

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES,  
Washington, DC, October 31, 2000.

THE POGO INVESTIGATION: CONTEMPT FOR  
INDIVIDUAL RIGHTS AND THE HOUSE RULES

DEAR COLLEAGUE: The Committee on Resources' Majority is asking you to vote for a resolution which charges three citizens with the statutory crime of contempt of Congress. Those three individuals, associated with the Project on Government Oversight (POGO), would be subject to criminal prosecution and up to one year in prison. The contempt resolution, which will come up again on the floor tonight, is a substitute for much broader charges of contempt reported by the committee.

Before you vote to send three people you've never ever seen to jail, consider whether you can rely on a rogue committee investigation that has abused the rights of witnesses and Members and failed to adhere to the House rules. In applying the criminal contempt statutes, the Supreme Court has required that a committee strictly follow its own rules and those of the House. *Yellin v. United States*, 374 U.S. 109 (1962). Yet the conduct of the Committee on Resources' investigation related to the pending contempt resolution is so egregious that it would dishonor the House to subject it to judicial review. Among the many procedural deficiencies are the following:

(1) Failure to conduct the investigation within the jurisdiction of the committee under House Rule X, Clause 1. The Majority has not maintained a consistent purpose for its investigation within the scope of the committee's authority as delegated by the House. The Supreme Court has held that a clear line of authority for the committee and the "connective reasoning" to its questions is necessary to prove pertinency in statutory contempt. *Gojack v. United States*, 384 U.S. 702 (1966). Instead, the Majority has constantly shifted their explanations of what they are investigating and why. For example, on March 6, 2000, Chairman Young wrote to POGO's attorney to explain that broad subpoenas were necessary "to begin weighing the merits of those conflicting statements" made in civil litigation. How a probe of potential perjury in a lawsuit relates to the committee's legislative jurisdiction over oil royalty management laws and policies was not clear at the time to witnesses—who declined to answer questions which were not pertinent—and remains unclear to Democratic Members.

(2) Failure to follow House Rule XI, Clause 2(k) applicable to investigative hearing procedures. It was not until June 27, 2000—over a year after subpoenas were issued—that Chairman Young authorized Subcommittee Chairman Cubin to "begin an investigation to complement the oversight inquiry underway." This is a meaningless effort to draw a distinction between "oversight" and an "investigation" when no such distinction exists for purposes of House Rule XI, Clause 2. Accordingly, over the protests of Democratic Members, the Majority failed to follow House Rules applicable to the rights of witnesses in Subcommittee hearings held May 4, and May 18, 2000. These flaws range from the failure to provide witnesses with the committee and House Rules prior to their testimony, to the failure to go into executive session.

(3) Failure to allow Members to question witnesses under House Rule XI, Clause 2(j). On multiple occasions, the Subcommittee Chair prevented Democratic Members from exercising their rights to question witnesses,

either under the five-minute rule or time allocated to the Minority under clause 2(j)(B).

(4) Failure to have a proper quorum under committee Rule 3(d). The Committee rules require a quorum of members, yet no such quorum was present during the hearings at the times of votes on sustaining the Subcommittee Chairman's rulings on whether questions were "pertinent."

(5) Failure to allow subpoenaed witnesses to make an opening statement under committee Rule 4(b). This rule states, "Each witness shall limit his or her oral presentation to a five-minute summary of the written statement, unless the Chairman, in conjunction with the Ranking Minority Member, extends this time period." In contravention of this rule and longstanding committee practice, the Chair refused to grant hearing witnesses the opportunity to make opening statements. Democratic objections were overruled.

(6) Failure to hold a hearing on the contempt issues. It is fundamentally unfair not to allow the parties charged with contempt an opportunity to explain their legal arguments for declining to answer questions or supply specific documents in contention. The Chair repeatedly refused the efforts of Democratic Members to recognize legal counsel to address the Subcommittee on these issues. The failure to provide due process in a hearing to those accused of violating a criminal statute further weakens the Majority's case.

(7) Failure to fully inform Members of the committee. At the July 19th committee markup of the contempt resolution, the Majority failed to provide Members with the language of the contempt statutes. They cited no judicial standards or precedents of the House for applying those criminal statutes in a contempt proceeding. They did not adequately explain or refute the legal rationale that the subpoenaed parties, based on advice from counsel, had asserted when they declined to answer specific questions which were not pertinent to the investigation. And they neglected to explain to Members that the witnesses had appeared at hearings and produced thousands of pages of documents in compliance with multiple subpoenas.

No matter what wrongdoing may be alleged, all citizens of the United States have the right to expect that they be given fair treatment and due process in compliance with the rules. The real threat to the integrity of the House of Representatives stems from the abusive and irresponsible manner in which the Committee on Resources investigation was conducted. To subject this record to judicial review—in what would be the first contempt of Congress referral since 1983—could threaten to undermine the powers of the House to conduct legitimate oversight and investigations in the future.

By offering a substitute for the original resolution, the sponsors have tacitly acknowledged that the broad contempt charges of contempt reported by the committee were unsustainable. Especially when considered in the context of the myriad procedural deficiencies in this investigation, this latest change of direction ought to give Members ample reason to vote "NO" on the contempt charges.

Sincerely,

GEORGE MILLER,  
Senior Democratic Member.

POSTPONING CONSIDERATION OF  
COMMITTEE ON RESOURCES CON-  
TEMPT RESOLUTION

(Mr. YOUNG of Alaska asked and was given permission to address the House for 1 minute.)

Mr. YOUNG of Alaska. Mr. Speaker, as many of my colleagues know, we were going to take up the contempt report following this vote. We have decided not to do that until a later time. It is not because of the issue. It is because of the number of people that saw fit to leave this body on both sides of the aisle to return to their homes. It will be considered next time.

REPORT ON RESOLUTION WAIVING  
POINTS OF ORDER AGAINST CON-  
FERENCE REPORT ON S. 2796,  
WATER RESOURCES DEVELOP-  
MENT ACT OF 2000

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 106-1022) on the resolution (H. Res. 665) waiving points of order against the conference report to accompany the Senate bill (S. 2796) to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes, which was referred to the House Calendar and ordered to be printed.

DISPENSING WITH CALENDAR  
WEDNESDAY BUSINESS ON TODAY

Mr. GOSS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with today.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Florida?

There was no objection.

VOICING CONCERN ABOUT SERIOUS  
VIOLATIONS OF HUMAN  
RIGHTS AND FUNDAMENTAL  
FREEDOMS IN MOST STATES OF  
CENTRAL ASIA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 397, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. BEREUTER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 397, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 362, nays 3, answered "present" 1, not voting 66, as follows: