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INVESTIGATIVE AUTHORITIES

HEARING

BEFORE THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H. RES. 167

PROVIDING SPECIAL INVESTIGATIVE AUTHORITIES FOR THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

June 18, 1997

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H. RES. 167, PROVIDING SPECIAL INVESTIGATIVE AUTHORITIES FOR THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Wednesday, June 18, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met, pursuant to call, at 6 p.m. in Room H–313, The Capitol, Hon. Gerald B.H. Solomon [Chairman of the committee] presiding.

Present: Representatives Solomon, Dreier, Goss, Linder, Pryce, McInnis, Hastings, Myrick, Moakley, Frost, Hall, and Slaughter.

The CHAIRMAN. Mr. Burton is here.

Where is Mr. Waxman?

Mr. BURTON. I believe he will be here in just a few minutes, Mr. Chairman.

Ms. SLAUGHTER. Can we take a break a minute, or you don't want to?

The CHAIRMAN. We are kind of under the gun because of some commitments on your side over here.

Mr. BURTON. Would you like me to go ahead and start?

The CHAIRMAN. Would you mind if we go ahead and start?

Mr. MOAKLEY. No. I think we could start without Mr. Waxman.

The CHAIRMAN. I have an opening statement anyway.

Mr. MOAKLEY. I don't want the opening statement to go without Mr. Waxman.

The CHAIRMAN. That may take some time.

Mr. MOAKLEY. Make your opening statement and closing statement, Mr. Chairman.

The CHAIRMAN. All right. This meeting will come to order.

We are here to consider House Resolution 167, providing special investigative authorities for the Committee on Government Reform and Oversight.

The matter before us is an original jurisdiction hearing of the Rules Committee on this resolution providing special investigative authorities. I have a brief statement, and then I will yield to my good friend, Mr. Moakley, should he care to respond.

At the outset, I would like to commend Chairman Burton. He has one of the toughest jobs in the Congress, and all Members should take note of the institutional importance of this investigation that is taking place. Having served in the Minority in this body myself, I most certainly commend Chairman Burton's Ranking Minority

Member, Henry Waxman, and I wish he were here to hear me commend him for his diligence and hard work. He is noted for it.

The Members are well aware of my long-standing concerns about the scandal which the Committee on Government Reform and Oversight is investigating today. The campaign finance improprieties in the executive branch are serious enough, but I am truly alarmed at the flood of daily revelations in the media which lead me to conclude our national security may have been compromised by individuals serving in the Clinton administration.

For this reason and due to the attempts by some to obstruct this inquiry, it is necessary for the House to consider a resolution giving the committee the tools it needs to adequately conduct this legitimate constitutional function.

The granting of special investigative authorities to committees, including staff deposition authority, is not a matter the Rules Committee considers lightly. As a matter of fact, I have been very hesitant to grant this kind of authority on different occasions.

For this reason, this committee insisted that the Government Reform and Oversight Committee adopt committee rules in advance which specify the right of the Minority to participate in staff depositions, protections for witnesses, provisions for notice, among other things.

I understand, Mr. Burton, that your committee has accomplished this task today. We have also insisted that a special resolution from this committee be consistent with past precedents, be consistent with House rules, and that the committee rule be consistent with House rules.

All of these requirements have clearly been met, and I have personally gone over that committee rule myself.

The staff deposition authority provided by this House Resolution 167 which I introduced 2 days ago is consistent with 10 House precedents in major congressional investigations dating back to 1974 and addressing investigations of Republican and Democrat administrations. The limited ability to seek evidence overseas also contained in this resolution conforms with at least eight provisions in previous congressional investigations dating back to 1975.

Because of the reluctance of some to cooperate in this perfectly legitimate probe and the outright refusal of others to testify, the committee needs staff deposition authority to swiftly and confidentially receive evidence.

Because certain potential witnesses may have left the United States, the committee needs the ability to gather evidence on an international basis. Certain campaign contributions originated overseas as well, and this presents a problem for those seeking evidence.

It was my belief in crafting this resolution that any resolution granting special investigative authority to Chairman Burton's committee should take some recognition of the fact that this is an international scandal. The resolution is consistent with the precedents and entirely appropriate given the nature of the scandal. The rights of the Minority have also been protected, and we have seen to it in the development of this resolution.

I believe we should hear the testimony today to ensure Members on both sides that they are satisfied and we can move to markup

tomorrow, which, incidentally, Mr. Moakley had requested that we not have a markup on the same day that we held the hearing, and that is why we will be meeting tomorrow at 1 o'clock to mark up this resolution and then bring it to the floor some time soon.

With that, I would yield to my good friend, Mr. Moakley, for any statement that he might have.

Mr. MOAKLEY. No, I don't have any opening statement. The only thing, when you say the Minority is protected, the only story—and I am not on the committee and I don't know, but the issuing of subpoenas without consulting with the Minority, if that is so, it doesn't seem to me the Minority is being protected, Mr. Chairman.

The CHAIRMAN. Well, there is nothing in this resolution that doesn't follow precedents from both Democrat and Republican Majorities in this House over the last 25 years, and I have seen to that. Not once do we fall away from those precedents.

So why don't we take the testimony.

Mr. MOAKLEY. Could I just ask one more question? Can you inform me of one investigation where the Majority issued subpoenas without consulting with the Minority?

The CHAIRMAN. Let me just refer to it—okay?—which I will be glad to do if I can find it in our reports here.

President Nixon impeachment proceedings, 1974; Koreagate, 1977; Abscam, 1981; Judge Hastings, 1987; House Assassinations Inquiry, 1977; Iran-Contra Committee, 1987; October Surprise Task Force, 1991; White House Travel Office, 1996; Bosnia Select Committee, 1996; and it goes on and on and on.

Mr. MOAKLEY. You are not answering my question, Mr. Chairman.

The CHAIRMAN. I will let Mr. Burton answer.

Mr. MOAKLEY. Do you know anywhere the Chairman issued a subpoena without—I am not talking about depositions, I am talking about where they issued a subpoena—without consulting with the Minority?

The CHAIRMAN. It is allowed under the rules of the House, yes. Mr. Burton.

Mr. MOAKLEY. Do you know, yourself?

STATEMENT OF THE HON. DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. BURTON. Before I go into my prepared statement, let me say we have issued no subpoenas, not one, without consulting with or advising the Minority. Mr. Waxman has been informed. He is given 24 hours notice before we issue any subpoenas. We ask for his input. He has given us input on certain occasions, but most occasions he has not. Any letters we send out requesting documents, we give the Minority at least 24 hours notice. We consider that consulting with.

We may not take their advice, but the fact of the matter is, he does have an opportunity to call me. We have talked on occasion. He is informed before I ever send a subpoena out. That will continue to be the practice.

Mr. MOAKLEY. I haven't talked to him. Just what I was getting in the newspapers.

Mr. BURTON. That is not correct.

Mr. MOAKLEY. Fine.

The CHAIRMAN. Just a minute, Dan. I just want to read to you from the rules of the House. It is rule XI. The power to authorize and issue subpoenas under subparagraph 1(b) may be delegated to the Chairman of the committee pursuant to such rulings and under such limitations as the committee may prescribe.

And it goes on and on.

Mr. BURTON. That is right. That is correct. But as a practice, we have informed the Minority of every subpoena that has been sent out. We made that a practice, even though we had the authority to do otherwise. We wanted them to know what was going on.

Mr. Chairman, I have about a 10- or 12-page statement, and I was trying to cross out things that I think—so I could get through this more quickly—but I think it is important for the committee to hear all of the reasons why that is important. So if you will please bear with me, I apologize for taking so much of your valuable time.

I appreciate the opportunity to come before this esteemed panel today to discuss the Government Reform and Oversight's needs for certain investigative tools so that we can proceed with our investigation into various matters of great concern.

Among other things, the Government Reform Committee is investigating reports of improper political fund-raising, misuse of official resources, alleged interference and obstruction of ongoing Government investigations, and other potential illegal acts which fall within our committee's jurisdiction.

Because of the serious matters under investigation by my committee, I am here today to request that this panel favorably report to the full House a resolution which will empower the Government Reform and Oversight Committee with authority to conduct discovery at home and abroad.

Mr. Chairman, the issues that my committee is investigating go to the heart of our free society. Our Constitution, painstakingly drafted by men who feared the tyranny of despots, devised a political and social system around which American lives are ordered.

At its core, our investigation is about the possible abuse of power and authority by those trusted to safeguard our national security, and this may be about the largest systematic and coordinated effort to funnel illegal funds into our national elections.

We have begun and, with your help, will continue to get answers concerning whether the fundamental integrity of our Government has been abused, exploited, compromised, or jeopardized. The American people have the right to know whether our system of free and fair elections, revered throughout the world, was infiltrated by possible foreign sources.

Did the Communist Chinese Government or individuals associated with the People's Republic of China attempt to influence the 1996 Presidential election?

Was the Democrat National Committee a willing participant in a scheme to receive laundered foreign money, or was it merely grossly negligent in taking millions of dollars of illegal campaign contributions from foreign elements?

Was the United States national security compromised or endangered in any way by the infamous Mr. John Huang, who apparently had access to top secret briefings and information before and

after he became a deputy assistant secretary of Commerce and then Vice Chairman of Finance at the DNC?

Did the President's friends, acquaintances, and benefactors work to secure former Associate Attorney General and best friend of President Clinton, Web Hubbell, his silence, by providing him lucrative consulting jobs, including a $100,000 or more payment from the Lippo Group, the huge Indonesian conglomerate and employer of John Huang?

Did the Immigration and Naturalization Service radically change its naturalization policy in order to boost Democrat voter rolls even though some were convicted felons?

Did White House officials use Government funds for political purposes when it spent over $1 million of taxpayers' money on the White House database?

Why have so many of the subjects of our investigation taken the 5th Amendment or fled the country, even though the American people have been told that no wrongs have been committed?

These are just a few of the important questions the American people have a right to have answered.

In order to fully investigate these and other important issues, the Government Reform and Oversight Committee requires the ability to engage in the discovery process both here and abroad.

You should know that nothing in the resolution before you, as you said, is unprecedented. All of the investigative tools contained in the resolution have been utilized by Democrats in preceding Congresses.

In major wide-ranging congressional investigations such as this, the White House has historically provided deposition authority to facilitate the fact-finding process. You may recall that the chairmen of various investigative committees were authorized by House resolutions to subpoena, as the Chairman said, witnesses to take part in depositions, staff depositions in the Nixon impeachment proceedings, the assassinations investigations, Koreagate, Iran-Contra, and October Surprise. In fact, the chief counsel of the Iran-Contra and October Surprise Committees were empowered to issue deposition notices.

I can assure this committee that will not be the case in our investigation, and I will remain accountable and will personally issue all subpoenas in this investigation.

Staff depositions are an intricate part of our effort to uncover the truth. The committee has received thousands of pages of documents and has begun to piece together the intricate web of potential fundraising illegalities.

The committee is at a point where it requires sworn testimony which will be taken in executive session of those with firsthand knowledge of schemes to funnel conduit payments to politicians and national party organizations.

Because of the potential political and criminal implications, few have voluntarily come forward to assist with our inquiry. The committee must be able—must be able—to obtain the testimony of those who would not otherwise be inclined to volunteer.

Also, there have been numerous inconsistencies between and among witnesses on a number of key matters under investigation. Providing a format of sworn deposition testimony allows the com-

mittee to best evaluate the veracity of various witnesses and clarify the events in question.

Because of the wide-ranging and ever expanding scandal, we may need to depose hundreds of witnesses, and I mean hundreds. Needless to say, it is impractical and unrealistic to expect members will be able to be present and engage in time-consuming deposition preparation as well as the depositions themselves.

We polled our committee, I might tell you, and asked how many would be willing to sit through the hundreds of hours involved in the depositions, and very few were willing to commit to that. It is a long and arduous process which has been used in numerous House investigations to uncover the facts.

The deposition authority contained in the resolution will assist the Committee on Government Reform and Oversight in obtaining sworn testimony quickly and confidentially without the need for lengthy and unproductive hearings.

One of the things I want to point out is, before we can get to our hearings—and the Chairman of the Senate committee is finding the same problem—we have to depose a number of witnesses so we are prepared for the hearings. We are not at that point yet.

I also want to assure that the Minority will be adequately protected. Therefore, my committee today passed new committee rules in anticipation of your efforts and final passage of the resolution on the floor. I will consult with the Ranking Minority Member, as I said to the Ranking Minority Member of this committee, on any depositions we are about to take, and I will make sure all members know at least 3 days in advance that a deposition is scheduled. Such a provision was never etched in the rules of either Iran-Contra or October Surprise. They didn't have the 3-day rule. It will afford the Minority and witnesses ample time to prepare for the deposition.

Furthermore, all the evidence received pursuant to the resolution will be taken in executive session.

Similar to the authority to conduct depositions, the committee is seeking the authority to engage through official Government channels extraterritorial discovery. Because we think evidence we need may be in countries like Indonesia, China, Thailand, and other countries, the committee requires authority to seek out physical and testimonial evidence from persons or entities in other countries. This is usually done through judicial and international discovery devices known as letters rogatory or commissions.

The Iran-Contra and October Surprise committees were granted these authorities, and various other special investigative committees used some or all of these international discovery devices.

A few countries, under certain circumstances, allow depositions to be conducted by U.S. officials in the same manner they are conducted in the U.S. However, most civil law countries do not allow this type of compulsory and broad discovery conducted by foreigners, particularly if the person being deposed is not a U.S. citizen.

Thus, successful international discovery is obtained through commissions or letters rogatory. I will not go into great detail on this subject, because I understand you received a briefing from the Congressional Research Service on this subject last week. However, I would like to summarize the issues.

For those of you who are not attorneys, a commission is a warrant or authority issued from the executive branch or court empowering the commissioners to exercise jurisdiction or perform certain official acts such as conducting depositions in a foreign country.

The commissioners, who are the people asking the questions, are usually consular officers or appropriate officers of the foreign government in which the questioning will take place. Such questioning is usually done pursuant to the law of the sovereign. However, where the United States has entered into bilateral treaties and international evidence conventions with a given country, the rules of the treaty or convention apply.

When the foreign country prohibits the taking of depositions regardless of voluntary cooperation of the witness, the evidence must be obtained pursuant to a letter rogatory. A letter rogatory is a request from a court in the U.S. addressed to a foreign court which sometimes passes through diplomatic channels, such as the Department of State, to perform some judicial acts, such as the taking of evidence or serving a summons or subpoena. These international devices are similar to depositions which are used domestically. They may be critical in obtaining information from entities outside of the U.S.

Mr. Chairman, in summary—and I am sure you are glad to hear this—in summary, let me again thank you for giving me this opportunity to testify on this important issue. I appreciate your assistance and the help of the entire Rules Committee in passing an equitable resolution, modeled after resolutions which have been passed in preceding Congresses, that will allow the Government Reform and Oversight Committee to conduct a fair and thorough investigation.

I want to publicly thank the staff of the Rules Committee, the Office of the Parliamentarian, the Office of Legislative Counsel, the Congressional Research Service, and my staff for working together to draft this critically needed and fair resolution.

This is an important issue, and your work here today will help move our investigation forward so that we can learn the truth surrounding the continuing allegations of campaign finance improprieties and possible violations of law.

Once again, I want to thank you, Mr. Chairman. If you have any questions, I will be glad to answer them.

[The prepared statement of Mr. Burton follows:]

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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INDEPENDENT

Statement of Chairman Dan Burton
House Government Reform and Oversight Committee
Before the House Committee on Rules
June 18, 1997

Chairman Solomon, members of the Committee, I appreciate having the opportunity to come before this esteemed panel today to discuss the Government Reform and Oversight's need for certain investigative tools so that it may proceed with its investigation into various matters of great concern. Among other things, the Government Reform Committee is investigating reports of improper political fundraising, misuse of official resources, alleged interference and obstruction of ongoing government investigations and other potential illegal acts which fall within the Committee's jurisdiction. Because of the serious matters under investigation by my Committee, I am here today to request that this panel favorably report to the full House a resolution which will empower the Government Reform and Oversight Committee with authority to conduct discovery at home and abroad.

Mr. Chairman, the issues that my Committee is investigating go to the heart of our free society. Our Constitution, painstakingly crafted by men who feared the tyranny of despots, devised a political and social system around which all Americans' lives are ordered.

At its core, our investigation is about the possible abuse of power and authority by those trusted to safeguard our national security. And this may be about the largest systematic and coordinated effort to funnel illegal funds into our national elections. We have begun, and with your help will continue, to get answers concerning whether the fundamental integrity of our government has been abused, exploited, compromised or jeopardized.

The American people have the right to know whether our system of free and fair elections, revered throughout the world, was infiltrated by hostile foreign sources. Did the communist Chinese government, or individuals associated with the Peoples Republic of China, attempt to influence the 1996 presidential election? Was the Democrat National Committee a willing participant in a scheme to receive laundered foreign money, or was it merely grossly negligent in taking millions of dollars of illegal campaign contributions from foreign elements?

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Congress must assert its proper oversight role, in our constitutional system with its checks and balances and separation of powers, to make sure the executive branch is free of corruption and is safeguarding our national security.

In order to fully investigate these and other important issues, the Government Reform and Oversight Committee requires the ability to engage in the discovery process here and abroad. You should know that nothing in the resolution before you is unprecedented. All of the investigative tools contained in the resolution have been utilized by Democrats in preceding Congresses. In major wide-ranging congressional investigations such as this, the House has historically provided deposition authority to facilitate the fact finding process. You may recall that the chairmen of various investigative committees were authorized by House resolutions to subpoena witnesses to take part in staff depositions in the Nixon impeachment proceedings, the Assassinations Investigation, Koreagate, Iran-Contra, and October Surprise. In fact, the chief counsel of the Iran-Contra and October Surprise committees were empowered to issue deposition notices. I can assure this Committee that I will remain accountable and will personally issue all subpoenas in this investigation.

Staff depositions are an integral part of our effort to uncover the truth. The Committee has received thousands of pages of documents and has begun to piece together the intricate web of potential fundraising illegalities. The Committee is at a point where it requires sworn testimony, which will be taken in executive session, of those with first hand knowledge of alleged schemes to funnel conduit payments to politicians and national party organizations. Because of the potential political and criminal implications, few have voluntarily come forward to assist us with our inquiry. The Committee must be able to obtain the testimony of those who would not otherwise be inclined to volunteer it. Also, there have been numerous inconsistencies between and among witnesses on a number of key matters under investigation. Providing a format of sworn deposition testimony allows the Committee to best evaluate the veracity of various witnesses and clarify the events in question.

Because of the wide-ranging and ever expanding scandal, we may need to depose hundreds of witnesses. Needless to say, it is impractical and unrealistic to expect that members

will be able to be present and engage in time-consuming deposition preparation as well as the depositions themselves. It is a long and arduous process, which has been used in numerous House investigations, to uncover the facts. The deposition authority contained in the resolution will assist the Committee on Government Reform and Oversight in obtaining sworn testimony quickly and confidentially without the need for lengthy and unproductive hearings.

I also want to assure you that the minority will be adequately protected. Therefore my Committee today passed new Committee rules in anticipation of your efforts and final passage o the resolution on the floor. I will consult with the ranking minority member at least three days ii advance of noticing a deposition, and I will make sure that all members know three days in advance that a deposition is scheduled. Such a provision was never etched in the rules of either the Iran-Contra or October Surprise committees. It will afford the minority and witnesses ample time to prepare for the deposition. Furthermore, all the evidence received pursuant to the resolution will be taken in executive session.

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A few countries, under certain circumstances, allow depositions to be conducted by U.S. officials in the same manner that they are conducted in the U.S.; however, most civil law countries don't allow this type of compulsory and broad discovery conducted by foreigners, particularly if the deponent is not a U.S. citizen. Thus, successful international discovery is obtained through commissions or letters rogatory. I won't go into great detail on this subject because I understand you received a briefing from the Congressional Research Service on this subject last week; however, I would like to summarize the issues.

A commission is a warrant or authority issued from the executive branch or a court, empowering commissioners to exercise jurisdiction or to perform certain official acts, such as conducting depositions in a foreign country. The commissioners, who are the people asking the questions, are usually consular officers or appropriate officers of the foreign government in which the questioning will take place. Such questioning is usually done pursuant to the law of the sovereign; however, where the United States has entered into bilateral treaties and international evidence conventions with a given country, the rules of the treaty or convention apply.

When a foreign country prohibits the taking of depositions, regardless of nationality or voluntary cooperation of the witness, the evidence must be obtained pursuant to a letter rogatory.

A letter rogatory is a request from a court in the U.S. addressed to a foreign court which

sometimes passes through diplomatic channels such as the Department of State, to perform some judicial act such as taking evidence, or serving a summons or subpoena. These international devices are similar to depositions which are used domestically. They may be critical in obtaining information from entities outside of the U.S.

Mr. Chairman, in summary let me again thank you for giving me this opportunity to testify on this important issue. I appreciate your assistance and the help of the entire Rules Committee in passing an equitable resolution, modeled after resolutions which have been passed in preceding Congresses, that will allow the Government Reform and Oversight Committee to conduct a fair and thorough investigation. I want to publicly thank the staff of the Rules Committee, the Office of the Parliamentarian, the Office of Legislative Counsel, the Congressional Research Service, and my staff for working together to draft this critically needed and fair resolution. This is an important issue and your work here today will help move our investigation forward so that we can learn the truth surrounding the continuing allegations of campaign finance improprieties and possible violations of law.

Again, I thank the Committee.

The CHAIRMAN. Dan, thank you very, very much.

We will go to Mr. Waxman.

Henry, I had some flattering things to say about you before you arrived.

Mr. MOAKLEY. Not many, Henry.

The CHAIRMAN. They were pretty flattering. We have great respect for you.

STATEMENT OF THE HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much.

I apologize, Mr. Chairman and members, for being late. We just got out of our long marathon meeting today on this very issue.

The CHAIRMAN. Your entire statement will appear in the record, without objection. Go ahead.

Mr. WAXMAN. Mr. Chairman—and the other members will not mind—I wanted to particularly address my comments to you. For years when you were in the Minority, you were one of the most eloquent of members in insisting on Minority rights.

I must tell you that what happened today in the Government Reform and Oversight Committee is an abomination and should not be permitted. Let me first describe how the committee's investigation has been proceeding this year, and I will start with subpoenas for documents.

When the Chairman's staff wants a subpoena issued, they urge the Chairman to do so. When he agrees, the Minority receives 24-hour notice that a subpoena will be issued. We can voice our objection to the Chairman if we disagree. But if he disagrees with our objections, the subpoena is issued nonetheless.

That is why Craig Livingstone, who has nothing to do with this year's investigation, was issued a subpoena, and it is why the bank records of the history professor with an Asian name were subpoenaed despite the fact that he has done nothing wrong and is not even remotely involved in this committee's investigation. With Craig Livingstone, his legal fund was subpoenaed—the records.

Under the current rules, the Majority never has to justify or make any public demonstration of the need for specific subpoenas. There are no institutional restraints of any kind. When the Minority wants a subpoena issued, we are required to make a request of the Chairman.

And we appreciate the Chairman's decision to issue 8 of the 38 subpoenas we asked for, but when the Chairman says no, as he did for the Minority's Haley Barbour subpoena request, that is the end of the process, notwithstanding the fact that we now know, according to the former president of the National Policy Forum, that Haley Barbour had a fascination with foreign money.

We have no opportunity to appeal the Chairman's decision and debate it with all the committee members. In short, the committee has delegated all its authority to the Chairman and his staff. That is completely unprecedented.

When we debated this issue in April, the Chairman could only cite four instances where a previous Chairman of any committee

unilaterally issued subpoenas for documents. That precedent was Chairman Clinger in 1996.

Today in committee we debated a different issue, issuing subpoenas for depositions. In this area, there isn't a single time that a Chairman of any committee ever unilaterally issued a subpoena for depositions.

The committee Democrats argued today that we ought to continue that to be the case, where a Chairman doesn't have that single-handed power to issue the subpoenas for depositions.

The Government Reform and Oversight Committee has only been given deposition authority once, once in all the time I have been here, and even before, since 1970, as far as our records go. That was last year in the Travel Office investigation. And in that case, Chairman Clinger proposed and adopted a rule that provided that subpoenas for depositions would only be issued if the Minority concurred or if there was a vote of the committee if there was a disagreement.

In adopting that rule, Chairman Clinger noted that, ″This new rule memorializes the long-standing practice of this committee to seek a consensus on the issuance of a subpoena.″

Today the Minority proposes to follow that precedent, which was adopted just last year, for the current investigation. We lost, and the Majority gave Chairman Burton the unilateral authority to issue subpoenas for depositions.

Chairman Burton argued that he was following the precedent set by Representative Lee Hamilton in two other investigations. But Representative Hamilton informed us that he never issued a subpoena unilaterally and he interpreted ″consultation″ to mean all decisions would be made on a bipartisan basis.

I have a letter from Representative Hamilton and ask that it be made part of the record.

The Minority wouldn't have a problem if Chairman Burton committed to following that interpretation. We asked him to do so in our committee meeting, and he refused. Instead, the Chairman has made it clear he wants to use the Hamilton wording but not the Hamilton meaning. That doesn't wash here any more than it did when military dictatorships called their regimes democrats but provided no democratic safeguards. Actions mattered more than semantics.

In effect, the committee has now delegated all its authority to subpoena documents, subpoena individuals, and release confidential information to the Chairman and his staff. That is a combination of powers no Chairman, no American, has ever had before. It is a dangerous and terrible precedent, and it should not be allowed to stand.

The committee also rejected an amendment by Representative Condit that would have required our committee to at least consult with the Senate before taking depositions from the same people the Senate had already questioned. The amendment would have saved us money, spared witnesses from unnecessary intrusion, and prevented waste and redundancy. That amendment was defeated.

Perhaps most incomprehensible of all, the committee voted to change the Clinger precedent of alternating rounds, where we

would have questions by the Majority for an hour and then questions by the Minority for an hour.

Please keep in mind that the only precedent our committee has for depositions is last year's Clinger investigation. The committee actions today mean that a witness who arrives at a deposition at 9 a.m. and must leave by 5 p.m. could be questioned by the Majority for 5 hours, 7 hours, or the entire day. There is no provision that the Minority will ever be able to ask questions because there may only be time for one round, and that is true if that deposition takes several days.

This is one of the most unfair and outrageous procedures that I could imagine. It violates every rule for how we do our work and every precedent we have. I only ask that the Chairman consider how he would feel if he were in the Minority and this rule were adopted. We are making a tragic mistake by transforming what should be a serious investigation into a partisan side show.

We all know the old expression that if it looks like a duck, walks like a duck, and quacks like a duck, it is a duck. The same is true of partisanship. In the committee's investigation, it feels, looks, and sounds partisan.

Three years ago, Newt Gingrich said that if the Republicans wanted control of the House, they would aggressively use subpoena power, and he predicted: ″Washington just can't imagine a world in which Republicans have subpoena power″, end quote.

Last year, the Republican leadership sent a memo to all committees, instructing them to focus their activities on investigating the Clinton administration, and in fact that is exactly what happened. This committee deposed 72 people for over 240 hours of questioning in the Travel Office investigation.

By the way, they did that under the Clinger rules which are now being thrown aside.

Last week, Speaker Gingrich told CNN that he was personally overseeing this committee's investigation. Let's look at what we are investigating. Today, the Chairman issued 282 subpoenas or requests for information from Democratic sources. He issued only 10 subpoenas or information requests from Republican sources. The Chairman has obtained 320,000 pages of documents from Democratic sources and has complained that those sources haven't been sufficiently cooperative.

In contrast, the Chairman has obtained 15 pages of documents from Republican sources and, upon receiving them, released a press release praising the cooperation he had been given.

Imagine what would be happening if we had discovered that Don Fowler, the former cochair of the DNC, had personally solicited foreign contributions, arranged to launder the contribution, forced the foreign contributor to default on a loan, and was described as being fascinated with foreign money. Can you imagine the outrage that would bring on the Majority side? Can you imagine the numbers of subpoenas that would be issued and the accusations that would be made? But when it is Haley Barbour, not done. Mr. Fowler, in that situation, we only hear silence.

Mr. Chairman, we are spending millions of dollars in an investigation that has already lost credibility. Mr. Chairman, I started my remarks by saying I wanted to address them particularly to

you. I know that there is a tendency when Democrats complain about partisan treatment to recite the crimes that the Democrats committed, and to some extent you are right to do so. But at some point we should stop keeping score and simply do what is right. What we did today would offend you deeply if you were in the Minority.

Mr. Chairman, I ask that you deny our committee subpoena authority until our committee rules comport with fair procedures and House precedent, until they comport with the rulings that have been binding for every committee investigation from Watergate to Whitewater, Senator Thompson's committee, and every other investigation that has ever taken place.

We don't need to toss out all the rules under which we have operated to give the Chairman this kind of power. It is offensive, it is partisan, and it is going to come back to haunt all of you if you go ahead down that path. I urge you to defeat this proposal.

The CHAIRMAN. Mr. Burton and Mr. Waxman, first of all, we are here, this is a hearing, not on your committee rule. This is a hearing on House Resolution 167, and I don't know if you had a chance to look at it. That is what you are here to testify on.

But what this does is give staff deposition authority. It cites that we designate a member of the committee or an attorney on the staff, and I insisted that it be an attorney on the staff, because people that are not attorneys, like myself, probably are not aware of all of the nuances in the law, and therefore I think it should be an attorney on the staff.

So we designate a member of the committee or an attorney on the staff of the committee to conduct any such proceeding, okay? That is number one. That is what this resolution before us does.

Number 2: It allows the taking of depositions and other testimony under oath anywhere outside the United States. That is important for information gathering. That is what this resolution is all about.

Number 3: It makes application for issuance of letters rogatory and requests, through appropriate channels, other means of international assistance, as appropriate.

I don't have to explain to you what letters rogatory is. It means we can either go through the State Department trying to intervene in foreign courts or go through our own courts trying to intervene in foreign courts to obtain evidence. Those are the three things that resolution before us today gives.

In terms of subpoenas, the committee has the same authority it had in the 103rd Congress under Mr. Conyers; it has exactly what the committee had in the 104th Congress under the Republican chairman Mr. Clinger; and it is exactly what the committee adopted earlier this year in February.

Now, let me just cite to you, we do nothing in H.Res. 167 about the issuance of subpoenas. Before you arrived, I cited rule XI which states that the power to authorize and issue subpoenas under subparagraph 1(b) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe. And it goes on.

But in two previous Congresses and the current Congress, the authority to authorize and issue subpoenas was provided in House

rules to the committee, which further allows the committee to delegate the authority to the chairman by a committee rule.

Now, when Mr. Burton approached this committee about giving him this kind of staff deposition authority and this kind of information-gathering authority and the letters rogatory, I told Dan, and so did other members of this committee, that his committee resolution must conform with House rules. It cannot vary, because we will not allow variations.

And we had many discussions on this, because Mr. Burton and I feel very strongly about this. As a matter of fact, I get extremely upset when I find out that there is someone that has been in the employ of our State Department who has been given unbelievable clearances without any investigation whatsoever. And then I find out that that individual has been taking classified information, at the Commerce Department and at the State Department and at the White House, and immediately thereafter contacting a foreign organization, a foreign corporation by the name of Lippo, which is an Indonesian incorporated company, and then passing that information on directly to the Chinese Embassy.

I think that is outrageous. And we are going to get to the bottom of it. However, in doing so, we are not going to give your committee anything beyond what they have had before, and we are insisting that whatever you do in your own committee resolution complies with House rules.

Those are the facts. That is what we are here today to consider. I would like to have your comments on this resolution before us today.

Mr. WAXMAN. I will give you my comments. That resolution is premised on the committee's rules under which they are going to consider these subpoenas and the deposition authority. And every instance you cited where you have given subpoena authority for deposition purposes to our committee was done on a bipartisan basis. And the rules under which we operated were the rules that Chairman Clinger proposed and were adopted by the committee.

Cardiss Collins, the Ranking Member at that time, came before you. We all went to the House floor together on a bipartisan basis to seek the authority under those rules.

I don't think you ought to give deposition authority unless we have rules that are the Clinger rules that were fair. I don't think this ought to be done on a partisan basis.

And knowing what we did today, by your giving deposition authority, you are, in effect, giving deposition authority to Mr. Burton, and Mr. Burton alone, and his staff, because the committee, on a partisan basis, delegated all that authority to him. If that is what you want to do, it is your decision. But I think it is offensive in terms of process, I think it is offensive in terms of doing a serious investigation.

Mr. WAXMAN. [Continuing.] I want a serious investigation. I called for an independent investigator on the White House. They weren't happy about that. But I said, let's get to the bottom of campaign finance abuses on both sides of the aisle. Let's do this job in a way that has credibility.

And I look at what is happening now and it is a partisan food fight.

We can continue down that road, and the American people will look at this investigation with the credibility it deserves, zero.

The CHAIRMAN. Henry, let me just respond briefly. You know House rules, and that committee rule you passed today, which I read before you passed it and compared it to make sure that it did not exceed precedent—in other words, demands that the Minority be present at any of this.

So whatever problems you have to work out with your Chairman and with the other members of your committee you can do so, as long as they comply with House rules. That is what we insist on doing.

Mr. Burton?

Mr. BURTON. Real briefly, Mr. Chairman, rule 7.1 in both the Iran-Contra and October Surprise is consistent with what we did today regarding deposition authority. There is no difference whatsoever.

I don't understand the dismay of my colleague. I will just tell you there is precedent for this, and we are not doing anything that hasn't been done before.

The CHAIRMAN. Mr. Moakley?

Mr. MOAKLEY. Mr. Burton, according to the *Washington Times* today, it said you plan to seek 150 to 200 depositions from witnesses. Do you intend to issue subpoenas in all these matters?

Mr. BURTON. Mr. Hamilton, who Mr. Waxman alluded to a moment ago, had this same subpoena authority that we have, but he didn't have to use the subpoena authority because the people he wanted to depose knew that they were going to be subpoenaed if they did not come in voluntarily. I would assume the same thing will happen with us.

I will assume that when people are asked to come in, there will probably be more than 200, I think almost all of them will come in without the issuance of a subpoena. If we have to issue a subpoena, we will, but I don't think it will be necessary.

Mr. WAXMAN. May I respond to that?

Mr. BURTON. Sure.

Mr. WAXMAN. Mr. Hamilton's committee on Iran-Contra issued loads of subpoenas. You would get the impression they didn't have to issue subpoenas because everybody knew they had subpoena authority and, therefore, the witnesses complied. They issued lots of subpoenas; I don't have the exact number, but no subpoena was issued without its being done on a bipartisan basis with concurrence of the Minority.

We are not asking for veto authority. That is not the way any committee has ever operated. If there is a disagreement, you can go to the committee.

Now, this is a Majority Republican committee, and if they want to vote us down on a partisan basis, they can do it. But at least you have the chance to make a public argument why somebody shouldn't be subpoenaed or why somebody should be subpoenaed, and let the Members decide.

Instead, the Members are being denied that opportunity. There is no concurrence that is going to be required, even though that was the spirit under which Chairman Hamilton operated the Iran-Contra investigation.

Mr. BURTON. Can I just speak? I think it is important to make this point.

We are probably going to depose anywhere from 150 to 300 or 400 people. Now, if we have to come before the committee every single time we have to get a subpoena, I can tell you we had a 6-hour meeting today, we had a 6-hour meeting on our protocol, and every single time that we want to get a subpoena where the Minority doesn't want us to, we will be there for 6 hours. You multiply 6 hours times 300 or 400 subpoenas, and we are never going to get to the bottom of this investigation.

That is the problem that Mr. Waxman is not going to address, the continued resistance to us getting to the bottom of this investigation. They fought us every step of the way, as has the White House, and we had to even threaten a contempt citation on the President's Chief Counsel before we could get documents out of the White House.

So all I am saying is, as a matter of expediency, if we are going to get to the bottom of this investigation and get through it, we are going to have to do the job. We can't be arguing over every single subpoena before the committee. It just isn't workable.

Mr. WAXMAN. If the rules were the Clinger rules—that is, under which we operated last year at a time when Democrats were at it with Republicans at each other's throats, yet we had ground rules to follow.

Sometimes you don't go to the expediency, you go to follow the rules that protect everybody, and then you go through with the rules. And the committee did its investigation on the Travel Office and the committee did its investigation on the FBI files, and we followed the rules that Chairman Clinger put in place, and they worked well. No one cited a single instance where they didn't work so that we had to dump them and give Chairman Burton all of this authority.

My argument is, don't give subpoena authority unless we have got the Clinger rules in place. Those were fair then, they are fair now, and you shouldn't let them be removed from the committee's jurisdiction.

Mr. MOAKLEY. Mr. Chairman, I still have the time?

The CHAIRMAN. Yes.

Mr. MOAKLEY. Dan, am I getting the opinion you are just not going to be bothered to have meetings to issue subpoenas, that you have to get on with the work? You think the meetings to get the subpoenas just get in your way?

Mr. BURTON. My good friend, Mr. Moakley, let me just tell you that we are talking about hundreds of depositions before this is over. Every single day, we find more people that may have been involved or have knowledge about illegal foreign contributions.

Mr. MOAKLEY. I can imagine that.

Mr. BURTON. The reason I am prefacing my remarks is by saying, I can tell you, because of what has happened so far in our hearings and our investigation, that we would probably have to fight over a majority of the subpoenas; and we simply don't have the time or the luxury of time to do that and get to the bottom of the investigation.

It is not that I wouldn't like to have these hearings; it is just that I think it is going to be a dilatory tactic employed to keep us from getting to the bottom of it.

Mr. MOAKLEY. I think that is a basic individual right to have a meeting on every subpoena you issue. I would hate to be someone who gets a subpoena issued by a Chairman who just didn't have time to go to the committee and explain why he was getting a subpoena.

Mr. BURTON. It is not a question of just having the time. It is a question of dilatory tactics being employed to keep us from doing our job.

I do not issue subpoenas indiscriminately. We give every single subpoena a lot of thought. I notify Mr. Waxman at least 24 hours—he is going to get 3 days' notice, 3 days' notice before we issue a subpoena regarding a witness coming in for deposition.

Mr. MOAKLEY. Mr. Chairman, I am in receipt of a letter sent by Lee Hamilton to Henry Waxman dated June 16, 1997. I would like to read from it and then submit the rest of it for the record.

"I am concerned that the term 'consultation' has come to mean less than it should over time, both as it applies to the Executive-Legislative discussions on foreign policy and with respect to discussions between majority and minority in the legislative branch in the context of investigations. It is my view that, used appropriately, consultation provides the foundation for a credible bipartisan investigation, and in the context of relations with the Executive, makes better and more enduring U.S. foreign policy."

"I want it to be very clear about how I view the practice of consultation for both Iran-Contra and October Surprise investigations. As a matter of practice in the Iran-Contra investigation, the four Congressional leaders of the Select Committee—Senators Inouye and Rudman, Representative Cheney and I—made decisions jointly on all matter of procedural issues, including the issuing of subpoenas and the taking of depositions. I do not recall a single instance in which the majority acted unilaterally. In fact, I do not recall a single instance in which our decisions were not unanimous. With respect to the October Surprise Task Force, I followed a similar approach with Henry Hyde. The Chairman and Ranking Member often were briefed together by the majority and minority counsel of the task force. Again, I do not recall issuing a single deposition notice without Henry's concurrence."

Mr. Chairman, I ask unanimous consent to put this entire letter in the record.

The CHAIRMAN. Without objection.

[The information follows:]

One Hundred Fifth Congress
Congress of the United States
Committee on International Relations
House of Representatives
Washington, DC 20515

June 16, 1997

The Honorable Henry A. Waxman
Ranking Democratic Member
Committee on Government Reform
2204 Rayburn House Office Building
Washington, D.C. 20515

Dear Henry:

As you requested, I am writing to explain the practices and procedures that governed the two special investigations I chaired: the House Select Committee to Investigate Covert Arms Transactions with Iran ("Iran-Contra") and the Task Force to Investigate Certain Allegations Concerning the Holding of American Hostages by Iran in 1980 ("October Surprise").

The resolutions under which the House granted authority for the Iran-Contra Select Committee and the October Surprise Task Force allowed the Chairman to take certain actions only after consultation with the minority. For example, the authority to take depositions was premised on consulting first with the minority.

I am concerned that the term "consultation" has come to mean less than it should over time, both as it applies to Executive-Legislative discussions on foreign policy and with respect to discussions between majority and minority in the legislative branch in the context of investigations. It is my view that, used appropriately, consultation provides the foundation for a credible bipartisan investigation, and in the context of relations with the Executive, makes better and more enduring U.S. foreign policy.

I want to be very clear about how I viewed the practice of consultation for both Iran-Contra and October Surprise investigations. As a matter of practice in the Iran-Contra investigation, the four Congressional leaders of the Select Committee – Senators Inouye and Rudman, Representative Cheney and I – made decisions jointly on all matter of procedural issues, including the issuance of subpoenas and the taking of depositions. I do not recall a single instance in which the majority acted unilaterally. In fact, I do not recall a single instance in which our decisions were not unanimous. With respect to the October Surprise Task Force, I followed a similar approach with Henry Hyde. The Chairman and Ranking Member often were briefed together by the majority and minority counsel to the task force. Again, I do not recall issuing a single deposition notice without Henry's concurrence.

Honorable Henry A. Waxman
June 16, 1997
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In both Iran-Contra and October Surprise investigations, the majority and minority may have held differing views on the substance of the investigative products. But in both cases, I think my then-minority colleagues would agree that on all aspects of procedure the investigations were carried out with an extraordinary degree of cooperation at both the staff and the Member level.

I would hope that you can find a way to incorporate in your committee rules some understanding of what is meant by "consultation" to ensure that some greater degree of meaning can be returned to the term and, more importantly, to ensure that the product of this investigation can be viewed as credible across partisan lines.

With best regards,

Sincerely,

Lee H. Hamilton
Ranking Democratic Member

The CHAIRMAN. I would like to respond. I am somewhat surprised to see that letter from Lee Hamilton, who I have a great deal of respect for. I am citing from the Iran-Contra rule 7.1, which Mr. Hamilton requested before this committee, and it states, ″Unless otherwise determined by the Select Committee, the Chairman upon consultation.″ Mr. Lee Hamilton is complaining about the word ″consultation,″ yet he asked for it.

Let me continue. ″The Chairman, upon consultation with the Ranking Minority Member or the Select Committee, may authorize the taking of affidavits,″ and it goes on. It was done not only then, but October Surprise and regularly on all of these investigations.

I think the gentleman protests too much. I would like to see us move on with this.

Mr. MOAKLEY. Mr. Chairman, Mr. Hamilton viewed consultation as concurrence. Wait a minute. He—

The CHAIRMAN. I would like to use Webster's dictionary.

Mr. MOAKLEY. He never once used the consultation.

The CHAIRMAN. I would hope Mr. Burton wouldn't either, except we happen to deal with investigations that we have 6 known people that have left the country to avoid a subpoena and avoid testifying. We have another 12 who are now taking the Fifth. You know what happens when you take the Fifth; it means there is a smoking gun someplace.

Mr. MOAKLEY. I don't drink.

The CHAIRMAN. You don't drink. I don't drink either.

Mr. MOAKLEY. I just think every person has a right to at least feel that there has been a hearing on whether the subpoena should be issued or not.

The CHAIRMAN. Mr. Moakley, let me tell you something. I recall sitting with Dan Burton on the first day he arrived in Washington, a number of years ago down in the gymnasium, and he sat down next to me, and I talked with him and we talked for about 45 minutes, and I said to myself, you know, he sounds just like Jerry Solomon. He is a guy that wants to get out there and get the job done.

Mr. MOAKLEY. Now I know I am in trouble.

The CHAIRMAN. Ever since that time, he has been conducting himself just like Jerry Solomon, and I am proud of it.

Mr. BURTON. And I am not even a Marine.

The CHAIRMAN. I take exception to the criticism.

Any further questions?

Mr. MOAKLEY. Yes.

The CHAIRMAN. Your time is almost up. I will certainly treat you with great respect.

Mr. MOAKLEY. Thank you. In fact, as you may recall, when I was Chairman, Mr. Chairman, I never limited your time. We went on for hours and hours into the night listening to your criticism of the tyrannical way I ran the committee.

The CHAIRMAN. Well, you believed in setting a precedent, and I don't believe in that. I think we have to stick to precedent.

Mr. MOAKLEY. All right.

Dan, last year's investigation, all information received by your committee was obtained in informal interviews; not one single sub-

poena was issued. Have you asked anyone at the White House to submit an informal interview yet?

Mr. BURTON. Before we ask anybody to come before the committee or sit for a deposition, we will ask them. We will not issue a subpoena until they have showed a reluctance to appear voluntarily.

Mr. MOAKLEY. Now, last year during the Travelgate hearings, my Chairman, Mr. Solomon, stated that the Rules Committee would only grant authority for staff to take sworn depositions—I am quoting here—"in very special circumstances where there is a compelling need for such authority."

Chairman Clinger argued that it was needed at that time, because of the reluctance or even the refusal of certain potential witnesses to voluntarily cooperate in submitting to staff interviews.

I would like to hear from you, Dan and Mr. Waxman, if witnesses up to date have refused to provide interviews for the committee staff. If not, what is the compelling need for new authority?

Mr. BURTON. Let me just say that Chairman Solomon has pointed out that Mr. Middleton, Mr. Hubbell, Mr. Huang—I want you to listen to this—Mr. Middleton, Mr. Hubbell and Mr. Huang have all taken the Fifth Amendment. Mr. Trie, Ms. Kanchanalak and the Riadys have all fled the country.

So I think that it is pretty evident that we are going to find a reluctance on the part of some to testify.

Mr. MOAKLEY. Mr. Chairman, at this time I don't want to take up all the time now. I would like to let you go on with other people, but I would like to go back to Mr. Waxman later.

The CHAIRMAN. You will reserve your time.

Mr. WAXMAN. I do want to respond, and I will address this to the Republicans. I am simply asking that the committee follow the rules that Chairman Clinger put in place for deposition authority, for subpoenas. That was the only time our committee in its history ever held a deposition, they had subpoenas for depositions. We followed those rules. I know of no problems with it—or we followed the rules that Chairman Hamilton had where he called for consultation, but the interpretation of "consultation" was that the interpretation that almost all committees have used—in fact, all committees have used where they get concurrence because it is much better to do any investigation on a bipartisan basis.

Republicans have always argued rightfully, you don't want big government intruding in people's private lives. You know what it means to be subpoenaed to come in to give a deposition where some staff lawyer can ask about your sexual preferences, your drug use, your political beliefs, your business dealings, your tax records, anything in the world? Nothing can be more intrusive than that. And you have to hire a lawyer as soon as you get a subpoena. You have to give up your working time to be there.

This is really big government, and at least if you are going to have something like that where it is necessary, it ought to have some checks and balances and restraints and follow the precedents, and the precedents were the precedents that Mr. Clinger put in place in our committee. That was our precedent. It is now being put aside.

The CHAIRMAN. Let me recognize Mr. Goss and ask him to take over. I have to go in the next room and try to resolve the DOD rule. We were going to come back here at 8 o'clock. I think we better delay that to 8:30. I know you have family, but at any rate, Mr. Goss, if and when they do finish here, if you would just recess subject to the call of the Chair around 8:30.

Mr. GOSS. Any other witnesses?

The CHAIRMAN. No, just these two, but there are questions, and I will be back.

Mr. BURTON. Thank you, Mr. Chairman.

Mr. GOSS. [Presiding.] I, in fact, have other questions, but I think I will continue yielding. In the rotation it is Ms. Pryce.

Ms. PRYCE. I have no questions. Thank you for the opportunity.

Mr. GOSS. Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman. I guess I didn't hear. Are we going to stay in until 8:30 or come back?

Mr. GOSS. No, we are not. We are going to finish up with these two witnesses, and then we are going to recess subject to the call of the Chair, and we expect the Chair to call us at 8:30.

Mr. HALL. Okay. Well, maybe I wasn't listening, but I didn't know how you answered Mr. Burton when Mr. Waxman said, is there going to be any consultation on the subpoenas that are going to be issued? Are you going to be talking together about this?

Mr. BURTON. My staff thinks I am forgetting. Mr. Hall, let me just tell you, we have sent every single subpoena and every single letter where we were asking for information to Mr. Waxman at least 24 hours before we did anything.

Regarding the deposition authority, he is going to have 3 days' notice before we issue a subpoena for deposition, and we welcome his input. That does not mean that we are going to give him veto power on whether or not we issue the subpoena, but we welcome his input.

Regarding the Young brothers, who laundered money, we believe, through a shell corporation to the RNC, Republican National Committee, in Miami, the Young brothers we subpoenaed, and we held up the subpoenas for a number of days because we wanted Mr. Waxman to have time to review them and his staff and to give us input, and he did.

But we held them up for an inordinate amount of time because we were waiting for his reply and response. Yes, we have consulted, and we will continue to.

Mr. HALL. What is taking so long to get this thing started? I mean, there has been an unprecedented amount of money that has been appropriated to this committee. It is unbelievable the amount of money that you have at your disposal, and the fact is this is now the third week in June, we haven't had one hearing on this yet. Why is that?

Mr. BURTON. I will be very happy to explain why it has taken so long. Mr. Moakley might even be interested in this.

Mr. MOAKLEY. I would be.

Mr. GOSS. Sorry, I was conferring with Mr. Moakley.

Mr. BURTON. That is all right. We have been trying for months to get the White House to give us documents that were relevant to the investigation, and we were told that the only way we could get

those documents was to have our staff go down to the White House and sit there and go through these documents, and then if we needed more information, we would have to go back there a second time and a third time and a fourth time. And so we were in a confrontation with Mr. Ruff and the White House staff in trying to get documents for some time.

And I had to confer with my staff, I had to confer with leadership before we started to move a contempt citation, and that took time. We could be much further along with the investigation if we had not had that kind of impediment to deal with. Once we finally convinced Mr. Ruff that we were serious about a contempt citation, he gave us 10,000 pages of documents that we are reviewing so that we could go ahead and conduct the rest of our investigation. That was the first phase of our investigation. Now that we are past that, the next step is to start deposing witnesses that we have found needed to be deposed from those documents.

Once you start going through the documents, you find people that may have been involved in illegal fund-raising and illegal laundering of money. When we find those people through looking at the documents we got from the White House and other sources, then we start asking those people to come in for depositions. That is the next step, and that is what we are doing right now.

Mr. WAXMAN. Mr. Hall, I just wanted to point out that Mr. Burton and his staff got 320,000 pages of documents from Democratic sources. They got 15 pages from Republican sources. The subpoenas he indicated to you, consultation on the Young brothers, was at our request.

Mr. BURTON. That is right.

Mr. WAXMAN. And we appreciated getting some of the subpoenas, but not all of the subpoenas we requested. Consultation as he is interpreting it means if he feels like going along with it, he will. After we raise an objection, or if he doesn't want to, he won't. All we get to do is get notice. We ought to change the rule to say ″notice″ because that is all basically we get is notice, and then we can let him know what our views are, and he will pay no attention.

Mr. HALL. Just one last question, Mr. Goss.

Dan, how do you follow up a question like that? It seems to be pretty unfair if you get 300,000-some pages.

Mr. BURTON. 300,000? I will be glad to respond.

Mr. HALL. And 15 pages for Republicans.

Mr. BURTON. There is a very simple reason for that. First of all, he is incorrect. The 300,000 pages of documents we have, much of those came from sources like the telephone company where we subpoenaed telephone records, not from Democrat sources; from credit card companies where we are subpoenaing credit card records and other documents pertaining to the investigation. They are part of the 300,000 pages, but a large part of them are documents that we got from sources outside of the people we are asking at White House.

Regarding the Young brothers, those subpoenas are not due for another 2 weeks. We gave them an adequate amount of time to give us the documents we wanted. And the documents from the RNC, likewise they have given us some, and we expect more, and the due date is not yet up. So we expect that we will probably have

several hundred or maybe several thousand pages of documents before the investigation is over with, but the time is not yet expired.

Mr. WAXMAN. Three hundred thousand documents relate to Democratic targets of the investigation. The 15 relate to Republican issues or targets of an investigation. And our request for subpoenas on the Republican issues have not been complied with.

For example, we asked Mr. Burton for subpoenas with respect to fund-raising on public property by Republicans. No response to that. Yet he has issued many subpoenas about fund-raising by Democrats on public property, particularly at the White House.

We are not getting a fair shake. The rules are being tossed out. At least give the Minority a chance to come in and argue to a committee where there is a Republican Majority why we think an action ought to be taken or not ought to be taken. Instead we are being told we can't even make an argument to our colleagues. We can only make it to Chairman Burton. And I think that is unfair to have any one person have that kind of power. It is unprecedented, and it is dangerous, because people who have power sometimes start abusing it and think that what they do is worthwhile, and therefore maybe it is not an abuse. That is called corruption by power, and we have checks and balances in our system to keep that from happening.

And we are dealing with people who are going to be subpoenaed in to come in and answer questions under oath for hour after hour, maybe day after day. I think we ought to follow the tried and true precedent. And I am just suggesting following the precedent that was put into place and the only time our committee ever held depositions, and that was last Congress, and the rules that were put in place were put in place by Chairman Clinger, and we had depositions of around 80 people. We didn't have any problems. We had disagreements, but we all thought that we ought to have depositions of people who were appropriate to depose.

Mr. BURTON. If I might make one brief follow-up comment. Every single letter that we have sent to Mr. Waxman, almost without exception, and almost every subpoena except for the Republicans has been ignored. He has not chosen to respond, to give us any kind of input whether he thinks there should be something added to it or taken away. He assumes that we are going to go ahead and do whatever we want to without consultation. We may go ahead and not agree with him, but as far as us not consulting with him or not listening to what he wants to say or have a cooperative attitude, it just is not the case.

Mr. GOSS. I guess Mr. Hall is finished.

Mr. MOAKLEY. You must have answered his question. He left 10 minutes ago.

Mr. BURTON. Tony, where are you?

Mr. GOSS. Ms. Slaughter.

Ms. SLAUGHTER. Dan, one thing in your request bothers me, and that is government workers not having access to departmental attorneys even if they are only talking about their duties and matters relating to their official duty, which means they have to go out and hire their own attorneys at great expense. And since we want more people coming forward voluntarily, wouldn't it be better if you were to allow them to have access to departmental attorneys so that

they are not facing large financial burdens—it seems to me what you are doing makes it harder for people to come forward voluntarily.

Mr. BURTON. My staff reminds me that there is a Justice Department fund that can be used for staff to hire an outside attorney to come in and be their consultant or attorney when we take a deposition, and that fund was specifically set up to help protect Federal employees' rights.

Ms. SLAUGHTER. Wouldn't it be cheaper to have the departmental attorneys?

Mr. BURTON. The problem with the departmental attorneys if you read the Eighth Circuit report regarding the First Lady and her appearance before the Federal grand jury that Mr. Starr was conducting, the problem there was that they said that the attorney-client privilege did not apply because you cannot take a tax-paid attorney and claim that attorney-client privilege, and that is being contested and is now before the Supreme Court.

We wonder if you have a person who has a tax-paid attorney, and they appear before our committee, and they consult with that attorney privately, whether or not the attorney-client privilege might apply so you might be jeopardizing that person's rights down the road if we—as we believe, the Supreme Court rules against the First Lady. We think that they probably will.

Ms. SLAUGHTER. Why would they be protected if the Justice Department pays for it?

Mr. BURTON. Because it is a private attorney that is being paid for.

Ms. SLAUGHTER. It wouldn't be tainted by the government's paying?

Mr. BURTON. I don't believe it would be, ma'am. It is the same as the Iran-Contra and October Surprise and Travelgate investigations, where they recognized the potential conflict of interest that could arise from having government lawyers represent private individuals, and all had provisions either prohibiting the practice or allowing the Chairman to decide.

Ms. SLAUGHTER. But here we have government lawyers protecting government workers, not private individuals.

Mr. BURTON. Well, I think I explained it. I think I have covered it. Maybe I didn't explain it to your satisfaction.

Ms. SLAUGHTER. You think that if the departmental lawyer was present in the room when you were deposing a Federal employee, that the departmental lawyer would have a conflict of interest? Is that your point?

Mr. BURTON. What I was saying—let's just say that we are going to depose somebody from the White House, and let's say that the Counsel's Office—the Counsel to the President says to the person that is about to be deposed, now we want you to take somebody from the Counsel's Office down there. We figured that might be an intimidating factor and might convince those persons when they are testifying before our committee that they may not want to tell us everything that they want to because they are sitting there beside somebody who has been ordered to attend from the White House's Counsel's Office. I think you are seeing what I am trying to get at.

Ms. SLAUGHTER. I do, but I think the most inhibiting thing in the world that has happened in Congress in the last few years is the extraordinary legal fees that have been run up by people who work for the government. They try to do a day's work, and it is nothing short of a disgrace, and I think lots of people have left here with debt up to their eyes. It strikes me as a way of really discouraging people from wanting to come forward. They have to go to the expense just to come in for the deposition, to have their own lawyer at their own expense.

Mr. BURTON. First of all, let me follow up by saying there are funds available that can be used for private attorneys.

Ms. SLAUGHTER. Can you tell me what the circumstances are for being able to use those funds?

Mr. BURTON. I will in a moment.

And secondly, any person under civil law can be sued and face the same problems that you are talking about right now. You can be sued by your next-door neighbor for some crazy thing that really isn't reasonable and would have to defend yourself in a JP court or some court.

Ms. SLAUGHTER. Would I as a Member of Congress, if I were sued over something about my duties, would my fees be covered, or would I have to get an outside attorney?

Mr. BURTON. Right now, ma'am, I have an outside attorney because of an outside investigation, and I had to pay $25,000 for him, so I think we are all at some risk.

Ms. SLAUGHTER. Okay. But I hope you understand my point that I think what we are doing is creating a whole system in Washington where attorneys are just making piles and piles of money, and people who literally are just there, trying to do a day's work, are finding themselves burdened.

Mr. BURTON. We are just being consistent with precedents.

Ms. SLAUGHTER. If you are going to depose everybody in the city and no limits whatever—

Mr. BURTON. We are not going to do that.

Ms. SLAUGHTER. We talked a lot about Mr. Hamilton. My understanding from Mr. Hamilton is that he interpreted the authority that was given him as if he required concurrence from the minority. And has any Chairman in the history of the House of Representatives ever unilaterally just done what you are asking to do?

Mr. BURTON. Well, I don't know what Mr. Hamilton's interpretation was. I do know what the rule was, and the rule is very clear. The rule that he asked for, as Mr. Solomon pointed out, is very clear, and that is he did not have to have any concurrence. All he had to do was consult, and that is all we are asking for is the same thing that Mr. Hamilton asked for, same identical language.

Ms. SLAUGHTER. But no Chairman has ever done this before, what you are asking?

Mr. BURTON. Well, we are asking for the same authority. I can't comment on every single investigation.

Ms. SLAUGHTER. It hasn't ever been used before. I looked.

Mr. BURTON. I don't know.

Ms. SLAUGHTER. That is all.

Mr. GOSS. Mr. McInnis.

Mr. MCINNIS. Thank you, Mr. Chairman.

First all, I would take exception with my good friend Mr. Moakley's statement, if I heard it accurately, that Mr. Hamilton felt that the word ″consultation″ was synonymous with the word ″concurrence.″ It is not in the dictionary.

Mr. MOAKLEY. Will the gentleman yield?

I know it was not in the dictionary. This was Mr. Hamilton's expression, and he did concur on all of his subpoenas and depositions.

Mr. MCINNIS. And then, Mr. Waxman, I find I know you used some strong words about this and that. I cannot believe that you would demand that you be able to concur or to concur, assent, to every subpoena requested of the other side. In my opinion, the Minority has an absolute right to be heard, but the Majority has to rule. And what you are suggesting, as a former attorney, although I have been inactive for a number of years, I certainly don't remember anything that I ever had where I was required to consult with opposing counsel before I took some kind of action, not only just consult, but—excuse me, I take that back. I was required to consult on hearing times, but I certainly didn't have to have the concurrence of the other side to step forward. And frankly, you are in the Minority. The Majority rules. Same thing on the Floor. Can you imagine on the Floor if we had the requirement for concurrence? Consent? We don't. One side wins; one side loses, and so—

Mr. WAXMAN. Let me explain—

Mr. MCINNIS. I am not finished.

My position is that especially after what I have witnessed with the White House, stall from this White House, I think that while you may be well-intended, there are other individuals if that power were given, equal power to both sides were given out, this thing wouldn't move 1 inch, not move 1 inch.

Finally, I guess you kind of got my attention earlier in the remarks when you used Craig Livingstone as an example, whose name I saw reappear in the Tamraz pipeline, where a former security guard takes this guy out, one of the heavy hitters in the oil industry—how that connection was ever made I don't know—and makes an introduction for him in the Department of Energy. You used him as an example of a poor fellow being picked upon. It doesn't sell with me. And as far as I am concerned, you should be consulted with, but you certainly should not have the authority to force consent.

Thank you, Mr. Chairman.

Mr. WAXMAN. Can I explain to you why I disagree? I don't want us to talk past each other. The way it has always worked in the past, under Jack Brooks as Chairman, John Dingell as Chairman, and all these others, even if the words say ″consultation,″ the notion was that if you go to the Minority—and I would have no reason to disagree with subpoenaing the deposition of all these cast of characters that have been clearly part of the contributions that we have been hearing about from the Democratic National Committee and the Republicans. If I did disagree with it, and the Chairman called a hearing, what would I say? I don't think that John Huang ought to be brought in to give a deposition because he doesn't know anything about it? I would look foolish to do that.

What I am suggesting to you is that the Minority have always had the right to make a case in those rare instances where we

think the Chairman may be wrong in a subpoena or in those instances where we think the Chairman ought to issue subpoenas, and then the decision is up to the Majority of the committee.

The committee is a majority Republican. If I can't make a case to convince some Republicans and Democrats adding up to the majority that I am right, they will outvote me. But what happens under these proceedings, and what I am talking about, are procedures that Clinger put into place. What happens now you remove those, I can only make the case to Dan Burton. The Minority cannot make a case to our colleagues on the committee, even if we are going to be outvoted. We cannot request subpoenas, we cannot really object to subpoenas if Dan Burton doesn't agree with us.

And then they adopted a rule that when we get into the deposition, the Clinger rule said that the Majority would take an hour, and then we get an hour, and then you go back to the majority and then we get an hour. They changed the rules to say they just get to ask questions until they are through, even if it takes days for them to complete their questions. If I showed up at the deposition, and his staff attorney was asking questions, I could sit there all day and not get a chance to ask questions, or my staff.

And so the point is, you could say the Minority is the Minority. We are outvoted if we can't win over people to our side. But I think we are being put in a position where the Minority can't even make the case in a public setting. And you can say, well, what role is there for us to play, and what do you need a Minority for? I think you need a Minority in a democratic system to keep the Majority honest and to make our arguments if we have an opportunity to do so.

Mr. MCINNIS. Just in final conclusion, because I know everybody would like to go to dinner, but it seems to me that the Minority has had ample opportunity, and the best, clearest example is the last half an hour listening to you, frankly.

Mr. WAXMAN. I am sorry to have burdened you.

Mr. MCINNIS. You have had half an hour of time.

Mr. WAXMAN. One of the few occasions that I will have an opportunity to make it.

Mr. MCINNIS. This is one of the opportunities that you have had in the last half an hour to express very strongly in strongly-worded language. So I don't buy into the argument that the Minority is going to be cut out of this. You have every right to be heard, but you don't have the right to rule.

Mr. MOAKLEY. Will the gentleman yield?

I am sure that Mr. Waxman would love to have the opportunity in his committee that he has before us here, which he doesn't have.

Mr. BURTON. May I make a brief comment? Mr. Waxman, like everybody else on the committee, but especially Mr. Waxman, gets ample time to express his views. He has never been quieted down or shut up in any way. As a matter of fact, we did try to move the previous question one time, and it went on for over an hour because he used dilatory tactics, which I understood, to extend the vote. And so I learned my lesson. They hit me in the face with a broad ax, and I learned that we don't cut the debate off, and so they fully debate and discuss every single issue.

One other thing I wanted to point out that is very important. That is whenever a Member of Congress comes into a deposition, whoever is doing the questioning is instructed by me, and that was instructed today in the public hearing, that they immediately stop, or as soon as they conclude the question they are on, they stop and ask the Member who is there, whether it is a Democrat or Republican, if they have any questions, and they do, then we cede the floor to that Member, and that is the way it has been, and that is the way it will be.

Mr. WAXMAN. I will never have a chance to make my argument to the committee because we will have vested the power to the Chairman, and I will not be able to make a case to them, and that seems to me is the worst thing to do to a Minority, not even to silence us and not be able to appeal to our colleagues of the other party.

Mr. GOSS. I wanted to make a couple of observations in the time we have here. We are not here talking about subpoenas. We are talking about the resolution that the Rules Committee is trying to evolve to put on the floor for the conduct of this matter.

And the facts seem to be that some of the most important individuals that your committee would like to talk to have fled the country, or have left the country, or are no longer available in U.S. jurisdiction, and that not only that, they are hostile witnesses. Consequently you have an extraordinarily difficult task, and we are trying to look into pressing the rules of the House to find out what tools would be appropriate for you to have in the legislative branch of government for the oversight responsibilities that we have for legislative, investigative and oversight hearings.

I think that we have done our homework quite well, and I think we have come up with a resolution that is entirely responsible that deals with two out of the three facets of it, that deal with overseas matters, taking depositions overseas, and one has to do with a balanced guaranteed opportunity for taking depositions by staff in the domestic United States. It seems to me that is pretty fair machinery that we are giving, and I fail to see any problem with it.

And I think the rest of this discussion that has gone on is somewhat colored by other matters which really are not properly before us.

I would add a couple of observations on my own to sum up the matters that have taken place. I happened to serve on the October Surprise investigation as one of the Members in the Minority. I have tremendous respect for Mr. Hamilton, but there was no question Mr. Hamilton was running that operation. That was a very weird investigation because it was a very weird story that Mr. Sick came up with, which was glommed onto presumably for partisan reasons and proved to be a total figment of somebody's imagination. It cost us a lot of money, but I think we had an exercise of appropriate mechanics, which are the same mechanics we are presenting you with, as far as I understand.

The second problem I have with this one, and please don't interpret these as partisan remarks because they are not, I have been badly misled by the White House on some matters involving Filegate personally, involving the GAO board that Mr. Clinger participated in under the Clinger rules as well as Mr. Wolf, and we

were led astray, and, in fact, the GAO may very well have been led astray by the White House.

And that is why I take a little exception about your testimony, Mr. Waxman, about Craig Livingstone. I would like to talk to Craig Livingstone. I would like to ask him how that all came to pass, that even the GAO investigators couldn't seem to get it right in response to a very legitimate complaint where we thought we were getting the right facts under rules that we felt were appropriate that Mr. Clinger had. So I think we have been misled, and I gather ″Once burned, my fault; twice burned, watch out,″ is a little bit the way I feel on that one. So I personally would like to see Mr. Livingstone, and if you subpoenaed him, I think you may be on the right track. I would be glad to supply a question or two.

Mr. WAXMAN. Before you leave Craig Livingstone, he was deposed for 30 hours before our committee under the Clinger rules. The Minority never objected to having him deposed. He was a key figure in that investigation.

Mr. GOSS. The reason I would like to talk to him is I would like to know point blank how he can square off some of the testimony we now have from the White House and from the GAO report that I am not sure was included in some of that 30 hours' worth. In other words, what has happened is that the trail has unwound here. We find there is new information, and we find out that maybe we have been further misled. Every day that we go by, we get new information that was true yesterday; gee, that was true yesterday, but there is something new today that doesn't quite square. And I think you have a huge task trying to make all of this line itself up; 300,000 documents or 350,000 documents doesn't impress me one bit. I just got through a case where people threw rooms full of documents at me that didn't mean beans. I needed a few good documents that I didn't get.

That kind of is a problem. So don't measure documents in terms of volume of boxes. Measure them in relevance to your question and honesty of response. I think that is very important. And I am satisfied we are trying to give you tools so that the opportunity to do that is there.

The other thing that bothers me very much about this, and this comes from my other responsibilities on the Intelligence Committee, I think that we have gone beyond the ″Everybody Does It″ defense. I think we have gone beyond the ″Washington Beltway Sleaze″ defense. I think we are right out there in some serious questions about national security at this time. I frankly wish that we had an independent counsel investigation going on. I believe that is the right way to have done this.

Since that opportunity is apparently not available for this investigation being conducted, I think that it would be inexcusable if we didn't exercise our oversight, and I think that is trying to be done in a forthright manner. I know partisan politics and charges are going to come in on this. That is the name of the game, and in this atmosphere there is no chance that is not going to happen. We know that. But I want to be certain that the machinery is in place to be operated fairly. The public will determine whether it is or is not when this thing is said and done, but we have to give you the right machinery, and that is what this resolution is about, nothing

more and nothing less. That is my view of where we are. So I hope you would agree that at least our resolution is on the right track.

Mr. WAXMAN. You are asking me? Because I don't think it is.

Mr. GOSS. Tell me what you would do with our resolution.

Mr. WAXMAN. I don't think you ought to give a committee the power that that resolution gives us.

Mr. GOSS. What aspects specifically?

Mr. WAXMAN. Unless you know that that power is going to be exercised responsibly, and I feel that the rules that our committee has adopted are not going to lead to a fair investigation. We needed a bipartisan, fair investigation where both of us are working together to get to the truth of all of these issues, and particularly when it comes to foreign contributions to campaigns, whether it be Democrat or Republican campaigns.

Mr. GOSS. Henry, we are not going to micromanage another committee's jurisdiction. We are going to pass a resolution that is under the jurisdiction of the Rules Committee, which is what we are trying to do. We do not go into other committees and tell them how to conduct themselves. I do not tell chairmen of other committees how to run their business, nor should I. We give them the rules. We let them do it.

Mr. WAXMAN. If we had good rules, I wouldn't disagree with you.

Mr. GOSS. What is wrong with the resolution? You are talking about your committee? You are not talking about my resolution or this committee's resolution? I am addressing myself to this committee's resolution.

Mr. MOAKLEY. Mr. Burton, according to the *Washington Times* today, your staff says you are considering using ″act of production immunity″ to obtain documents from key witnesses. This is a very difficult area of case law. Even the Supreme Court has said that you have to be very careful about using it. In *Braswell v. United States,* they state that ″a grant of 'act of production immunity' can have very serious consequences.″ It is very hard to separate the document from the person. In any case where you want to leave open the possibility of prosecuting the person who turns over the documents, this kind of limited immunity can jeopardize that prosecution.

The Supreme Court decisions on this must give Justice Department prosecutors real concern, so I was wondering have you talked with the Justice investigative team about this, or Ken Starr, or anyone on your staff on these investigations, thought through the consequences? Are you comfortable with that kind of immunity?

Mr. BURTON. Mr. Moakley, I agree with you 100 percent. Before we would even consider granting production immunity, we would talk to the other people conducting investigations. The Justice Department. I have already talked to Ken Starr, and I told him before we even talked about any kind of immunity, production immunity, document production immunity or others, we would certainly consult with him, because we don't want to impede in any way any of the other investigations or jeopardize our own.

Mr. MOAKLEY. That is good, Mr. Chairman.

Solomon is not here, but he referred to the Rules Committee gave special subpoena authority to Chairman Conyers in the 103rd Congress; it never happened.

Mr. GOSS. Then we should ask the Chairman of the 103rd.

Mr. MOAKLEY. Anyway, I would like to put in the record the nine different occasions where the committee has had to have consultation on Bosnia, travel office, October Surprise, it showed the practice was more concurrence than just consultation. Without objection, Mr. Chairman?

[The information follows:]

Summary -- Past Deposition Authority in the House

1 Arms to Bosnia, H Res 416, 1996, 104th
Committee on International Relations
CONSULTATION, but no subpoenas issued

2. White House Travel Office, H.Res. 369, 1996, 104th
Committee on Government Reform
CONSULTATION, but committee rules require CONCURRENCE

3 October Surprise, H.Res 258, 1991, 102d
Committee on International Relations
CONSULTATION, but practice was concurrence (Hamilton)

4 Iran-Contra, H.Res.12, S.Res.23, 1987, 100th
Select Committee
CONSULTATION, but practice was concurrence (Hamilton)

5. Judge Hastings Impeachment, H.Res 320, 1988, 100th
Judiciary Committee
Resolution silent, would use Nixon impeachment procedures (JOINTLY OR COMMITTEE VOTE) but no subpoena issued.

6. Judge Nixon Impeachment, H.Res.562, 1988, 100th
Judiciary Committee
Resolution silent, would use Nixon impeachment procedures (JOINTLY OR COMMITTEE VOTE) but no subpoena issued.

7. Select Committee on Assassinations, H.Res 222, 1977, 95th
Select Committee
SUBPOENAS MAY NOT BE UTILIZED FOR STAFF DEPOSITIONS.

8. Gifts by Korean Government to Members of Congress, H.Res.252 & H.Res.752, 1977, 95th
Committee on Standards of Official Conduct
JOINTLY OR COMMITTEE VOTE

9 Nixon Impeachment, H.Res.803, 93rd, 1974
Judiciary Committee
JOINTLY OR COMMITTEE VOTE

Summary -- Past Deposition Authority in the House

In the Government Reform and Oversight Committee

1 White House Travel Office, H.Res. 369, 1996, 104th
Committee on Government Reform

The only time the Government Reform Committee has had deposition authority, Committee Rule 19 provided: "the chairman shall not authorize and issue a subpoena for a deposition without the concurrence of the ranking minority member or the committee."

In Other House Committees

1. President Nixon Impeachment, H.Res.803, 93rd, 1974
Judiciary Committee

Subpoenas could be authorized jointly, or by committee vote: "by the Chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised..."

2. Gifts by Korean Government to Members of Congress, H.Res.252 & H.Res.752, 1977, 95th
Committee on Standards of Official Conduct

Subpoenas could be authorized jointly, or by committee vote: "by the chairman and ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised..."

3. Select Committee on Assassinations, H.Res.222, 1977, 95th
Select Committee

Subpoenas were prohibited for staff depositions. Committee Rule 4 provided that for staff depositions "subpoenas may not be utilized to obtain such statements. Counsels must advise the person that such statements are voluntary."

4 Judge Nixon Impeachment, H.Res 562, 1988, 100th
Judiciary Committee

No deposition subpoenas were issued. If they had been, the committee would have followed the Nixon precedent of issuing a subpoena jointly or by committee vote.

5 Judge Hastings Impeachment, H.Res 320, 1988, 100th
Judiciary Committee

No deposition subpoenas were issued. If they had been, the committee would have followed the Nixon precedent of issuing a subpoena jointly or by committee vote

6 Iran-Contra, H.Res.12, S.Res.23, 1987, 100th
Select Committee

The resolution provided for consultation, but in practice all decisions were made jointly. According to Chairman Hamilton, "the four Congressional leaders of the Select Committee -- Senators Inouye, Rudman, Representative Cheney and I -- made decisions jointly on all matter of procedural issues, including the issuance of subpoenaes and the taking of depositions. I do not recall a single instance in which the majority acted unilaterally. In fact, I do not recall a single instance in which our decisions were not unanimous."

7 October Surprise, H.Res 258, 1991, 102d
Committee on International Relations

The Resolution provided for consultation but consultation was interpreted by Chairman Hamilton as concurrence: "I do not recall issuing a single deposition notice without Henry [Hyde, the ranking minority member]'s concurrence."

8 Arms to Bosnia, H.Res. 416, 1996, 104th
Committee on International Relations

Although deposition authority existed, no subpoenas were issued.

Mr. GOSS. Without objection.

Mr. MOAKLEY. I have other questions, but I think we have probably been over this. Do you have anything else, Mr. Hall?

Mr. HALL. No more questions.

Mr. MOAKLEY. Are you sure?

Mr. HALL. Positive.

Mr. GOSS. Mr. Hastings, you didn't get a shot.

Mr. HASTINGS. Thank you, Mr. Chairman. I was in the other room. But I would just say as a relatively new Member of this body, and a Member that goes home rather frequently and hears constantly, I guess, a sense of, for the lack of a better word, distrust that is going with us, elected Representatives, that there has to be some sort of method to get to the bottom of what it is all about, and I think this is one of the means. It is not the end, but I think this is part of it, and from my perspective, my understanding of it is that this is consistent with the rules that we have had before. What we are doing, I am very much in favor of that. And I think that—wish that we could get to the bottom of this as quickly as possible. That is all I have to say, Mr. Chairman.

Mr. GOSS. Thank you very much. Since there is nothing further, we will be adjourned until the call of the Chair at approximately—in recess until approximately 8:30.

[Whereupon at 7:30 p.m. the Committee recessed to be reconvened subject to the call of the Chair.]

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