his own party. This complaint dealt with allegations by Republican Nick Smith (R-Mich) about the actions of the House leadership in trying to win his support for a prescription drug bill. Smith originally said he was offered a \$100,000 bribe. The ethics committee's unanimous report concluded that DeLay *had* offered to endorse Smith's son, who was running for Congress, in return for Smith's vote. The ethics committee rebuked DeLay in a letter saying that he had violated the House rule requiring members to "conduct themselves at all times in a manner that shall reflect creditably on the House."

Thus, by the middle of October 2004 the ethics committee had admonished DeLay on three counts: (1) his offer to endorse Smith's son, (2) his intervention with the Federal Aviation Agency, and (3) the golf fund-raiser. An unrepentant DeLay and his supporters went on the offensive. After the November 2004 election, House Republicans approved a change in party rules that would protect DeLay from having to step down from his leadership post if he were indicted in

the Texas investigation. In January 2005, on a party-line vote of 220-195, House Republicans also pushed through a substantial change in the ethics process. Complaints would now be automatically dismissed unless six members of the 10-member panel voted for an investigation.⁶³

Democrats rebelled against the changes and blocked the ethics committee from organizing in the new Congress. In January, under mounting public pressure Republicans reversed the change that was directed at protecting DeLay if he were to be indicted and three months later rescinded the change regarding automatic dismissal of complaints.⁶⁴

Other partisan changes in the ethics process did stay in place. In February 2005, Republicans replaced the committee chairman who had presided over the DeLay investigations and replaced two other members with individuals widely viewed as more loyal to DeLay. Two of the new members, who had contributed to DeLay's legal defense fund, soon after announced their recusal from any future investigation of DeLay.⁶⁵

Good-government groups continued to demand an investigation into the fund-raising by TRMPAC, saying that it was insufficient to defer the matter to a criminal investigation. Media attention also focused on trips DeLay took to foreign countries, such as a \$2,000 trip to Scotland with convicted lobbyist Jack Abramoff. That trip was charged to Abramoff's credit card; trips funded by registered lobbyists or foreign agents are not allowed under House rules. Trips financed by nonprofit organizations—as DeLay claimed that one was—are permissible. Lawmakers, however, are required to “make inquiry about the source of the funds” for trips.⁶⁶ DeLay was also criticized for a 1997 trip to Russia, also allegedly funded by a lobbyist, and one to Korea on the tab of a registered foreign agent. Media attention also addressed the large salaries his wife and daughter received while on the payroll of DeLay's political and charitable organizations.⁶⁷

No additional ethics committee investigation was started into these issues, although the Justice Department did begin an investigation. DeLay announced in early April 2006 that he would not run for reelection and would step down from his seat by June.⁶⁸

Analysis of DeLay Charges: Partisanship, Bipartisanship, and Political Gain

The DeLay investigations involved a significant amount of partisanship. One example is the filing of charges by Democrat Chris Bell. Naked partisanship was also evident in the rule changes implemented by the GOP. Yet, other elements of the ethics process were not so partisan. Examples include the two unanimous ethics committee reports admonishing DeLay in 2004. In addition, the complaint regarding DeLay's actions with respect to the Medicare bill was made by a member of DeLay's own party. And, as with Wright and Gingrich, nonpartisan groups—not just partisan elected officials—demanded that DeLay be held to account for his actions. Thus, more than simple partisanship was involved even in the initiation of the investigations, which is typically seen by the partisan-ethics-wars framework as a simple reflection of partisanship.

It is also noteworthy that the 1997, 1999, and 2004 admonishments of DeLay centered on his efforts to achieve political rather than financial gain. Again, the content of the cases is worth examining. As Dennis Thompson argues, the pursuit of political gain, such as campaign contributions or the passage of a bill, is not inherently wrong or illegal.⁶⁹ Indeed, it is an essential part of political life: Working hard for the passage of legislation is not illegitimate. But the *manner* in which DeLay sought to achieve the passage of legislation—offering an endorsement to another legislator to gain his support for the legislation—was problematic, said the committee in no uncertain terms. The committee also criticized DeLay in 1997 and 2004 for actions that created the appearance of “special access” for campaign donors. Across party lines, the committee converged in their conclusion that the appearance of special access violated norms governing acceptable methods of fund-raising and policy making enshrined in House ethics rules.

Similarly, the committee took a clear bipartisan stand in admonishing DeLay for his intervention with the Federal Aviation Agency. Democrats and Republicans agreed that a federal agency should not be used to target members of the other party (reminiscent of charges that Presidents Nixon and Obama used agencies like the FBI and IRS to target members of the other party). House ethics guidelines governing intervention before federal agencies state that it should not be done in a blatantly partisan manner for political gain. Members of both parties agreed that DeLay had not lived up to these guidelines.

DeLay got into trouble in part because he failed to pay adequate attention to “appearances,” specifically the appearance of special access for campaign donors. As Alan Rosenthal and Andrew Stark note, the concept of conflict of interest is centrally about how things *appear* to the public.⁷⁰ Ethics rules and modern political norms say that a politician’s actions can be ethically problematic simply because of how they appear, even if the official’s motives are not malign. Thompson’s principle of accountability says members need to attend to appearances—not just how things “are” but how they look to constituents whose trust is essential for a well-functioning democracy. The politics-by-other-means or partisan-ethics-wars framework misses the bipartisan agreement on this principle of legislative ethics. In the DeLay case, as with Wright, there was clear bipartisan agreement on the ethics committee regarding the importance of autonomy and accountability.

Conclusion

Some common patterns can be found across the three investigations. Consistent with the partisan-warfare or politics-by-other-means framework, partisanship played a role in each case. However, the influence of partisanship was not as overwhelming or complete as has been suggested. Commonalities are also found in the activities that came under scrutiny by the House ethics committee. Particularly with respect to Gingrich and DeLay, the activities that were investigated do not fit the classic paradigm of “personal financial gain.” What was central to the Gingrich and DeLay cases—and what was hinted at in Wright

case—was the improper pursuit of political gain, involving activities such as providing special access to big campaign donors and undue intervention before a federal agency on behalf of campaign donors.

The ethics committee (and House floor, in the Gingrich case) made clear, across party lines, that there is a distinction between improper and acceptable pursuit of political gain. Improper political gain charges are increasingly important, having increased as a percentage of all congressional ethics investigations since the 1970s.⁷¹ Since then, there have been numerous cases involving alleged violations of laws and rules pertaining to the use of campaign funds, disclosure of campaign funds, use of congressional staff for campaign work, and special access for campaign contributors. The increase in these types of cases reflects an expansion of federal laws and congressional ethics rules that define the boundaries of political activities.⁷²

Although there were laws governing improper political gain before Watergate—such as the 1883 Pendleton Act, which prohibited soliciting campaign donations on federal property—the post-Watergate era has witnessed a burst of regulatory efforts to rein in certain behavior involving political gain. In addition to those areas of activity noted above, the House passed rules that (1) restricted intervention before federal agencies on behalf of campaign contributors and (2) limited the use of the House floor to promote political organizations. In addition, the 1957 federal law governing tax-exempt organizations and political activity was amended in 1987 to make it harder to claim an exemption. This amended law was at the heart of the Gingrich investigation.

In the Gingrich case, the committee and floor also expressed a strong bipartisan consensus that dishonesty in providing information about one's political activities is misconduct worthy of reprimand and even financial punishment. And members of Congress expressed, across party lines, a more general concern that legislators should avoid behavior that does not “reflect creditably on the House”: they should be concerned with how their actions affect the public image of the legislative institution.

The ethics charges examined here offer some support for the politics-by-other-means or partisan-warfare perspective. Partisanship was a critical motive behind the filing of many of the complaints that led to the investigations. Particularly in the first two cases, members of the opposing party sought to bring down a powerful leader. However, I have argued that this is not the full story. The content of the investigations is noteworthy. It is not simply that the *investigations* of these politicians were partisan and political but that the *activities* that came under investigation were political in ways that could be construed as improper according to ethics rules and state and federal law. The bipartisan consensus expressed by the ethics committee and full House show that Congress deems certain activities (improper political gain and dishonesty, in addition to improper financial gain) to be unacceptable. We have seen similar bipartisan agreement in other congressional ethics cases—for example, those involving sexual misbehavior in recent years.⁷³

A focus on the partisan aspect of ethics investigations, then, undervalues the existence of bipartisan agreement on certain fundamental principles of legislative ethics. The creation of the Office of Congressional Ethics in 2008, as an

independent, nonpartisan entity tasked with reviewing allegations of member misconduct, suggests that the ethics process does not always have to be highly partisan. However, even this independent ethics agency has been affected by partisanship, as Republicans have consistently sought to undermine its power.⁷⁴

Thus, we must be careful not to overstate the degree of bipartisanship with respect to the congressional ethics process. It is also important to recognize that this study is based on only three cases and that there have been and continue to be cases in which partisanship has been evident.⁷⁵ Future research should explore the conditions under which partisanship in ethics cases may be greater and bipartisanship less evident. To what extent do the specific details of the charges matter, and how does the power of the accused affect the degree of bipartisanship? This study has focused on three powerful members of Congress, who represent the party “brand.” As discussed earlier, the incentive for party members to go on record as criticizing an accused party leader’s ethics is likely to be greater than the incentive to do so with respect to a less-well-known rank-and-file member. Looking at cases that do not involve powerful members of Congress may yield a different conclusion with respect to partisanship in ethics cases. And looking at more cases involving powerful members could strengthen the conclusion drawn here that some notable bipartisanship is evident or weaken or add refinement to the argument that has been made here.

The contribution of this study is to show that some degree of bipartisanship has occurred in the case of three high-profile members of Congress, so the ethics process is not simply a matter of using ethics as a weapon against the other party. This study has also argued that focusing solely on the partisanship involved in the ethics process leads us to miss important trends in the *content* of the investigations. Examining the content as well as the partisanship of cases illuminates much about the changing societal and legal expectations for members of Congress.

Notes

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- ³⁹ Babcock and Yang, "Files in Gingrich Case."
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Cite this article: Rosenson, Beth (2024). "Beyond a 'Partisan-Ethics-Wars' Interpretation of Congressional Ethics Investigations: The Cases of James Wright, Newt Gingrich, and Tom DeLay." *Journal of Policy History* 36 (4): 365–385, doi:10.1017/S089803062400006X