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COMMITTEE DEPOSITION AUTHORITY

HEARING

BEFORE THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

H. RES. 836

GRANTING THE AUTHORITY PROVIDED UNDER CLAUSE 4(c)(3) OF RULE X OF THE RULES OF THE HOUSE OF REPRESENTATIVES TO THE COMMITTEE ON EDUCATION AND LABOR FOR PURPOSES OF ITS INVESTIGATION INTO THE DEATHS OF 9 INDIVIDUALS THAT OCCURRED AT THE CRANDALL CANYON MINE NEAR HUNTINGTON, UTAH

DECEMBER 5, 2007

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EMERGENCY MEETING ON H. RES. 836, GRANTING THE AUTHORITY PROVIDED UNDER CLAUSE 4(c)(3) OF RULE X OF THE RULES OF THE HOUSE OF REPRESENTATIVES TO THE COMMITTEE ON EDUCATION AND LABOR FOR PURPOSES OF ITS INVESTIGATION INTO THE DEATHS OF 9 INDIVIDUALS THAT OCCURRED AT THE CRANDALL CANYON MINE NEAR HUNTINGTON, UTAH

WEDNESDAY, DECEMBER 5, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, DC.

The committee met, pursuant to call, at 2:00 p.m. in room H–313, The Capitol, Hon. Louise M. Slaughter [chairwoman of the committee] presiding.

Present: Representatives Slaughter, McGovern, Hastings of Florida, Matsui, Cardoza, Welch, Castor, Arcuri, Sutton, Dreier, Hastings of Washington, and Sessions.

The CHAIRWOMAN. The Rules Committee will please come to order.

We are here to consider H. Res. 836, Granting the Authority Provided under clause 4(c)(3) of rule X of the Rules of the House of Representatives to the Committee on Education and Labor for Purposes of its Investigation into the Deaths of 9 Individuals that Occurred at the Crandall Canyon Mine near Huntington, Utah.

On August 6 of this year, pillars in Utah's Crandall Canyon Mine exploded and tragically killed six miners. The entire Nation watched around the clock as rescuers made their best effort to recover these six persons. Unfortunately, tragedy struck again just 10 days later when three rescuers themselves died in the midst of their heroic efforts.

The rescue effort ultimately was called off, and the mine was closed. Although any mine rescue will be treacherous, serious questions were raised about the rescue efforts of the Labor Department's Mine Safety and Health Administration and the mine owner, Murray Energy, and the safety of the mine itself.

Since the mine accident, the Education and Labor Committee has been engaged in exhaustive investigation into not only any safety problems in the mine that were known to MSHA and Murray Energy prior to the accident, but also the conduct of Murray Energy

and MSHA in attempting the rescue. The investigation has consisted of countless staff interviews, document requests, a subpoena and a hearing.

While the committee has attempted to obtain needed information through voluntary interviews and document requests, some individuals have indicated that they will not cooperate voluntarily with the investigation. Whether such recalcitrance was caused by the fear of retaliation or by the fear of self-incrimination, it is hindering a legitimate congressional investigation into all of the most recent of several mining incidents.

This resolution provides the authority that the Education Committee needs to uncover what happened and what needs to be done to prevent future accidents.

House Resolution 836 would extend the authority that already exist in the House rules and will permit the committee to call witnesses for Member and staff depositions. It is important to know that the deposition authority in H. Res. 836 is limited to the committee's investigation of the mine deaths at Crandall Canyon Mine. It does not extend to any other investigation or even any accident in any other mine.

In addition, the minority members of staff must be afforded equitable treatment with respect to notice and participation in any depositions. These are just a few of the many provisions in the authority that protect the rights and prerogatives of the Members. Just a few hours ago, the Education Committee adopted deposition rules in anticipation of H. Res. 836 passing the House. The committee rules provide significant protections to the committee members and witnesses called for depositions.

I ask that during their testimony Chairman Miller and Ranking Member McKeon describe for us these precautions, protections and how they will differ from past deposition rules. I believe that the resolution and the committee rules provide a reasonable tool for the continuation of the Crandall Canyon Mine investigation.

It is my understanding that the Education Committee's ranking member has been involved closely in the development of the resolution and the rule and that many, if not all of his concerns have been addressed.

I hope that this committee and the House will approve the resolution so that the investigation can continue and that the truth of Crandall Canyon can be uncovered and that the information obtained can be used to prevent future mine accidents.

I now recognize Mr. Dreier for an opening statement.

Mr. DREIER. Thank you very much, Madam Chairman.

As I listen to your very thoughtful opening remarks, I am of course brought, as we all are, back to those days in August. In many ways it seems like it is a long time ago. It is hard to believe it was just 3 months ago. I can remember vividly sitting up late, as we all do, when disasters like this hit and there are people whose lives are threatened, who are waiting and watching these reports that were coming from the Crandall Canyon Mine disaster.

I do think that it is essential that everything that possibly can be done to ensure that what we faced then never happens again. This is not a first. This has obviously happened repeatedly. I remember when our former Rules Committee colleague, Mrs. Capito,

was dealing just a few years ago with the tragic loss of life there. I remember what a roller coaster ride that was when they came that night, do you remember, and said that everyone was safe, and, then, of course they got the reverse before long.

I can't say how saddened I am to having thought about that situation again. I want to express my condolences.

I will say that we are at the end of the day going to be supportive of this effort, but I would like to raise a couple of concerns that I have seen on this. We all know that this is an extraordinary procedure that we are talking about here. I just wrote down what you said in your opening remarks. You said this already exists in House Rules.

It does exist in House Rules in that on the opening day when we passed the rules package, which, not surprisingly, Mr. McKeon and I and Mr. Hastings opposed for numerous reasons, which we outlined at that point, one of those included providing our California colleague, Mr. Waxman, with basically blanket and extraordinary authority. In fact, Madam Chairman, back in the 105th Congress you were a signatory to minority views which described that as extraordinary.

I will say that I believe it very important that we move as carefully as we possibly can. I think that Mr. McKeon will probably point to the fact that while, as you said in your remarks there, that there may be some people who, for one reason or another, feel that they do not want to come forward, subpoena authority does exist. I do believe that we have the ability to glean the necessary information.

I also want to say that if you look at the package here in dealing with the Education and Labor Committee, it is far better than what you described as already existing in the House rules, the package that was put into place on the opening day of the 110th Congress. I wish very much that the model that has been put forward for Chairman Miller and Mr. McKeon would have been the model utilized for Mr. Waxman's committee.

In closing, I would simply say, Madam Chairman, that this is the first original jurisdiction hearing of the Rules Committee for the 110th Congress. I hope very much that it won't be the last as we proceed with the very important jurisdiction which falls within the Rules Committee.

Thank you very much.

The CHAIRWOMAN. Thank you very much.

Let me call Mr. Miller, the Chair, and Ranking Member McKeon to the table.

Mr. Miller, we would be happy to hear from you.

STATEMENT OF THE HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Thank you. Thank you for this hearing and for the resolution.

Madam Chairman, you and Mr. Dreier have pointed out the reason why we are here, the tragedy at Crandall Canyon Mine and our obvious need to investigate what transpired there over a considerable period of time from the approval of plans to the accidents and the aftermath of the accidents. As you know, not only were the

miners killed, but then three who went in to rescue them were killed in that process.

We believe that this authority is necessary to engage in these depositions. A number of people we have talked to from various aspects of this accident have indicated that they will not cooperate for different reasons, and that is certainly their right currently. But we believe that their testimony and our ability to probe them is essential to the success of this investigation.

Mr. McKeon said this morning, and you mentioned it, that there is an investigation going on by MSHA, but MSHA itself—its activities and responses are a part of that investigation, so that this can't be left just to theirs. We have been respectful of their investigation. We have pursued this investigation parallel with theirs and others that have taken place by the State of Utah and others, and we have worked cooperatively with them.

But at this stage we believe that this authority is necessary, and the resolution that you have under consideration is obviously essential to our having the authority to do it in this fashion.

It is unusual. There is no permanent rule for the committees, as you pointed out. Authority was granted to Government Reform but not to us, and that is obviously why we are here.

This committee has sought that authority, I think, in the past, when we were doing the Teamsters investigation a number of years ago. That authority was given.

Mr. Dreier has noted that this is different than that authority. In working with the Rules Committee, with Government Reform, and with the minority on this, we have made some changes.

We think that our rules now are reflecting the consensus and cooperation that Members would receive 3 days notice before the chairman issues the subpoenas, the chairman's rulings on objections in the depositions are promulgated to the Members before the ruling is implemented and can be overruled by the full committee. Members are given an opportunity to object to the introduction of deposition testimony into evidence before the committee at such time that evidence is offered. The Republicans are consulted before subpoena notice goes out. Minority counsel is given a full opportunity to question the deponents and participate in the depositions with the majority counsel. For the deponent, they can bring personal counsel in applicable cases, agency counsel or corporate counsel to advise the deponent and respect the deponent's rights.

The deponents do not have to answer questions for which a privileged objection is made. In the first instance, subject to overruling that privilege, that objection by the committee, the depositions are taken by counsel, not attorney staff, who are able to consider, respect the deponent's constitutional rights and of the privileges. As you know, you can't exercise privileges before a congressional committee, but the congressional committee has the authority to override them.

But we protect those rights, we protect the rights of the majority and the minority with respect to notice participation and rotating the ability to ask the questions, to go back and forth in selected periods of time in that inquiry. So we think it does meet the test of fairness and protection of the rights of all parties to this. We recog-

nize this is unusual authority, but we clearly believe that it is necessary at this stage of the investigation.

Thank you.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF HON. GEORGE MILLER, CHAIRMAN, HOUSE COMMITTEE ON EDUCATION AND LABOR

Madam Chairwoman, thank you for the opportunity to speak with your Committee today about H. Res. 836.

This resolution would grant authority to the Education and Labor Committee to compel witnesses to appear for depositions in our ongoing investigation into the tragic deaths of nine men at the Crandall Canyon Mine in Utah in August 2007.

Six coal miners who were trapped in a collapse at the mine remain entombed there. Three rescuers who made valiant efforts to reach the trapped miners also paid with their lives.

Given the seriousness of this disaster, it clearly warrants a full and independent investigation.

Although the federal Mine Safety and Health Administration has begun its own investigation, the agency simply cannot be entrusted with this responsibility.

That is why, soon after the tragedy, I began a Committee investigation into the circumstances leading up to, during, and following the collapse.

I believe that a mechanism for full and independent investigations of mining tragedies must be enshrined into law. My committee has already approved legislation that would do just that.

But now, in the absence of such a mechanism, it is essential that Congress fully investigate what happened at Crandall Canyon.

In most investigations, a combination of documentary and testimonial evidence provides the greatest insight. Our committee has begun to receive documentary evidence, including emails and memoranda, that have helped our work.

To conduct a thorough investigation, however, we also need to have the ability to collect testimonial evidence.

We need to know who knew what, when they knew it, and how they came to know it. We need to know about face-to-face meetings and telephone conversations they had.

Emails and memos are important, but they will only tell a part of the story. The technical aspects of mining plans, the mining plan approval process, and other features specific to the mining industry will require precise questioning in fully transcribed, bipartisan deposition sessions.

While we would prefer that individuals come forward voluntarily to supply the Committee with information, we believe this step is necessary to ensure that we get the information we need from all relevant witnesses, whether they volunteer the information or not.

And the seriousness of this matter requires that interviews be conducted under oath, as they would be in a deposition.

I am pleased to say that, earlier today, the Education and Labor Committee approved new bipartisan committee rules governing the use of this deposition authority.

We developed these rules in close consultation with Senior Republican Member McKeon and his staff. These rules will protect the rights of the deponents and the rights of the minority.

The Committee's majority and minority staffs include attorneys experienced in litigation, investigations, and House procedure. This deposition authority will enable them to pursue this investigation as effectively and efficiently as possible.

Madam Chairwoman, earlier this year my Committee heard from family members of the miners and rescuers who died at Crandall. They want to know what happened to their loved ones. They have a right to know what happened.

With a full and independent investigation, we will learn what went wrong and what steps could be taken now to help prevent future tragedies. We owe that to the families of the miners who have died and to the thousands of miners who risk their lives working underground every day.

Thank you.

The CHAIRWOMAN. Thank you, Mr. Miller.

Mr. McKeon.

STATEMENT OF THE HON. HOWARD McKEON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCKEON. Thank you, Madam Chairman, Ranking Member Dreier and Members of the committee. I appreciate the opportunity to testify on the proposal to grant deposition authority to the Committee on Education and Labor and the investigation of the Crandall Canyon mining disaster.

I joined my colleagues in that just a short time ago to establish rules to govern these depositions. The rule adopted by our committee to direct this process was developed cooperatively to ensure that this authority, regardless of whether it is merited, will be exercised fairly and with the full consultation of the minority.

Based on his actions up to this point, I have every confidence that the chairman will treat this respectfully in this process. While I did not object to the parameters of the deposition authority, I expressed caution, and just as I do now, that this authority is premature, unnecessary and has the potential to cause great harm.

The Education and Labor Committee has a history of working carefully and cooperatively to ensure safety in our Nation's mines.

Last year we oversaw the development and enactment of the Miner Act, the most sweeping mine safety reforms in a generation. We take seriously our commitment to mine safety, which includes appropriate oversight.

Because of that, I do not believe we should take lightly this proposal to diverge from our accepted oversight capabilities.

At a minimum, this proposal is premature. Our committee has already made significant progress in our investigation through existing authority to conduct hearings, demand documents and interview witnesses and experts. Our colleagues on the other side of the Capitol are engaged in similar exercises.

At the same time, the U.S. Department of Labor and the State of Utah have undertaken a series of investigations into the cause of the mine collapse and handling of the events in its wake. There are inquiries into the cause of the collapse, inquiries into the development and observance of the mine safety plans and inquiries into the handling of the rescue by both the mine operator and Federal regulators.

There is no shortage in the number and scope of these inquiries. Our role in these investigations is to conduct robust oversight.

To that end, the committee has requested, and the Department of Labor has produced, hundreds of thousands of pages of documents related to this mine and its collapse.

More documents are on the way. We also have significant tools at our disposal, even without this new and extraordinary authority, to hold hearings, interview witnesses and officials, insert findings into the official record and compel the disclosure of documents. We have not come close to exhausting the resources at our disposal to investigate the incident.

Not only is the deposition authority premature at this juncture, it also appears to be unnecessary. Although the majority staff have refused to discuss who they intend to depose, we have been told that only four or five witnesses would need to be subpoenaed. I see no reason why the regular hearing process could not accommodate that small number of witnesses.

Today, however, we are beginning down a path that I believe goes far beyond our charge to conduct oversight. By granting the Education and Labor Committee the authority to depose witnesses, we are venturing into an arena rarely entered by Congress and then only under circumstances such as national security, the impeachment of a President and the alleged defrauding of a national organization by its leadership. Deposition authority will allow dozens of interviews to be conducted under oath and be compelled by subpoena. This could create the possibility of a potential web of conflicts of interest, produce claims and rulings, requests for immunity, leaks and contradictory evidence.

Previous congressional probes would serve as a cautionary tale as we head down this path. Tactics used in the congressional oversight investigation of the Iran Contra Affair caused key testimony against Oliver North to be thrown out and his convictions to be overturned.

In early September, the Acting Solicitor of Labor wrote to Chairman Miller and myself, along with the leadership of the House, expressing concerns that the committee's parallel investigation may compromise the integrity of MSHA's law enforcement investigation and potentially jeopardize its ability to enforce the law and hold violators accountable.

Madam Chairman, I would like to include that letter in the record. The danger described in the letter is as real today as it was then.

The CHAIRWOMAN. Without objection.

[The information follows:]

DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, DC, September 11, 2007.

Hon. GEORGE MILLER,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: I am writing to express grave concerns that the Committee's current plans to pursue its own parallel investigation of the Crandall Canyon mine accident may compromise the integrity of the Mine Safety and Health Administration's (MSHA's) law enforcement investigation and potentially jeopardize its ability to enforce the law and hold violators accountable. Specifically, the Department is concerned about the Committee's plans to interview witnesses and hold a public hearing before MSHA's officially constituted accident investigation team has the chance to interview the witnesses and carry out its statutorily mandated law enforcement responsibilities. For the Committee's parallel inquiry to proceed while MSHA's investigation is ongoing and in its early stages is likely to result in confusion for the families and the public and may taint the ongoing accident investigation to such a degree that MSHA is unable to prosecute any violations of mine safety and health standards that contributed to or exacerbated the accident. In light of these concerns, the Department requests that the Committee postpone witness interviews for a few weeks and that the October 3, 2007, public hearing be rescheduled for a date following completion of the witness interview phase of the law enforcement investigation.

MSHA's statutory law enforcement obligations

As you know, MSHA has been overseeing rescue and recovery operations at the Crandall Canyon coal mine as a result of a mine accident on August 6, 2007. Pursuant to its mine accident investigation authority under Section 103 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 813, and consistent with general law enforcement investigation protocols, MSHA investigates mine accidents and issues formal reports summarizing the findings and conclusions of the investigation, identifying causes of the accident and how the incident unfolded. At the conclusion of the investigation, should MSHA discover violations of safety or health

standards that contributed to the accident, the responsible parties are cited civilly. If there is evidence of intentional or willful violations, criminal referrals will be made to the appropriate U.S. Attorney's office. Accordingly, on August 30, 2007, MSHA announced that its investigation team will review relevant documents, conduct interviews of relevant witnesses, including the mine owner, mine management, other miners, and MSHA employees involved in oversight of Crandall Canyon. At the completion of the investigation, the results of the investigation as well as the transcripts of non-confidential witness interviews will be made available to the public.

In accord with MSHA practice, the investigations will be conducted under law enforcement investigation protocols. For example, the MSHA investigation team looking into the accident itself will conduct government-only witness interviews jointly with the State of Utah. Information from interviews or transcripts will only be released after MSHA's chief investigator and the designated Utah official determine that a release will not jeopardize the integrity of the investigation. All witnesses will be asked not to discuss the substance of their interviews with other witnesses or the public in order to protect the integrity of the investigation and to prevent prejudice to the testimony of other witnesses.

In addition to the accident investigation, the Department announced on August 30, 2007, the appointment of independent outside mine safety experts to review the actions of MSHA relative to the Crandall Canyon Mine accident. That review will include actions taken before the August 6 accident and the ensuing rescue operations and will consist of a thorough examination of documents relevant to the Crandall Canyon Mine and interviews of MSHA employees with personal knowledge of MSHA's inspection responsibilities and enforcement procedures at the mine.

Committee staff rejected proposed accommodation

On September 6, 2007, the investigative staff of the Education and Labor Committee informed the Department of Labor that they were planning to interview employees of MSHA Region 9 in Denver, Colorado. On September 7, the Department of Labor contacted the Committee's investigative staff to discuss the request. Committee staff again stated that they intended to question MSHA employees on various aspects of the accident on September 12 and also indicated that the Committee intended to call some of the interviewees for a hearing on October 3, 2007. The Department explained that MSHA's ongoing law enforcement investigation would not be complete by the time of the interviews proposed for this week and that it would jeopardize the law enforcement investigation for the Committee to interview witnesses before the MSHA law enforcement investigation team had done so. Committee staff stated they could not wait beyond September 12 or 13 for the Department to produce the following witnesses for interviews: the MSHA district manager, the roof control specialist who approved the Crandall Canyon roof control plan, and the roof control specialist's supervisor.

The Department requests a short delay that will minimize the potential prejudice to the open law enforcement investigation

The Department has no objection to providing the Committee with background information and information on MSHA procedures that pertain to the Crandall Canyon accident or to allowing Committee staff to interview appropriate MSHA personnel at an appropriate time in the near future. The Department, however, strongly believes that interviews at this time and a public hearing would jeopardize the law enforcement investigation. Although the Committee has a legitimate interest in determining how the Department enforces statutes, congressional investigations during the pendency of the law enforcement investigation pose an inherent threat to the integrity of that investigation. Your parallel investigation could prejudice the testimony of other witnesses, subject witnesses to possible intimidation, tip off potential civil or criminal violators that they are under suspicion, and/or taint the investigation such that any enforcement action is precluded from being brought. See, e.g., *Walkins* v. *United States,* 354 U.S. 178 (1957) (noting that Congress is not "a law enforcement agency" as that is a function of the executive branch); Letter of Assistant Attorney General Robert Raben (Jan. 27, 2000); Opinion of Attorney General Jackson, 40 Op. Att'y. Gen. 45, 46 (1941) (citing Attorney Generals from the beginning of the 20th Century). Accordingly, the Department has serious concerns about a parallel investigation by the Education and Labor Committee proceeding while the Department's investigation is ongoing.

The Department also takes very seriously its responsibility to protect the privacy interests of individuals about whom information is developed during a law enforcement process. The reputations of individuals mentioned in investigations could be severely damaged by the public release of incomplete circumstantial information

about them, especially when they may be exonerated by additional investigation and other evidence later developed.

In conducting its own parallel but limited investigation before an October 3 hearing, it is likely the Committee will not know all the facts and may come to conclusions on the accident that are later contradicted by other evidence. The public airing of that incomplete information on October 3 will inevitably affect the testimony of any witnesses not interviewed by the accident team before October 3, tip off possible targets, confuse the victims' families and the public, and possibly unfairly tarnish the reputation of innocent individuals.

The Department will continue to cooperate with the Committee

The Department respects the prerogatives of the Committee to conduct oversight and, as you know, has previously responded to a number of Committee letters requesting information on other matters as well as dozens of requests from your staff for documents and information, briefed the Committee on a number of occasions on mine safety issues, and testified before the Committee. The Department has already provided the Committee with non-confidential documents in the course of the Crandall Canyon investigation in response to requests and will continue to provide requested information as it becomes available.

The Department asked the Committee staff to delay its investigation for a short period of time to enable the law enforcement investigative team to complete the interviews and fact-gathering phase, after which the Department would be pleased to facilitate the Committee's inquiries. However, because staff represented during a conference call on Friday with Department attorneys that the Committee intended to forge ahead despite the serious concerns expressed, MSHA has already asked the requested personnel to be available on September 12 in Colorado for a brief interview by your staff. In response to this particular Committee request, the Department is providing access to these witnesses for non-public interviews only. The Department believes that disclosure of the contents of these interviews could adversely impact our law enforcement efforts by prematurely revealing information to other witnesses. Accordingly, the Department requests that the Committee take appropriate steps to ensure that such disclosures do not occur and otherwise to conduct your investigation in a manner that will avoid risks of compromising our efforts. In view of our concerns, the Department trusts you will find this to be a good faith accommodation.

The Department remains particularly concerned that a public hearing would complicate our efforts to hold any culpable parties accountable for any legal violations that may have caused or contributed to the mine accident. Accordingly, the Department respectfully urges you to delay the Committee's inquiry appropriately.

Sincerely,

JONATHAN L. SNARE,
Acting Solicitor of Labor.

Mr. MCKEON. The majority has thus far heeded our warnings and the Department of Labor. Interviews have proceeded cautiously to avoid any inadvertent sabotage of our pending inquiries. Our hearing was structured in such a way as to avoid endangering the investigations.

I am concerned that by granting unfettered deposition authority the House is backing away from that cautious approach and rekindling the threat that our activities could undermine the aggressive enforcement that MSHA and that other investigators have an obligation to pursue. The deposition authority today is crafted narrowly not only to cover the Crandall Canyon Mine collapse. I have serious questions about the timing and necessity of this discrete authority.

Beyond that, however, I want to make it perfectly clear that the narrow authority being granted in this instance should in no way be viewed as a precedent for future oversight functions of our committee.

Our committee rules allow for a range of tools and resources that can be used to conduct rigorous oversight, tools that, I would add, are not being fully utilized in this instance.

If there is any effort to begin granting a more wide-ranging deposition authority, I believe the dangers will be multiplied exponentially. As such, my objections will be multiplied as well.

Before yielding back, I would like to commend the chairman, thank him for the openness and really working with the minority on this. They granted many of our requests, which the chairman outlined, and I think have made for a better process.

I thank him for that and look forward to working with him on it as we move forward on this and other issues.

[The prepared statement of Mr. McKeon follows:]

PREPARED STATEMENT OF REP. HOWARD P. "BUCK" MCKEON (R–CA)

Thank you Madam Chair, Ranking Member Dreier, and members of the Committee. I appreciate the opportunity to testify on the proposal to grant deposition authority to the Committee on Education and Labor in the investigation of the Crandall Canyon mining disaster. I joined my colleagues in that committee just a short time ago to establish rules to govern these depositions. The rule adopted by our committee to direct this process was developed cooperatively to ensure that this authority—regardless of whether it is merited—will be exercised fairly and with the full consultation of the minority. Based on his actions up to this point, I have every confidence that the Chairman will treat us respectfully in this process. While I did not object to the parameters of the deposition authority, I expressed caution then, just as I will do now, that this authority is premature, unnecessary, and has the potential to cause great harm.

The Education and Labor Committee has a history of working carefully and cooperatively to ensure safety in our nation's mines. Last year, we oversaw development and enactment of the MINER Act, the most sweeping mine safety reforms in a generation. We take seriously our commitment to mine safety, which includes appropriate oversight.

Because of that, I do not believe we should take lightly this proposal to diverge from our accepted oversight capabilities. At a minimum, this proposal is premature. Our committee has already made significant progress in our investigation through existing authority to conduct hearings, demand documents, and interview witnesses and experts. Our colleagues on the other side of the Capitol are engaged in similar exercises.

At the same time, the U.S. Department of Labor and the State of Utah have undertaken a series of investigations into the cause of the mine collapse and the handling of events in its wake. There are inquiries into the cause of the collapse; inquiries into the development and observance of the mine's safety plans; and inquiries into the handling of the rescue by both the mine operator and federal regulators. There is no shortage in the number and scope of these inquiries.

Our role in this collage of investigations is to conduct robust oversight. To that end, the Committee has requested—and the Department of Labor has produced—hundreds of thousands of pages of documents related to this mine and its collapse. And more documents are on the way. We also have significant tools at our disposal, even without this new and extraordinary authority, to hold hearings, interview witnesses and officials, insert findings into the official record, and compel the disclosure of documents. We have not come close to exhausting the resources at our disposal to investigate this incident.

Not only is the deposition authority premature at this juncture, it also appears to be unnecessary. Although the majority staff has refused to discuss who they intend to depose, we have been told that only "four or five" witnesses would need to be subpoenaed. I see no reason why the regular hearing process could not accommodate that small number of witnesses.

Today, however, we are beginning down a path that I believe goes far beyond our charge to conduct oversight. By granting the Education and Labor Committee the authority to depose witnesses, we are venturing into an arena rarely entered by Congress, and then, only under circumstances such as national security, the impeachment of a President, and the alleged defrauding of a national organization by its leadership.

Deposition authority will allow dozens of interviews to be conducted under oath and compelled by subpoena. This could create the possibility of a potential web of conflicts of interest, privilege claims and rulings, requests for immunity, leaks, and contradictory evidence.

Previous congressional probes should serve as a cautionary tale as we head down this path. Tactics used in the congressional investigation of the Iran-Contra affair caused key testimony against Oliver North to be thrown out, and his convictions to be overturned.

In early September, the Acting Solicitor of Labor wrote to Chairman Miller and I, along with the leadership of the House, expressing concerns that the Committee's "parallel investigation . . . may compromise the integrity of MSHA's law enforcement investigation and potentially jeopardize its ability to enforce the law and hold violators accountable." Madam Chair, I would like to include that letter in the record. The danger described in that letter is as real today as it was then.

The majority has thus far heeded our warnings and those of the Department of Labor. Interviews have proceeded cautiously to avoid any inadvertent sabotage of the pending inquiries. Our hearing was structured in such a way as to avoid endangering the investigations. I'm concerned that by granting unfettered deposition authority, the House is backing away from that cautious approach and rekindling the threat that our activities could undermine the aggressive enforcement that MSHA and other investigators have an obligation to pursue.

The deposition authority proposed today is crafted narrowly to cover only the Crandall Canyon mine collapse. I have serious questions about the timing and necessity of this discrete authority. Beyond that, however, I want to make it perfectly clear that the narrow authority being granted in this instance should in no way be viewed as a precedent for future oversight functions of our committee. Our committee rules allow for a range of tools and resources that can be used to conduct rigorous oversight—tools that, I would add, are not fully being utilized in this instance. If there is any effort to begin granting a more wide-ranging deposition authority, I believe the dangers will be multiplied exponentially. As such, my objections will be multiplied as well. With that, I yield back.

The CHAIRWOMAN. Thank you, Mr. McKeon. One question for either of you that I have is, if I am correct in this, this mine has already been mined, retreat mined and abandoned. Murray Energy was able to buy it for a few cents on the dollar; is that correct?

Mr. MILLER. I don't know all the particulars. The mine was a mine that I guess, you know, they say played itself out. But with new technologies and these new technologies you can go back in.

Retreat mining is an old practice, you have pillars in the mine that are out of coal, and you pull them out. Basically you are running a series of controlled collapses in the mine.

The CHAIRWOMAN. As you leave.

Mr. MILLER. It is very dangerous. Alan Mollohan, our colleague, used to do this for a living. He can explain this to you. It sounds like a horrendous place to work.

The CHAIRWOMAN. It sounds awful, but in that case if they are allowed to use abandoned mines that are already retreat mines—then the legislation that you spoke of last year in mine safety, did it deal with that in any way?

Mr. MILLER. I don't believe that it dealt with that particular practice. This mine was already operating at that process.

The CHAIRWOMAN. The laws that exist.

Mr. MILLER. I believe there is precedence elsewhere about how the plans were approved and all of that. That is part of the investigation, but I don't think we spoke specifically to retreat mining in the Miner Act of last year.

The CHAIRWOMAN. It is true that MSHA is basically made up of mine owners?

Mr. MILLER. Well, they have people from the industry who have been brought to the regulatory agency. That is not that unusual, but they haven't been the swiftest agency in responding to these accidents that have happened, the loss of life that has taken place over the last several years.

Their early actions on the Crandall mine in the first few hours are called into question, especially when you had the owner, Mr. Murray, handing out information to the press that was of questionable value or accuracy or truthfulness. MSHA, in this sense, is supposed to take over the release of information.

There was a lot of questions here by a lot of different parties. That is essentially why we need this authority. We are down to, as Mr. McKeon pointed out, a limited number of people, but we believe they are important. My investigators tell me they are important, and they are not at this point willing to cooperate.

The CHAIRWOMAN. Mr. McGovern.

Mr. MCGOVERN. I am losing my voice, so I want to be very brief here.

I just want to say for the Record that I trust you both to use this very wisely, and I think all of us are interested in the same thing; that is, getting to the truth and getting some semblance of justice and trying to make sure these things don't happen again in the future. I expect you will work with us and you will also work with the Department of Labor. As was mentioned, this is not unprecedented. In this particular case, it is limited to a single investigation.

I agree with Chairman Slaughter and Ranking Member Dreier when I say I think you have both worked together in a cooperative way to craft a carefully worded statute that I think strikes the right balance. I just want to say thank you for your cooperation and for a commitment that is reasonable.

Thank you.

The CHAIRWOMAN. Mr. Dreier.

Mr. DREIER. Thank you very much, Madam Chairman.

Thanks, as everyone said, to both of you, for working hard on this. I will say that, again, you can say this is not precedent setting, but it is—but it has been granted in the past Congresses. We did it again on the opening day rules, the opening day rules package for the Government Reform Committee.

I am, as Mr. McKeon pointed out in his statement, concerned about this, I guess I would ask both of you the following question. You both referred to the fact that the other has been cooperative in this process.

Do you, Mr. McKeon, feel as if you were cooperative in being willing to say, at the committee level, the notion of subpoenaing any of these five witnesses about whom you have spoken to come before the committee and provide answers to the very tough questions that obviously are out there, did you in any way stand in the way of the committee's ability to do just that?

I say that because it seems to me, as you said in your statement, the tools are already there. I understand that deposing someone is different from having testified before a hearing, I understand that. But these questions are out there. I think most of us know what they are. Everyone here has raised them.

I clearly have more than a few myself as we all followed that horror. But I wonder if you do feel that you were going to do everything that you possibly could to ensure that the committee would have had the ability to do exactly what this measure that we are dealing with here is designed to address.

Mr. MCKEON. A word on the minority, we don't select the witnesses. Generally, if there are more witnesses, we get one. So all we get on a regular hearing is the opportunity to submit the name for a witness.

Mr. DREIER. Well, on this you certainly would have. I mean, I think you both agree, you just said, George, these four or five witnesses are the people in question here who may for some reason feel the prospect is threatening or they fear some sort of retribution.

Mr. MCKEON. Not by us.

Mr. DREIER. No, no, no, obviously within their community in some way.

Mr. MILLER. There has been no issue here about the hearings. We have had a hearing on this. We have been working together. There is no issue here.

You have people who don't want to cooperate at this level. I could subpoena them and bring them before the committee, but it may not be terribly helpful in the sense that their information may be preliminary to another part of the investigation. Some of this is technical. Some people only want to come under a subpoena, with all due respect. They say you want me, subpoena me. I am not coming voluntarily because I work here, I work there, fine.

But a lot of that, if you were trying to manage it with 27 members of the committee asking questions at the same time, it is really not very good for the witness. And it is not very good in terms of drilling down on the particular evidence that you are looking for to fill in the puzzle.

That is why this is done. That is why it is done at the depositional stage because it may not be information that you can get out if every member has 5 minutes to ask a question on whatever comes into their mind.

Mr. DREIER. Let me just say that is clearly part of the legislative process. There is no question, there is no committee in this institution that for the nearly three decades I have been privileged to serve here does as good a job at that than the Energy and Commerce Committee.

John Dingell and that team, without this authority, regularly—I remember in the 1980s when he as chairman of the Investigations and Oversight Subcommittee there went very, very diligently at more than a few witnesses.

Mr. MILLER. Mr. Dreier, we can do it. It is a choice. I am chairman of the committee. In my meetings with the investigative staff who have long, long experience in these kinds of complex investigations, they have made a determination. We have talked it over. I think they are right.

I have gone through complex investigations, did the Exxon Valdez. It took a very, very long time. In fact, there, because everything was put out in the hearing, it did destroy the legal case.

In fact, members of the minority took information from our conversation on the floor and put them into the Congressional Record.

I am very aware of the ability to sabotage hearings and how careful you have to be. I think this allows us to get the information at a level out of the public eye so people can talk to us, tell us what is on their mind, and we can, as Mr. McKeon said, we can protect

the other parallel investigations that are taking place at the same time. That is all.

Mr. DREIER. I hope you appreciate—I am just looking at the institution and the fact that this has never been done before in the 110th Congress.

Mr. MILLER. We gave authority to Mr. Hoekstra to do the Teamsters investigation in our committee because you had the same problem. There are people there that said I ain't coming forward to talk to you guys, you know, subpoena me.

Mr. DREIER. But a concern that I have is just the notion of our continuing to do this, since it has been done, you know, first, as I say in an opening day rules package and here.

Mr. MILLER. I disagree with you, I disagree. I think this is absolutely critical. I think every committee that has this kind of authority that you have over these programs, this is part of separation of powers, this is a part of the authority of the Congress to be able to do its job.

Mr. DREIER. I am doing all I possibly can to ensure oversight.

Mr. MILLER. That is not the discussion here tonight.

Mr. DREIER. Thank you, Madam Chairman.

Mr. MILLER. I think to have depositional subpoena power is critical to the stages of the investigation.

The CHAIRWOMAN. I am sure that is why we are here, Mr. Miller.

Mr. Hastings.

Mr. HASTINGS of Florida. Thank you very much, Madam Chairman.

The courts have repeatedly held that Congress has investigatory prerogatives. The thing that is inherent in this particular measure, as offered, is the transparency and the minority participation.

When Mr. McKeon decided on a very critical matter dealing with Oliver North what he may not be privy to and there were other investigations that were conducted, incidentally, I happened to have served when a very similar deposition was put forward with reference to the Iran-Bosnia hearings which have been on the dustbin that nobody bothered to review.

So this isn't as precedent setting, as my friend from California suggests, as it is Congress pursuing its prerogative.

That said, the only thing that I would ask of you particularly, Mr. Miller, is what potential national policy outcomes, further investigation in this specific case, do you see? Otherwise, the conflicts, the parallels, the question that I literally subscribe to that you addressed, I think, appropriately. As my colleague, Mr. McGovern said, obviously we have great confidence in you and Mr. McKeon to protect matters.

One of the things that has not been said here is there are families who expect it of the Labor Department. I might add, they would, if I know correctly, take a very long time to come to some conclusions. There obviously are potential litigation circumstances, particularly civil. I don't know about any criminal investigation, but Congress' prerogative should not be precluded.

What do you see as some kind of national policy outcome from this, Mr. Miller, and that would be my only question? Thank you, Madam Chairman.

Mr. MILLER. I would say that one of the questions that is sort of central to this is we see energy prices continuing to increase, coal that was left in the ground at one time has now become valuable. Where you made a decision that it was unsafe to mine this coal when oil was $30 a barrel, at $100 a barrel this coal looks pretty valuable.

The national policy implications for the miners and their families and for the owners of these mines is under what conditions and how would you approve these mines?

I mean, people willingly walked out of these mines and they said it was too dangerous. We are closing the mine here and went looking for another property to mine.

Price changed all of that. It does so in the oil and gas business, too. You reopen wells that you didn't think were worth much 5 years ago, and you are pumping oil today. This has ramifications because people have to go into these arrangements.

We have had a series of hearings where we have been looking at safety procedures and survival procedures and all the rest of that. It is very contentious. This is a pretty independent mining industry, and they like doing business the way they have been doing it.

But clearly change came on with the Miner Act of last year. We have additional legislation proposed for this year. The whole idea of retreat mining really wasn't on the scale until the price of energy went up so high.

But how that is done, and a central question has been raised on what was the approval of these plans and who provided for that approval, was it done in regular order, and were there a series of questions that should have been asked and were they, in fact, asked.

I don't know the answer to that, but I know that it has been focused and clearly in the public also. Those issues clearly have been raised in our hearings.

There are serious implications for this because this is an activity, as I said, that would have been abandoned in a different energy situation.

Mr. HASTINGS of Florida. Thank you very much for your answer. Thank you.

The CHAIRWOMAN. Mr. Hastings.

Mr. HASTINGS of Washington. Thank you, Madam Chairman.

As I listen to your testimony here and what you are trying to accomplish, I certainly sense that there is bipartisan effort to try to find out and get to the bottom of what happened there. It sounds to me, at least on Mr. McKeon's testimony, that at least the rules and regulations that you have set up, how you are going to proceed will be fair. All of that process seems pretty good, which I congratulate you both on.

But there is one area where it seems like there hasn't been correspondence, and I would ask both of you to respond to that, and that is how many people will be deposed. Mr. McKeon said he wasn't sure. After talking to staff it was four or five.

This seems to me that this is something that has broader national or broader interest within the bipartisan Education Committee. Why would that part not be something that would be dis-

cussed in a bipartisan way so that you could agree on who should be coming to testify and why wouldn't the minority, prior to coming here, know who you want to——

Mr. MILLER. We don't know where this testimony is going to take us. That is the nature of these investigations. We don't know. We think we are down to a handful of people that this might apply to. I think in fact in some cases it may be when they find out we have the authority they may come. I don't know, but I am not going to limit it to that because that is illegal.

We will notify and discuss the witnesses and set up the procedures as is outlined in the rule change and with the approval of the resolution. But I don't know.

Mr. HASTINGS of Washington. That echoes the heart of my question, and maybe you have answered it, and I don't want to put words in your mouth, I hope I understood what you said correctly, but you have gotten down—I understand you don't know where investigations will go until you ask a question. That may be something else prompts some other questions.

I guess where you have some broad agreement before, why would not the minority know at least who you are thinking about talking about? That is my question.

Mr. MILLER. We are conducting—I am responsible for this investigation. I am conducting it in a fashion that I think is fair. As we also know that there are parallel investigations going on, we are talking to those investigators in those other agencies. In some cases, they may want to take a crack at a person before we do, but we still want them for a different reason. That is not helpful to our case to have or to the investigation, I should say, not to the case, to the investigation, to have that discussed.

Mr. HASTINGS of Washington. Mr. McKeon.

Mr. MCKEON. Our whole purpose in this—we did pass the Miner Act last year, it has a 3-year implementation, and we are only 18 months into that. Now we passed, at least in the House, this other mining safety bill, which we see could have some potential problems, and now we are getting more involved in this investigation.

My whole hope on this is that we can really find out what happened there, that this isn't just—and I don't think it is. I hope I am not also putting words into people's mouths. This is not just a political witch hunt. I haven't seen that, and I think the real purpose on both sides is to find out what really happened and if somebody was at fault to bring them to justice.

My concern is that you have been a judge. You know a lot more about that. I am not an attorney. I just know there is a risk out there of doing damage to a potential case. I have talked to enough people associated with mining and with this accident that I think there was, I think there is some problem.

Mr. MILLER. If I might, let me just say something. We have had a series of accidents in this country, and for whatever reasons those accidents weren't very thoroughly investigated either in this Congress or otherwise when they took place.

I have gone to West Virginia, I have gone to Kentucky, and I have met with the families of the miners who were killed and we have had them here in Washington, D.C. They were not allowed to

come and testify about their loss or what they knew about the investigations in those earlier accidents.

I just made a flat-out commitment to those families that on my watch that will never happen again. This investigation is part of that, and we are going to find out what happened at Crandall Canyon, and we are going to find out what happened at those other mines. This is a tool that I am asking you to put in our quiver.

We will use it sparingly, properly and responsibly. But I can't have the investigation that those families deserve without this.

Any of us who have been involved in litigation in any form, this is just fundamental. This is just fundamental. I don't need governmental agencies asking our questions. This committee doesn't need somebody else asking our questions, and that is just that fundamental with me.

I have watched these families over the last couple of years and that agony and when they couldn't get answers from the government, from the Congress or from anybody else. It is just not going to be that way on my watch.

Mr. HASTINGS of Washington. Last thing, just to clarify because you said this is Crandall Canyon and others, but this is just narrowly drafted.

Mr. MILLER. This is just Crandall Canyon. The others are a different type of investigation and much more time has passed. It is different, but I am just saying, those aren't unfinished on our agenda either.

Mr. HASTINGS of Washington. You implied they will be looked at.

Mr. MILLER. No, this applies just to this investigation.

Mr. HASTINGS of Washington. The others will be done under regular order then presumably?

Mr. MILLER. Yes.

Mr. HASTINGS of Washington. Thank you.

The CHAIRWOMAN. Ms. Matsui.

Ms. MATSUI. Thank you, Madam Chairman.

I just want to follow up on your comments, Mr. Miller. I noted that there were several mining accidents this year, quite a few, in fact, I realize this is narrowly prescribed. I believe that, and I understand Department of Labor has its investigation, MSHA certainly has, but we have an oversight responsibility.

We have constituents, we represent the people. I believe it is our role to have this responsibility. Things have happened, and we know that. We can't exactly pin the responsibility at this point in time.

I think this is very necessary. My understanding is that you have issued subpoenas and information was not forthcoming, particularly with perhaps Mr. Murray. So, therefore, I believe the deposition authority is very, very necessary.

I also understand that we have to be careful, and it seems to me that this particular committee, because of its history of working together, will make sure that this is narrowly prescribed. In essence, I think you said, Mr. McKeon, and maybe Mr. Miller also, that, in essence, you have looked at this. You probably understand where you need to go right now with witnesses. Perhaps you need to depose, but you are not sure yet.

I think a lot of this happens to be a tool that is necessary because there are people who do not want to speak in public and would rather speak in private, but they also need to be subpoenaed to do that, too. I think this is a very necessary tool. I believe the way it has been organized and put together here is the proper way to go.

I thank you both very much. I believe that this authority is very necessary.

Thank you.

The CHAIRWOMAN. Mr. Sessions.

Mr. SESSIONS. Thank you, Madam Chairman.

Mr. McKeon, I am reading your testimony that you have here, and I find it interesting that one says that there is no shortage in the number and scope of these inquiries that is taking place already by the Federal Government and the State of Utah, top of page 2.

What I am saying is lots of people are dealing with this.

Mr. McKeon, would you anticipate at any point your committee would gain knowledge into or seek information which would change the behavior of this from becoming an investigation into a criminal investigation?

Mr. MCKEON. I don't know. I think there is information that we don't have. I think that is what the chairman is trying to get.

I don't understand if there are other investigations going on, if there are criminal investigations.

Mr. MILLER. Yes. I don't want to comment on that, because I don't know where MSHA's investigations are taking them, where the State of Utah, the attorney general there is taking them. I really don't know that, and I don't want to speculate on people who have been called to testify.

Mr. SESSIONS. Chairman, I would like to ask you then at any point do you intend to delve into the difference between criminal investigation and oversight? Do you understand the difference between criminal investigation and oversight?

Mr. MILLER. Yes, I think I do.

Mr. SESSIONS. Do you mind discussing that with us? You said you didn't want too get into it.

Mr. MILLER. I have conducted oversight this year on the Reading First program. We have recommended to the Justice Department that they take action.

I think we just had another investigation on boot camps where a young person died in a boot camp, and it was not properly investigated. The FBI has now taken that again under a criminal investigation. There is a point at which we say——

Mr. SESSIONS. So it is a certain point.

Mr. MILLER. Well, let me finish the answer. There is a point at which we make a decision that this now has moved beyond us. And we send our material, our evidence, our letter of transmittal, our reasons why to, in this case, I should say the Justice Department, for their action.

Mr. SESSIONS. Okay. Do you believe that in any way, and I know we have had some conversations here about precedent-setting circumstances, that this is going to lead us into getting into things

that happened in colleges where there are shootings or Columbines or things like that?

Mr. MILLER. I have no way of knowing that.

Mr. SESSIONS. You have no way of knowing that.

Mr. MILLER. I am sorry, I don't know if you were here. I happen to believe—I don't want to get trapped here.

I happen to believe that this authority resides under these kinds of conditions between the majority and minority in committees of jurisdiction, with legislative jurisdiction over these programs. I just think that is part of our oversight. The Congress hasn't done that. I respect that, and that is why we are here.

Mr. SESSIONS. This Member, notwithstanding what any other Member thinks, this Member believes it is true what was said here, there is no shortage in the number and scope of inquiries, that if the Department of Labor, State of Utah are engaged in this issue, and that I would really prefer to have the committee, just maybe myself, to be able to offer some evaluation as a result of professionals who would go in and look at and do their own investigation and then for you to grill those people after they have completed their investigation. That would be my own personal take on this.

I believe there is a sense that I have—a sense that I have that there may be some criminal element that is engaged here, not just mine safety, rather willful misconduct or other things which could take place.

I think the committee is ill prepared, not only that it lacks the jurisdiction, in my opinion, to even accurately see the bigger picture in that.

So my point would be I would like to see you not do that. Let them go and investigate it. Once it is all over go grill whoever you would like to go grill. I think, in my opinion, we are not a professional organization that is prepared to understand criminal law.

I yield back.

The CHAIRWOMAN. Thank you.

Mr. Cardoza.

Mr. CARDOZA. I don't have any questions.

The CHAIRWOMAN. Mr. Welch.

Mr. WELCH. I have no questions, but I certainly support the use of the committee having the tools it needs to the oversight and the Congress to do what the Congress has the ability to do.

The CHAIRWOMAN. Ms. Castor.

Ms. CASTOR. I want to thank you gentlemen, with all of the items on your agenda, all of the national policies, the. Education and Labor initiatives, your landmark college aid package you passed this year. For you to say we are not going to give up on this investigation is an important commitment to these families and to the American people who really want you to get to the bottom of this terrible tragedy at the mine.

I thought the memo from Mr. Halstead was very well written. Of course the memo recognizes, of course, as I do, the preponderance of authority and expansion of the Congress and the oversight, and that includes the ability of the committees to conduct depositions and, of course, issue subpoenas.

I thought the memo was very thoughtful and did detail that since 1974 this has been done at least 10 times. So I support the rule change and wish you luck with the investigation.

The CHAIRWOMAN. Mr. Arcuri.

Mr. ARCURI. Thank you.

Gentlemen, thank you very much for being here. I think that you are actually right to be delving into this area. I mean, most prosecutors welcome other agencies looking into issues. I mean, all they hope for is that the other agency recognized the fact that there is the possibility that there may be criminal investigation as well.

Certainly, I think you can't abdicate our responsibility as Congress of looking into something, because, frankly no criminal agency, no criminal office, no prosecutor's office, no criminal agency may look into this. Then the people who look into this, the people who may have done something improper will not receive the thorough review that is so needed by this.

So I think from a prosecutorial, a prosecution perspective, your actions are welcome.

Mr. MILLER. I would just say, that is an interesting point you just raised. We did an investigation of these boot camps where kids are taken out and sort of given some form of tough love, but it is a real problem. A young person died, wasn't a resident of the State, wasn't a resident of the county. The corporation was from another State, the State had no laws.

They looked at that and they said this person died of natural causes. When the GAG went in and looked, and the Inspector General went in and looked at the autopsy and the amount of abuse this young person received, they said, no, that is not what happened here.

Now that is under a full criminal investigation because nobody else really had any stake in the game, tragically so. For a considerable period of time, it was just a closed case, and that has changed. That would not have happened without this investigation.

Mr. ARCURI. I will take it a step further. I think by doing what you are doing you are actually aiding potential prosecutions, if, again, that is what is necessary—because you will be doing fact finding, you will be uncovering, perhaps, issues that may not otherwise get uncovered and eventually get you a prosecutor. It will be very beneficial. So I say that.

The second point I wanted to make that I think is important, obviously, in terms of doing depositions, anybody can do a deposition. The problem with doing a good deposition is that you need to have expertise into the background of what's going on. Clearly, your committee has that expertise.

You know, there is no substitute for being able to know that a person you are asking a question of is not telling you the truth or not giving you all the facts clearly. Your committee coming down around and being part of the jurisdiction is clearly beneficial in terms of looking into it. I think that you doing it in this limited area is really putting the first team in and essentially basically helping us get to the bottom of it.

So I commend it. I support it, and I thank you both for your consideration.

The CHAIRWOMAN. Ms. Sutton.

Ms. SUTTON. Thank you, Madam Chairman. I wholeheartedly support what you are doing, briefing, regulations have been pulled back. This Congress has a distinct, a distinct responsibility to provide accountability and oversight so that we can prevent this from happening ever again.

Mr. MILLER. Thank you.

The CHAIRWOMAN. I thank you both. This is very personal to me as well. I was born in the coal fields of Kentucky.

I think the most distressing thing I heard here was that family members of mine victims had not been allowed to testify. I hope that wasn't because benefits were not tied to that. That really is an appalling thing which I would like to know about.

If this leads to criminal charges, so be it. People die here in a mine where they may not have needed to be in the first place.

I thank you very much. I think after 12 years of no investigation in this House people are afraid of it. Wherever it leads, it should be done.

Mr. MILLER. I think Mr. McKeon and I are both committed to the idea that we want to get to the end of this story. He has been very supportive of this effort. I don't want my passion to suggest that somehow people haven't been cooperative. This has all gone very well to date.

The CHAIRWOMAN. Yes, indeed, thank you.

Mr. MILLER. Thank you.

The CHAIRWOMAN. You are welcome. Now I am happy to call T.J. Halstead, Legislative Attorney of Congressional Research.

Without objection, Mr. Halstead, your full statement will appear in the Record, and we will welcome your summary, if you will give us one. Thanks for being here.

STATEMENT OF T. J. HALSTEAD, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE

Mr. HALSTEAD. Thank you, Members of the committee. I thank you for inviting me to testify today regarding the committee's consideration of H. Res. 836, which would imbue, as you heard, the House Committee on Education and Labor with the authority to adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the Committee on Education and Labor relating to the committee's ongoing investigation into the tragedy that occurred last August at the Crandall Canyon Mine. .

The mechanics of deposition practice are similar in the judicial, executive, and legislative context, but I think it is essential to analyze the vesting of staff deposition authority in relation to point constitutional authority that Congress possesses in the oversight context.

A long line of Supreme Court precedent establishes Congress' power to engage in oversight and investigation of any matter related to its legislative function, to the extent that it is unremarkable, I think, to state that the Supreme Court has held conclusively that congressional and investigatory power is so essential that it is implicit in the general vesting of legislative power in the Congress.

Viewed in light of that expansive power, I don't think there is any discernible basis upon which it can be successfully argued that Congress lacks the ability to authorize staff depositions.

I think this conclusion is supported by the fact that deposition authority has factored prominently in an increasing number of significant congressional investigations since the Watergate era. For instance, in a report accompanying a 1997 resolution granting deposition authority to the Committee on Government Reform and Oversight, this committee observed that the House had granted deposition authority in at least 10 major investigations since 1974.

I have laid this information out more specifically in my prepared statement, but there are several additional stamps dating from the 1970s to today where deposition authority has been granted pursuant to Senate and House resolution——

Ms. CASTOR. Would the gentleman yield for just one moment? Did I misspeak? Was it the Government and Oversight Reform Committee?

Mr. HALSTEAD. No. For instance, in 1977—that I referenced in my paper, that was pertaining to a specific investigation regarding campaign finance, campaign finance improprieties in the report accompanying the resolution that this committee passed granting that authority to the House Government Oversight and Reform Committee. The report noted at least 10 instances where authority had been given as a general matter.

The CHAIRWOMAN. It was part of the packet?

Mr. HALSTEAD. And there are, again, numerous additional examples where that authority has been granted pursuant to either a Senate or a House Resolution. This authority has been extended in the current Congress, for instance, to the Senate Committee on Homeland Security and Governmental Affairs, as well as to the House Committee on Oversight and Government Reform. And as Congressman Dreier alerted earlier, that is a bit of a distinction there because it is a general authority vested in the Oversight Committee that had not been done previously. And as you well know, the resolution before the committee today would simply extend the House Oversight Committee's deposition authority to the Committee on Education and Labor with the restriction that it be applied specifically to the Crandall Canyon investigation.

In light of those factors, I think it is evident that there is ample support for the proposition that Congress may delegate this deposition authority to its committees and staff. But as has been mentioned earlier, the committee may also wish to consider practical and legal factors that may affect the exercise of deposition authority. It has been argued in the past that staff depositions may circumvent the traditional committee process that consists of hearings and informal interviews, and can impact the rights of deponents and restrict the role of the minority in the investigative process.

Furthermore, to the extent that the current proposal contemplates inquiries into the administration of relevant laws by government agencies, including the Department of Labor and the Mine Safety and Health Administration, executive agencies may raise legal, constitutional, and policy objections to the attendance of agency officials at those depositions. However, in many instances depositions can serve as a desirable alternative to a hearing, since they can enable a committee to obtain information that it needs quickly and confidentially, and without the logistical constraints that often impede robust oversight activity in the traditional hear-

ing context. This factor ameliorates the burden imposed by conducting field hearings that require the presence of members, and may be of particular utility in the current scenario given the logistical and investigative difficulties imposed by conducting a traditional hearing-based Congressional oversight inquiry into a mine disaster in the State of Utah. Finally, the efficacy of the staff deposition process appears to have been enhanced by congressional action taken over the past 10 years that emphasizes that criminal sanctions pertaining to the obstruction of a congressional investigation into the making of false statements applied during the taking of depositions.

Ultimately, the House's action on this issue will necessarily hinge upon a determination as to whether the potential benefits of vesting staff deposition authority in the committee outweigh the perceived risks to traditional oversight practice.

Madam Chairman, I will conclude my statement there. The Congressional Research Service stands ready to assist the committee in its consideration of any of these issues, and I would be happy to answer any questions that you or the members of the committee may have.

[The prepared statement of Mr. Halstead follows:]

PREPARED STATEMENT OF T.J. HALSTEAD, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Madam Chairman and Members of the Committee: My name is T.J. Halstead. I am a Legislative Attorney with the American Law Division of the Congressional Research Service at the Library of Congress, and I thank you for inviting me to testify today regarding the Committee's consideration of H. Res. 836.[1]

H. Res. 836 would imbue the House Committee on Education and Labor with the authority to adopt a rule authorizing and regulating the taking of depositions by a Member or counsel of the Committee in furtherance of the Committee's investigation into the deaths of nine individuals that occurred in August 2007 at the Crandall Canyon Mine near Huntington, Utah. H. Res. 836 would authorize such depositions to be taken pursuant to a subpoena issued in accordance with the Rules of the House of Representatives, and would also authorize the Committee to provide that a deponent be directed to subscribe an oath or affirmation as administered by an authorized individual. The resolution under consideration would accomplish this by extending to the Committee by reference the authority that is currently exercised by the House Committee on Oversight and Government Reform pursuant to clause 4(c)(3) of rule X of the Rules of the House of Representatives.

Generally speaking, a deposition is a pre-trial discovery device commonly used in litigation that typically involves the oral questioning of a witness (the deponent) by an attorney for one party, outside the courtroom, and out of public view. A deposition is taken following notice to the deponent, and is sometimes accompanied by a subpoena. The deposition testimony is given under oath or affirmation and a transcript is made and authenticated. While the mechanics of deposition practice are similar in the judicial and legislative spheres, the vesting of deposition authority in a Committee and its staff is best analyzed in relation to the exercise of oversight authority by Congress generally. While there is no definitive constitutional or statutory provision imbuing Congress with oversight authority, a long line of Supreme Court precedent establishes Congress' power to engage in oversight and investigation of any matter related to its legislative function.[2] Unless there is a countervailing constitutional privilege or a self-imposed statutory restriction upon its authority, Congress and its committees possess the essentially unfettered power to compel necessary information from executive agencies, private persons and organizations. Indeed, even though the Constitution does not contain any express provision authorizing Congress to conduct investigations and take testimony in support

[1] H. Res. 836, 110th Cong., 1st Sess. (2007).

[2] For a thorough analysis of legal principles governing congressional oversight, See Morton Rosenberg, Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry, Congressional Research Service Report No. 95–464A, April 7, 1995.

of its legislative functions, the Supreme Court has held conclusively that congressional investigatory power is so essential that it is implicit in the general vesting of legislative power in the Congress.[3]

In *Eastland* v. *United States Serviceman's Fund,* for instance, the Court stated that the "scope of its power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."[4] Also, in *Watkins* v. *United States,* the Court emphasized that the "power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes."[5]

Viewed in light of the expansive power possessed by Congress in the oversight context, there is no discernible basis upon which it may be argued that Congress lacks the ability to authorize the procurement of information through means short of a formal hearing, including through the conduct of a deposition.[6] Likewise, there would not appear to be any support for the proposition that the investigatory prerogatives of Congress do not extend to authorizing the conduct of such depositions by congressional staff.[7]

This conclusion is buttressed by the fact that deposition authority has factored prominently in an increasing number of significant congressional investigations over the last thirty years. One of the early investigations to make extensive use of this authority was the Senate's 1980 probe of the relationship between President Carter's brother, Billy Carter, and Libya, in which thirty-five depositions were taken.[8] Additionally, approximately 250 sworn depositions were taken by committee counsel and/or one or more Members of Congress under authority vested in the House and Senate committees that investigated the Iran-Contra affair.[9] Moreover, in a report accompanying a 1997 resolution granting deposition authority to the Committee on Government Reform and Oversight for purposes of its investigation of alleged political fund-raising improprieties, this Committee observed that the House had granted deposition authority in "at least 10 major investigations" since 1974.[10]

Regarding authorization for staff depositions, it is generally conceded that "committee staff may take depositions only if the committee is given that authority by its parent house."[11] Apart from the authorization extended to the House Committee

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[3] E.g., *McGrain* v. *Daugherty,* 272 U.S. 135 (1927); *Watkins* v. *United States,* 354 U.S. 178 (1957); *Barenblatt* v. *United States,* 360 U.S. 109 (1959); *Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491 (1975); *Nixon* v. *Administrator of General Services,* 433 U.S. 425 (1977); See also, *United States* v. *A.T.T.,* 551 F.2d 384 (D.C. Cir. 1976) and 567 F.2d 1212 (D.C. Cir. 1977).

[4] 421 U.S. at 504, n. 15 (quoting *Barenblatt, supra,* 360 U.S. at 111).

[5] 354 U.S. at 187.

[6] The courts have upheld another alternative to a congressional hearing, statutes requiring the filing of information with administrative agencies, on the ground that they are an exercise of the legislative power to obtain information. See *Electric Bond & Share Co.* v. *SEC,* 303 U.S. 419 (1938) (upholding statutory provision requiring public utility holding companies to register with SEC); *United States* v. *Rappeport,* 36 F. Supp. 915 (S.D.N.Y.), *aff'd sub nom. United States* v. *Herling,* 120 F.2d 236 (2nd Cir. 1941). There is also specific statutory recognition of the use of depositions in congressional probes. In 1978, Congress granted the District Court for the District of Columbia original jurisdiction over civil actions brought by the Senate to enforce process issued by the Senate, including Senate subpoenas to respond to depositions. See, e.g., 28 U.S.C. § 1365.

[7] In light of the fact that staff can conduct interviews (see *United States* v. *Weissman,* 1996 U.S. Dist. LEXIS 19125 (S.D.N.Y. Dec. 19, 1996)) and pose questions at hearings (see House Rule XI, cl. 2(j)(2)(C)), then it would seem that they can be permitted to take depositions. The Supreme Court has recognized, in a decision extending constitutional immunity under the speech or debate clause to congressional staff, that "the day-to-day work of such aides is so critical to Members' performance that *they must be treated as the latter's alter egos. . . .*" *Gravel* v. *United States,* 408 U.S. 606, 616–17 (1972) (emphasis added). The value of the information elicited at a deposition is not diminished by the fact that it is obtained by staff since, presumably, a transcript of the deposition will be available for Members of the committee to read. *Cf. Christoffel* v. *United States,* 338 U.S. 84, 91 (1949) (Jackson, J., dissenting).

[8] See, "Inquiry into the Matter of Billy Carter and Libya: Hearings before the Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments of the Senate Judiciary Committee," 96th Cong., 2nd Sess., Vol. III (App.) at 1741 (1980).

[9] S. Rept. 100–216, 100th Cong., 1st Sess. at xiv, 685 (1987).

[10] H. Rept. 105–139, 105th Cong., 1st Sess. 12 (1997).

[11] John C. Grabow, "Congressional Investigations: Law and Practice, § 3.3 (1988). It should be noted that both the Senate and the House have previously asserted that standing committees possessed the authority to conduct staff depositions in certain investigations despite the absence of an authorizing resolution. See, e.g., S. Res. 495, § 3 96th Cong. (1980) (stating in a provision granting deposition authority that "this resolution shall supplement without limiting in any way *the existing authority of Senate committees and subcommittees to conduct examinations and depositions.*" (emphasis added)); See also, H. Rept. 104–472 at 12, 104th Cong. (1996) (stating,

on Oversight and Government Reform pursuant to clause 4(c)(3) of rule X, neither house of Congress has rules that specifically authorize staff depositions. However, as noted above, such specific authority has been granted pursuant to Senate and House resolutions on a number of occasions. Such authority has likewise been extended, for instance, to the Senate Committee on Homeland Security and Governmental Affairs.[12] Numerous other examples of such authorizations may be found in a Congressional Research Service report entitled "Staff Depositions in Congressional Investigations."[13] When vested with such authority, a committee will normally adopt procedures for the taking of depositions, including provisions for notice (with or without a subpoena), transcription of the Deposition, the right to be accompanied by counsel, and the manner in which objections to questions are to be resolved. The House Committee on Oversight and Government Reform has adopted such procedures in relation to the authority extended to it by clause 4(c)(3) of rule X.[14]

From the above analysis, it is evident that there is ample precedent for the proposition that Congress may delegate deposition authority to its committees and staff. However, the Committee may wish to consider several factors, both legal and pragmatic, that adhere to the vesting of deposition authority in committees and staff. From one perspective, staff deposition may be seen as affording a number of significant advantages for committees engaged in complex investigations.

For instance, the imprimatur conveyed by such delegated authority may encourage a more rapid and robust response to general staff requests for information. Additionally, the actual conduct of such depositions may enable committee staff to obtain relevant information quickly and confidentially, without the necessity of Members devoting time to lengthy hearings that may be unproductive because witnesses do not have the facts needed by the committee, or refuse to cooperate. Depositions are conducted in private and may be more conducive to candid responses than would be the case at a public hearing.[15] Statements made by witnesses that might defame or even tend to incriminate third parties can be verified before they are repeated in an open hearing. Depositions can likewise prepare a committee for the questioning of witnesses at a formal hearing and may also serve as a screening mechanism to filter witnesses who do not possess pertinent information. The deposition process may also serve to obviate the time and resource constraints that impede full utilization of the formal hearing process, and enables the questioning of witnesses outside of Washington, D.C. This factor ameliorates the burden imposed by conducting field hearings that require the presence of Members, and may be of particular utility in the current scenario, given the logistical and investigative difficulties posed by conducting a traditional hearing-based congressional oversight inquiry into a mine disaster in Utah. Finally, the efficacy of the staff deposition process would appear to be enhanced by congressional action emphasizing that criminal sanctions pertaining to the making of false statements apply during the taking of depositions.[16]

Conversely, it has been argued that staff depositions may "circumvent the traditional committee process" (i.e., hearings and informal staff interviews) and, depending on the terms of the resolution authorizing such depositions and related committee procedural rules, compromise the rights of deponents and restrict the role of the minority in the investigative process.[17] Furthermore, to the extent that the current proposal contemplates inquiries "into the administration of relevant laws by government agencies, including the Department of Labor and the Mine Safety and Health Administration," executive agencies may raise legal, constitutional, and pol-

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with regard to a resolution granting staff deposition authority to the House Committee on Government Reform and Oversight, that nothing "shall be construed as undermining or reversing procedural precedents established in the course of past congressional investigations. . . . [T]he committee is aware that, in the past, sworn testimony has been taken from witnesses [at staff depositions] in the absence of a specific resolution authorizing the taking of such statements.").

[12] See S. Res. 89, 110th Cong., 1st Sess. § 11(e)(3)(E) (2007).

[13] Jay R. Shampansky, "Staff Depositions in Congressional Investigations," Congressional Research Service, Report No. 95–949A (1999).

[14] See House Committee on Oversight and Government Reform, Committee Rules and Jurisdiction, Rule 22 (available at [*http://oversight.house.gov/rules/*]).

[15] Committee staff engaged in the taking of depositions may wish to consider the issues adhering to grants of immunity by Congress. See Frederick M. Kaiser, et al., "Congressional Oversight Manual," Congressional Research Service, Report No. RL30240 (2007).

[16] See, e.g., 18 U.S.C. § 1001 and the False Statements Accountability Act of 1996, P.L. 104–292, where Congress acted in response to the Supreme Court's decision in *Hubbard* v. *United States,* 514 U.S. 695 (1995) (which held that 18 U.S.C. 1001 applied only to false statements made in executive branch department and agency proceedings).

[17] H. Rept. 105–139, supra note 3, at 20–26 (minority views).

icy objections to the attendance of agency officials at staff depositions.[18] Finally, from a practical perspective, it might be argued that staff depositions present a "cold record" of witness testimony that might not be as useful to Members as in person investigations. The Congressional Research Service stands ready to assist the Committee in its consideration of any of the aforementioned issues.

Madam Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Committee might have, and I look forward to working with all Members and staff of the Committee on this issue in the future.

The CHAIRWOMAN. Thank you, Mr. Halstead. That was very helpful. I appreciate it very much, and the efforts and time you put in to come here today.

Mr. HALSTEAD. My pleasure.

The CHAIRWOMAN. Mr. McGovern.

Mr. MCGOVERN. I, too, would like to say thank you for your very comprehensive statement. If I am understanding your statement correctly here, there is nothing that we are doing here that is unprecedented. The courts have ruled that this authority does, in fact, appropriately rest with Congress in certain cases, and that nothing we are doing here is threatening or undermining the institution. And so the case that Mr. Miller has made, and I think, you know, which I find is a compelling case, in my opinion, justifies us supporting this resolution. And I thank you very much.

Mr. HALSTEAD. You are welcome.

The CHAIRWOMAN. Mr. Hastings.

Mr. HASTINGS of Washington. Thank you, Madam Chair, and thank you, Mr. Halstead, for being here. Just, first did I hear or understand in your testimony that this authority was first vested to the Congress and ultimately sustained by the courts in the Watergate hearings?

Mr. HALSTEAD. Well, it is beginning in the Watergate era that you see an increasing utilization of this mechanism. There is actually no record when it was first employed. We have not been able to identify that. There is a long history, particularly in internal administrative matters of the Congress, of deposition authority being utilized.

Mr. HASTINGS of Washington. I just wanted to get a sense because I don't think there is any argument, frankly on any side, that this authority does not exist within the Congress. The question is as a matter of degree and how that is used. And my friend from

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[18] See Shampansky, n.13, supra, at 2. Depending on the issues and personnel implicated, a host of issues ranging from executive privilege to separation of powers concerns might be raised. For example, the Final Report of the Select Subcommittee to Investigate the U.S. Role in Iranian Arms Transfers to Croatia and Bosnia ("The Iranian Green Light Subcommittee"), 104th Cong., 2nd Sess. 44–64 (1996) [hereinafter, The Iranian Green Light Subcommittee Report], illustrates the potential for such conflict in the staff deposition context. Agencies cooperated to some extent with the efforts of the Iranian Green Light Subcommittee to obtain deposition testimony. The Department of Defense made agency personnel (with the exception of the Secretary of Defense) available for subcommittee depositions (id. at 50) while the Department of State questioned the authority of the subcommittee to take depositions from "principals" (the Secretary, Deputy Secretary, and Undersecretary) (id. at 54). The White House asserted that the President's deliberative process (executive privilege) would be infringed by efforts of the subcommittee to obtain deposition testimony from senior National Security Council staff. Id. at 55–57. Executive privilege was asserted "on dozens of occasions in depositions" taken by the House Committee on Government Reform and Oversight in its investigation of the White House Travel Office firings and related matters. H. Rept. 104–849, 104th Cong., 2d Sess. 178 (1996). Compromise between the branches in a controversy over executive compliance with a congressional request for attendance at a staff deposition may be possible. Alternatives to a staff deposition may include an interview (distinguished from a deposition by the absence of an oath and a transcript) and a briefing of Members by senior executive branch officials. The Iranian Green Light Subcommittee Report, supra, at 55, 57.

Massachusetts said that there is nothing unprecedented about this. And I would just ask the question to say is there any precedent in the past that you could find where deposition authority was given carte blanche to a committee in the standing rules of the House?

Mr. HALSTEAD. That has been a recent development with the 110th Congress.

Mr. HASTINGS of Washington. So there is no precedent before the 110th Congress?

Mr. HALSTEAD. Right. To my knowledge from my research has not revealed a prior instance where the type of authority that the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs now possess by virtue——

The CHAIRWOMAN. Would the gentleman yield?

Mr. HASTINGS of Washington. I would be happy to yield.

The CHAIRWOMAN. I probably misunderstood what you said. My understanding was you said that was not an unprecedented act, and had been given to other committees in the rules package.

Mr. HALSTEAD. Oh, I am sorry. No, generally speaking, they are ad hoc resolutions that are committed——

The CHAIRWOMAN. As needed.

Mr. HALSTEAD [continuing]. As needed, There are, however, examples on the Senate side, I believe, of the Permanent Select Committee on Intelligence and the Senate Committee on Aging that have had long-standing staff deposition authority. It is not specifically referenced in the rules package itself, but it has been I believe for the Committee on Aging it was first adopted in the 70s, late 1977, '78. And they do exercise that authority to this day.

The CHAIRWOMAN. Thank you. I did misunderstand. Thank you for yielding, Mr. Hastings.

Mr. HASTINGS of Washington. You are welcome. I just wanted to make the point nobody really argues that CRS can't go back and find out specifically when it started, but if the escalation was post-Watergate it would only be logical, I guess, to assume that if it were done in the standing committees before that would be easier to find. So this—we really are setting a precedent, have set a precedent in this Congress by giving at least one standing committee that authority in the House rules.

Mr. HALSTEAD. I would say with regard to the House of Representatives that is——

Mr. HASTINGS of Washington. That is all we are worrying about. Sometimes we reference the other body and sometimes not in nice ways, so I am only focusing on what I am saying here on the House of Representatives. Okay. Well, I again, the concern that we have, part of the concern we have is that we are glad this is focused as narrowly as the ranking member has suggested, but we have a little bit of a caution on how it is being used, given the precedent in this Congress of establishing that for a standing committee. So I thank you for clarifying that.

Mr. HALSTEAD. You are quite welcome.

The CHAIRWOMAN. Ms. Matsui.

Ms. MATSUI. Thank you, Madam Chair. I have no questions. I just want to thank you very much for testifying.

Mr. HALSTEAD. Thank you.

The CHAIRWOMAN. Mr. Sessions.

Mr. SESSIONS. Thank you, Madam Chairman. Mr. Halstead, thank you so much for your comprehensive brief and you being here with us today. Mr. Halstead, have civil lawsuits been struck in this case?

Mr. HALSTEAD. I am sorry, regarding——

Mr. SESSIONS. Are there civil lawsuits that exist in this case?

Mr. HALSTEAD. Pertaining to the mine investigation?

Mr. SESSIONS. Yes.

Mr. HALSTEAD. As I say, I am not privy to the mine investigation itself. I am focusing specifically on the institutional issues of staff deposition authority. So I would have to plead ignorance on that point.

Mr. SESSIONS. Has this extensive, comprehensive brief that you have done and this background investigation, has there ever been a circumstance where it dealt with where Congress decided to get in what I would say pretty up front, as opposed to behind, receiving information from others that may do an investigation, but not out on-site, just of the people who—the investigators where there was a civil lawsuit involved?

Mr. HALSTEAD. Again, not to my knowledge. But I would be happy to do some follow-up research to try to identify. It wouldn't surprise me if that would be the case, but I am not aware off the top of my head of that being of any particular instance.

Mr. SESSIONS. The documents that might be yielded as a result of this investigation is there any privacy related to those, or are all of those just open to anyone who would want to see them——

Mr. HALSTEAD. Well, Congress itself can ensure a degree of privacy should it in its negotiation in the receipt of testimony.

Mr. SESSIONS [continuing]. Should it choose to?

Mr. HALSTEAD. Uh-huh.

Mr. SESSIONS. But there is no real—is there any——

Mr. HALSTEAD. Not that I am aware of as a prophylactic matter.

Mr. SESSIONS. Typically speaking, where there are interviews that would take place by let us say a congressional investigator, are those typically available to people?

Mr. HALSTEAD. It is really something that is done on an ad hoc basis. The House Committee on Oversight and Government Reform, for instance, on their Web site, has made available a deposition that they conducted, I believe, in June of 2007 with an official from, I believe the Executive Office of the President. I am drawing a blank on the name. It may be Julie Stone, something of that nature. So it has been done on occasion, but there are certainly many instances where the information would not be released.

Mr. SESSIONS. In your comprehensive analysis, have you discovered any sort of a code of ethics that would be required for an investigation by an oversight committee in this case, oversight, as it related to discussions with other legal counsel, for instance, perhaps someone that filed a civil lawsuit where they would or would not be included in or receive information? Or is there a code of ethics related to the investigators? Or can they talk to the media, can they talk to anybody that is perhaps considering a lawsuit or——

Mr. HALSTEAD. As a fundamental matter, the authority that has been given to the House Committee on Oversight and Government

Reform under rule 10 and that will be extended in the Committee on Education and Labor is limited to the taking of depositions by members and staff that are counsel. So by incorporation that would extend for committee staff who are counsel, they would be fully covered by the bar rules of their particular State.

Mr. SESSIONS. In this case, would they be under a court? Because all lawyers are, wherever they are licensed, they are part of a court, responsible to a court. Is there any responsibility under their legal duties, these lawyers, to be under the jurisdiction, supervision or adherence to any court structure, in this case I assume which would be Utah?

Mr. HALSTEAD. It would raise an interesting question, actually, as to whether or not the State of Utah would consider the staff depositions being conducted at that locus to qualify as the practice of law in the State of Utah. I would think as a fundamental matter the interpretation that would prevail would be that a state level restriction of that nature could not serve to trump a congressional investigation.

Mr. SESSIONS. In this case, would you assume that a Federal district court that might have jurisdiction would at some point have jurisdiction, or are we under our constitutional duties of the first branch of government immune to that?

Mr. HALSTEAD. Yeah, I would be—I think it would be exceptional for a court to try to involve itself in a congressional investigation.

Mr. SESSIONS. So in other words, a court might, if they felt some need to become engaged, they would simply look at our rules and make sure we followed our rules, the internal ethical standards or procedures that had been established.

Mr. HALSTEAD. Potentially. I would be hard pressed to conceive of a situation that would arise where something of that nature would become justifiable.

Mr. SESSIONS. I could think of one real quickly. And that is that you have civil lawsuits that have been filed and civil people went and talked to the lawyers about the investigation.

Mr. HALSTEAD. Yeah, there is certainly——

Mr. SESSIONS. I can do that in half a second. I am surprised that you didn't think of that.

Mr. HALSTEAD. No, there are numerous instances that can arise as a practical matter regarding the impact the congressional investigation can have, both on civil lawsuits and certainly on criminal investigations as well. Congress, should it so desire, can essentially destroy a criminal investigation through the granting of immunity.

Mr. SESSIONS. Right. As has been stated. So you believe then that inasmuch as the application of this to the committee, that we would be giving two lawyers, which is a higher standard in my opinion, and I think you would say that, too, because you have been versed in the law as opposed to investigation, that you would understand a tight set of circumstances by which you are operating to gain information to offer immunity, to do those kinds of things as opposed to a wide open game. So you think we would go out with those careful set of understandings about what we were trying to do.

Mr. HALSTEAD. Yeah, I think that the committee staff are certainly professional staff, and certainly Congress itself can monitor

to ensure that they are behaving and operating in an appropriate fashion.

Mr. SESSIONS. Okay. I guess the last question I have is, is there any responsibility to ask for or share in information that would be considered criminal that would be outside the scope of what you think they would be granted?

Mr. HALSTEAD. Under this resolution?

Mr. SESSIONS. Yes.

Mr. HALSTEAD. No, I don't see any limitation that would prevent them from inquiring to that end.

Mr. SESSIONS. So in other words it is not, you are saying it is not a well-crafted, careful, cautious, well-understood. You are saying they have full authority to branch out. However, they would be lawyers and bound by whatever.

Mr. HALSTEAD. Right. And that would be similar not in the staff deposition context, but, for instance, with regard to Chairman Burton's investigation into misconduct of the Boston FBI field office. That was another example of a congressional investigation——

Mr. SESSIONS. Is that where the FBI had——

Mr. HALSTEAD. Yes.

Mr. SESSIONS [continuing]. Lied to and coerced——

Mr. HALSTEAD. Right. I believe that led to the first invocation of executive privilege by the Bush administration, that was then ultimately withdrawn.

Mr. SESSIONS. Yes.

Mr. HALSTEAD. But certainly there is always that potential. And it is incumbent upon entities that are engaged in these types of investigations to operate in a responsible fashion.

Mr. SESSIONS. I want to thank you for being here today and for taking your time. And I appreciate the gentlewoman's extended time to me.

Mr. HALSTEAD. You are quite welcome.

The CHAIRWOMAN. Mr. Welch.

Mr. WELCH. No questions, thank you.

Ms. CASTOR. No questions, thank you.

The CHAIRWOMAN. Mr. Arcuri.

Mr. ARCURI. Just a couple questions. One is the actions that the Congress will be taking would in no way violate any double jeopardy problems in Utah. Is that correct?

Mr. HALSTEAD. I would be hard pressed, again, to really conceive of that. You know, Congress's power again in this context is quite expansive.

Mr. ARCURI. This person would be able to be tried for any criminal matter in the State of Utah. There would be no double jeopardy problems as a result of the hearings that are going on. Is that correct?

Mr. HALSTEAD. I wouldn't think so.

Mr. ARCURI. And there is no authority here to give Congress any conferral of immunity authority or make any conferral of immunity.

Mr. HALSTEAD. Not within this particular resolution. There are standards in place at a general level that apply to the granting of immunity.

Mr. ARCURI. Right. It would be use immunity, though, right? Which means the person would still be able to be prosecuted?

Mr. HALSTEAD. That would be one of the options available, certainly.

Mr. ARCURI. Thank You. Nothing further.

Ms. SUTTON. I have no questions, thank you.

The CHAIRWOMAN. Mr. Halstead, we thank you very much for your time and for your statement. It was very helpful to us.

Mr. HALSTEAD. Thank you. You are quite welcome.

The CHAIRWOMAN. That will end the hearing portion of this matter. We will proceed to the original jurisdictional markup of H. Res. 836, and the Chair will be in receipt of a motion.

Mr. MCGOVERN. Madam Chair, I move that the committee favorably report House Resolution 836, granting the authority provided under clause 4(c)(3) of rule 10 of the Rules of the House of Representatives to the Committee on Education and Labor for purposes of its investigation into the deaths of nine individuals that occurred at the Crandall Canyon mine near Huntington, Utah.

The CHAIRWOMAN. Thank you, Mr. McGovern. You have heard the motion of the gentleman from Massachusetts. Are there any amendments?

Mr. DREIER. Madam Chair, I would just like to ask Mr. McGovern to repeat the motion and read it a little more loudly.

The CHAIRWOMAN. Mr. McGovern is indisposed somewhat.

Mr. DREIER. That is the reason I asked.

The CHAIRWOMAN. Can he pass to me?

Mr. DREIER. That is good. We have no amendments, Madam Chair.

The CHAIRWOMAN. In that case we will proceed to the question. All in favor say aye. Aye. All opposed, no. In the opinion of the Chair the ayes have it. It will be carried for the majority by me.

Mr. DREIER. And Madam Chair, I am scheduled to do this, and I would like to state for the record we do have minority views that we would like to have incorporated.

The CHAIRWOMAN. Absolutely. Without objection. The Rules Committee stands adjourned. Thank you all very much.

[Whereupon, at 3:17 p.m., the committee was adjourned.]

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