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C-SPAN II AIRS ETHICS HEARINGS ON SENATOR DAVID DURENBERGER

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Washington, D.C., June 11 -- On Tuesday, June 12, C-SPAN II will begin coverage of the Senate Ethics Committee's hearings into the finances of Minnesota Senator David Durenberger (R-MN).

These hearings mark the first time ever the Ethics Committee has conducted its business before TV cameras.

Each day the committee hears testimony, C-SPAN II will air that day's testimony at 8:00pm ET/7:00pm CT.

Senator Durenberger faces allegations of receiving profits that exceeded Senate honoraria limits. The six-member ethics panel, chaired by Senator Howell Heflin (D-AL), will hear evidence surrounding the charges.

C-SPAN II, C-SPAN's companion network, carries live the U.S. Senate and other public affairs programming. It is currently available in 21.2 million households nationwide. The C-SPAN networks are privately funded and are a public service of the cable television industry.

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ETHICS

Durenberger Inquiry Ready To Go Public, on the Air

No backroom deal cut, clearing the way for the Senate to have the first open ethics panel hearing in years

Despite widespread speculation that the Senate Ethics Committee would quietly settle its 15-month investigation of Dave Durenberger, the panel is ready to begin its first formal, public hearing on a senator's ethics and conduct in almost a decade.

The hearing, scheduled to begin June 12, will mark the first time in its 26-year history that the Ethics Committee has conducted business before television cameras.

For Durenberger, R-Minn., the key question is how quickly the public ordeal will end so he can begin to assess the political damage to his 12-year career in the Senate.

For the Senate, the key question is whether the publicity attending the inquiry will reinforce the public's cynicism about Congress as an institution and build pressure on other senators, even those untainted by scandal.

As the allegations against Durenberger have grown, some home-state politicians no longer ask whether the committee will recommend punishing him, but only how harshly.

"They wouldn't go this far unless they were going to reprimand him in some way," said Barbara J. Sykora, chairwoman of the Independent Republican Party of Minnesota. "The severity is what will make a difference."

The allegations against Durenberger have not been proved. And sources close to the committee say it is unlikely that he would be expelled — the chamber's harshest sanction, in the past reserved for senators who have been accused of such crimes as treason and bribery.

"There's no chance of expulsion," said committee member Trent Lott, R-Miss. "To impose our own judgment on the voters of Minnesota, he's going to have to be doing a lot more than he's done."

By Janet Hook

PAUL CONKLIN

Sen. Dave Durenberger, R-Minn.

Earlier this spring, committee members and Durenberger had indicated that a negotiated settlement between the senator and the committee might make a trial unnecessary. But this possibility evaporated as the hearing date approached.

"This is not the kind of matter you plea-bargain," said Warren B. Rudman, R-N.H., the committee's vice chairman.

Durenberger would not comment, saying simply: "There will be a hearing."

Feeling the Ethics Heat

The case could do to the Senate what other recent investigations have done to the House: turn a spotlight on the ethics of one member and, in the process, cast a long shadow on the institution as a whole.

Last year, the House was consumed by the investigation of Speaker Jim Wright of Texas. In the wake of his resignation, the House voted to bar its members from keeping honoraria after 1990. Although Durenberger does not symbolize a chamber the way the House Speaker does, publicity surrounding this case could give new impetus to efforts to make the Senate join the House in banning honoraria.

The charges against Durenberger are reminiscent of the Wright inquiry: Both have faced allegations of having improperly enriched themselves through home-state housing arrangements and through book-publishing deals that seemed designed to circumvent legal limits on honoraria and other outside income.

Durenberger stands accused of improperly taking Senate reimbursement for renting a Minneapolis condominium he partly owned. He also faces questions about whether he skirted honoraria limits through a book deal that paid him $100,000 over two years for making speeches and channeling the fees to the publisher, Piranha Press. *(Charges, p. 1770)*

Some see it as a measure of the changing ethics climate in Washington that Durenberger's case has been pressed so far and so publicly in an institution even more clubby and self-protective than the House. The last time a senator came under this advanced stage of investigation — the 1981-82 inquiry that led to the resignation of Harrison A. Williams Jr., D-N.J. — the committee didn't start investigating until after the senator had been convicted in federal court of bribery and conspiracy.

Durenberger faces multiple allegations of impropriety in his personal finances; no one has accused him of selling his vote or influence.

"Traditionally, there have been two kinds of ethics violations, bad bookkeeping and selling office," said Abbe Lowell, a Washington lawyer who has represented many members of Congress and other clients before the House and Senate ethics committees. "The second kind are the ones the Justice Department and public

have been most concerned about, but now people get as agitated about the first as the second."

Most damaging to Durenberger has been the gradual accumulation of allegations that contribute to a portrait of a man careless of ethical boundaries.

In addition to the condo and book deals under scrutiny, news reports have raised questions about whether he reaped political benefit from a nonprofit organization he helped found or got loans from a bank on preferential terms. *(Weekly Report, p. 374)*

Durenberger has tried to paint an alternative portrait, that of a senator too busy and a man too besieged by personal problems to have paid much attention to his finances, which he entrusted to lawyers and others.

"I lived by the rules as I understood them, as they were interpreted to me," he said in December 1989. "But, as I have said, I have learned that is not enough."

Few Precedents

In conducting the inquiry, which began in March 1989, the Ethics Committee has often had to wander down unmarked byways, as there are few precedents to guide its work.

In the 20th century, the Senate has formally disciplined six members. *(History, p. 1771)*

The investigatory hearing is supposed to let the committee review evidence and determine whether ethics violations have in fact occurred and, if so, to recommend to the Senate an appropriate punishment. Expulsion is the most extreme; censure is considered the next harshest. The committee has been known to resort to other terms of opprobrium: For example, the Senate "denounced" Herman Talmadge, D-Ga., in 1979; in 1954, it "condemned" Joseph R. McCarthy, R-Wis.

"You can use a thesaurus," Ethics Committee Chairman Howell Heflin, D-Ala., said in jest.

A disciplinary resolution would have to be approved by four of the panel's six members and then by the full Senate. An expulsion requires a two-thirds vote of the Senate; other actions require a majority vote.

Focus on Motivation

The cast of characters involved in the Durenberger hearing will assemble June 12 at 9:30 a.m. in a vast, modern hearing room where the six-member committee will sit against a cold marble backdrop. *(Cast, p. 1772)*

The hearing will be open to the public. While television cameras will be allowed, none of the major networks are expected to show the proceedings live. The cable network that broadcasts House and Senate proceedings, C-SPAN, plans at least to tape the hearings from gavel to gavel for later broadcast.

The lawyers who will argue the case are veterans of Senate ethics battles.

Handling the investigation for the committee is special counsel Robert S. Bennett, who also handled the committee's investigation of Williams.

Representing Durenberger is

The Durenberger Investigation

The Senate Ethics Committee's investigation of Dave Durenberger, R-Minn., focuses on a 1985-86 book deal and suit on a condominium.

The Book Deal

Background: Piranha Press, a Minnesota company, published two books written by Durenberger — one on defense policy, "Neither Madmen Nor Messiahs," and one on health policy, "Prescription for Change" — and paid Durenberger $100,000 in quarterly installments in 1985-86. In exchange, Durenberger gave about 113 speeches over the two years to promote the books, including six appearances in congressional facilities. Interest groups that invited Durenberger to speak during those years were referred to Piranha Press and asked to pay fees directly to it. During both years, Durenberger's other speaking engagements earned him the maximum amount of honoraria senators could keep — $22,500 in 1985 and $20,000 in 1986.

Charges: The committee will determine whether Durenberger:

- Circumvented limits on senators' honoraria through the book deal.
- Violated financial disclosure requirements by failing to report expense reimbursements received for about 43 speaking trips he made in 1985-86. In July 1989, Durenberger amended his reports to list these trips.
- Improperly converted campaign funds to personal use by transferring to Piranha Press a $5,000 check written to his campaign in December 1986 from the Pathology Practice Association Federal Political Action Committee.
- Violated laws barring the use of congressional buildings for commercial purposes by giving speeches in the Capitol and Senate office buildings in exchange for $6,250 paid to Piranha Press.
- Violated Senate gift rules by accepting free limousine service in the Boston area — services estimated by the committee to be worth $4,935.

The Condominium

Background: Durenberger received Senate reimbursement for rent paid on a Minneapolis condominium from August 1983 to November 1989.

Durenberger used to own the condo, but, in what he said was an effort to reap tax advantages, he sold it to a business partnership formed with Roger Scherer, a friend and political backer. Durenberger says he agreed to form the partnership in mid-1983, but it was not recorded with county officials until mid-1984. Documents were backdated to justify earlier reimbursements.

Also in 1983, Durenberger switched his legal residence from Minneapolis to his hometown of Avon, Minn. He said he believed that that would make him eligible for reimbursement when he stayed in Minneapolis. The Independent Service Co. — owned by political associate Paul Overgaard — bought the condo in 1987; documents pertaining to the sale were filed belatedly.

Charges. The committee will examine whether Durenberger abused his office, "through a pattern of misconduct which brings discredit upon the U.S. Senate," by seeking reimbursement for staying at the condo in which he shared ownership. The committee will examine whether Durenberger:

- Submitted misleading Senate travel vouchers.
- Misrepresented the ownership of the condo in seeking reimbursement.
- Improperly backdated documents pertaining to the condo deal.
- Violated federal ethics law governing blind trusts by improperly communicating with the trustee of his assets, including his condo partnership.

James Hamilton, the Washington lawyer who defended Talmadge.

Bennett said he has approached about 200 witnesses in his investigation, but not all have been subpoenaed to appear.

The biggest clue to the tone and duration of the proceedings will be provided when Hamilton makes an opening statement on behalf of Durenberger or the senator himself makes an opening statement. The key question is how much Durenberger will contest Bennett's presentation of the facts. If he accepts the evidence as presented, there may be little need for Bennett to go through extensive documentation and testimony, and the committee might not need the full two weeks set aside for the hearing.

On the other hand, the Talmadge hearings were scheduled to last two weeks but ended up spanning more than two months.

Over the past year, Durenberger has not disputed key facts about the transactions in question. He has confirmed details of the book deal and the condo arrangement, but he has repeatedly denied any intention to violate ethics rules or laws.

The question of Durenberger's intentions may prove a focus of the hearing. Gary L. Diamond, whom committee investigators questioned because he published Durenberger's books, said their line of inquiry focused on Durenberger's motivation in setting up the book contract.

"They seemed to want to show it was an out-and-out way to get around the honoraria limit," said Diamond, who said all his dealings were with Durenberger's lawyer, not the senator himself.

Heflin

Rudman

Bennett

Players in Hearing

Senate Ethics Committee

Howell Heflin, D-Ala., chairman.
Warren B. Rudman, R-N.H., vice chairman.
Other members: David Pryor, D-Ark.; Terry Sanford, D-N.C.; Jesse Helms, R-N.C.; Trent Lott, R-Miss. *(Profiles, Weekly Report, p. 889)*

The Lawyers

Robert S. Bennett, special counsel to the Ethics Committee. Member, Washington law firm of Skadden, Arps, Slate, Meagher & Flom ... is also heading a pending Ethics Committee inquiry into five senators' links to thrift executive Charles H. Keating Jr. .. in 1981-82, headed Ethics Committee investigation that led to the resignation of Sen. Harrison A. Williams Jr., D-N.J.

James Hamilton, attorney for Sen. Dave Durenberger, R-Minn. Member, Washington office of the New York firm of Olwine, Connelly, Chase, O'Donnell & Weyher ... also represents Sen. Dennis DeConcini, D-Ariz., in pending Ethics Committee inquiry into his links to thrift executive Charles H. Keating Jr. ... represented Sen. Herman E. Talmadge, D-Ga., in ethics investigation in 1978-79 ... assistant chief counsel to the Senate Watergate committee, 1973-74.

Durenberger Associates

Gary L. Diamond, friend of Durenberger and owner of the company, Piranha Press, that published two of the senator's books.

Randall E. Johnson, a former campaign attorney for Durenberger in 1978 who advised Durenberger on a condominium partnership.

Michael C. Mahoney, personal attorney for Durenberger who advised him on the book deal.

Paul Overgaard, friend and former campaign manager of Durenberger and owner of Independent Service Company, which bought his condo for $52,500 in 1987.

Roger Scherer, friend and political backer of Durenberger's with whom the senator formed the condominium partnership.

Possible Defenses

Durenberger and his aides would not discuss his defense strategy. But his past responses to allegations suggest that his defense will rest on these pillars:

• **The official OK.** Durenberger says he consulted with and got approval from Senate authorities and his lawyers before entering the deals under scrutiny.

On the book promotion deal, Durenberger's lawyers in October 1983 wrote to the Federal Election Commission (FEC) asking for an advisory opinion on whether the money Piranha Press was to pay Durenberger amounted to honoraria — fees for speeches and appearances — of which senators can keep only a limited amount. The FEC said, based on the information provided, that the money was not honoraria but a "stipend" — income for services on a continuing basis that is not limited by law or Senate rules.

However, Durenberger's lawyers did not mention in their letter that the groups inviting Durenberger to speak would be paying the publisher fees they had expected to go to the senator.

Before seeking reimbursement for staying in the condo, Durenberger says, his staff consulted with the Senate Rules and Ethics committees, which raised no objections.

But after the media questioned the condo arrangement, Durenberger in December 1989 asked the Rules Committee to review it again, and the panel said the reimbursement was not proper.

In documents submitted for that review, the only evidence Durenberger offered of earlier approval from Rules and Ethics was an interoffice memo from one Durenberger aide to another. "No one has a problem with the partnership situation," it said, without specifying who had been consulted.

It may be harder for Durenberger than it would be for other senators to make the case that he did not fully understand the complexity of Senate rules. He served on the Ethics Committee in 1983-84.

"That will significantly limit his ability to say these are obscure rules and no one knows what they mean," said John D. Saxon, a former aide to Heflin. "He would have sat through enough Ethics Committee sessions that he would have to know the purpose of honoraria limits."

• **Personal turmoil.** Durenberger may ask the committee to take account of problems he was facing when these transactions were undertaken.

His first wife died in 1970, leaving him with four young sons. His second marriage was failing by the mid-1980s, and Durenberger publicly acknowledged that he was having a "midlife crisis."

He faced the financial burden of

Williams

Talmadge

McCarthy

La Follette

Long

Senate Discipline in the 20th Century

1982 — Harrison A. Williams Jr., D-N.J. — Resigned
Accused of corruption in connection with Abscam scandal. Williams had been convicted in federal court in 1981 of accepting stock in a mining company in return for government contracts. Resigned after it became clear he would be expelled.

1979 — Herman E. Talmadge, D-Ga. — Denounced
Accused of financial misconduct for improperly collecting $43,436 in reimbursements between 1973 and 1978 by submitting false expense vouchers. He also failed to report more than $10,000 in campaign contributions. Denounced upon recommendation of the Ethics Committee, which rejected a censure proposal.

1967 — Thomas J. Dodd, D-Conn. — Censured
Accused of financial misconduct for spending campaign funds for personal purposes, double-billing for travel expenses and exchanging favors with a West German public relations representative. Censured for campaign-fund violations only.

1954 — Joseph R. McCarthy, R-Wis. — Condemned
Accused of obstruction of legislative process, especially refusal to testify before the Rules Committee in 1952; insulting senators, especially the defamation of Millard E. Tydings, D-Md.; habitual contempt for people. The original 40,000-word report from a Select Committee to Study Censure Charges recommended McCarthy be censured, but the Senate substituted the word "condemned" for "censured."

1942 — William Langer, R-N.D. — Not expelled
Accused of corruption as governor of North Dakota and in other state government posts. The Senate rejected a resolution declaring Langer was not entitled to his seat.

1934 — Huey P. Long, D-La., and John H. Overton, D-La. — Not expelled
Accused of corruption in connection with the nomination and election of 1932. The Committee on Privileges and Elections asked to be taken off the case.

1929 — Hiram Bingham, R-Conn. — Censured
Accused of bringing the Senate into disrepute for hiring a secretary to the president of the Connecticut Manufacturers' Association to assist him with tariff legislation.

1919 — Robert M. La Follette, R-Wis. — Not expelled
Accused of disloyalty for decrying U.S. participation in the war in Europe. The Senate voted to dismiss the Minnesota Public Safety Commission's petition to expel.

1907 — Reed Smoot, R-Utah — Not expelled
Accused of Mormonism — favoring polygamy and opposing separation of church and state. The Senate rejected a resolution reported by the Committee on Privileges and Elections that would have declared Smoot not entitled to his seat.

1905 — John H. Mitchell, R-Ore. — Died
Accused of corruption for his conviction in July 1905 for accepting compensation for expediting land claims of clients. Died while appeal was pending.

1902 — John L. McLaurin, D-S.C., and Benjamin R. Tillman, D-S.C. — Censured
Accused of assault. During a debate on the Philippines, the two engaged in a brief fistfight on the Senate floor.

sending four children to college. Two of his children were treated for drug problems at the same time.

Sources familiar with the inquiry say Durenberger cited those factors when he testified in a closed meeting of the Ethics Committee in February. *(Weekly Report, p. 374)*

While those circumstances may have no bearing on the committee's judgment of whether he broke the rules, it might affect how harsh a punishment to impose.

Said a fellow Minnesota Republican, Rep. Vin Weber: "These are serious matters and serious amounts of money, but circumstances do matter. It's not to say it's not wrong, but the circumstances in Dave's personal life were extraordinary."

• **Mea culpa.** Although his defense may hinge on portraying himself as a busy senator who relied on experts and aides, Durenberger has said he assumes full responsibility for his "mistakes and lapses in judgment."

What's more, Durenberger has taken steps to compensate for his mistakes.

He has amended his financial disclosure forms to include unreported trips and has repaid the Senate $11,005 for the rent reimbursements he should not have taken.

In recent cases before the House ethics committee, such compensatory steps have been known to ease the sanction.

Scrutiny Back Home

No one will be watching the hearings as closely as the Minnesota voters who re-elected Durenberger in 1988. At least three Minnesota television stations will cover the hearings, and a public radio station plans to carry it live.

Unless he is expelled or he resigns, Durenberger will have four years to put the matter behind him before he has to face voters in Minnesota again.

Once among the state's most popular politicians, Durenberger watched his approval ratings plummet over the past year. But he is not up for re-election until 1994.

"He has pretty significant political problems, but that's not to say it couldn't be turned around over time," said Rep. Timothy J. Penny, D-Minn.

Said Sykora of the Independent Republican Party: "Most people think Durenberger is an excellent senator who means well but makes some mistakes.

"People are waiting to see what happens." ■

CLARIFICATION

Financial Disclosure Reports. Weekly Report, p. 1716, third column, fourth full paragraph. Although Rep. Barbara B. Kennelly's 1989 financial disclosure form reported a gift of a rug worth $250 from Pakistan's prime minister, Benazir Bhutto, the Connecticut Democrat's staff says the rug was accepted on behalf of the State Department and does not belong to the congresswoman. ■

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