

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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February 20, 1997

The Honorable Dan Burton
Chairman
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

Thank you for responding to my February 18 letter. I agree that the minority did receive advance notification that you planned to issue the first four subpoenas. It is also true, however, that the actual subpoenas were given to the minority at the last moment and with too little time to engage in substantive consultation.

I will not revisit the other points I raised in my previous letter, except to note that the events of the past week have not met the expectations that I had for conducting a genuine bipartisan investigation. Although I hope a cooperative effort will be possible, I am deeply concerned about three threshold issues that will determine how our work proceeds in the months ahead.

First, it is clear to me that we disagree on how our Committee should proceed in issuing subpoenas. I do not believe that you should issue subpoenas unilaterally, absent extraordinary circumstances. I recognize that under the House and Committee rules, you have the power to issue subpoenas without my concurrence or a Committee vote. The issuance of a subpoena, however, is an exceptionally serious measure that compels the person subpoenaed to provide documents to the Committee against his or her will, often at great personal sacrifice and expense. As a matter of prudence, you should not invoke this compulsory process unilaterally.

As you are aware, the Democratic chairmen who preceded you also had the authority to issue subpoenas unilaterally, but they deliberately did not exercise this power. Rather they issued subpoenas only after obtaining (1) the concurrence of the ranking minority member or (2) a Committee vote. These safeguards, which are also being followed by Senator Thompson in the Senate investigation, provide minimal checks and balances that seek to insure that the subpoena power is not abused for partisan political advantage. The Committee should follow these same safeguards.

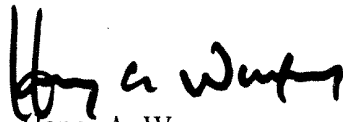
Second, in your letter you reassert your view that in addition to having the right to issue subpoenas unilaterally, you also have the right to release unilaterally any documents provided to the Committee under these subpoenas, including documents that contain privileged or confidential information. I do not believe you have this right under the House rules.

If you insist on this course, it will be an extraordinary assertion of power. I know of no legal precedent -- in Congress or in the United States -- for the authority you claim. In essence, you would individually be able to compel through subpoena and then release confidential information without seeking the approval of the Committee. My staff can find no member of Congress who ever proceeded in such a sweeping and unilateral manner. I think it is beyond the scope of your powers as chairman and an unwise position to assert given the sensitive nature of the Committee's investigation. The issue is not whether you or your staff would act carelessly -- the issue is whether any individual should have such enormous power, unchecked by Committee rules or procedures.

Third, I still have no information regarding the budget you are seeking for the Committee or whether you intend to comply with the official House policy of allocating one-third of all resources to the minority. There have been press reports that you will be requesting an amount comparable to Senator Thompson's proposal, along with informal indications that you plan to urge that the minority receive significantly less than a one-third allocation. I think my views on these issues have been made clear in my previous letters. I urge you to provide specific information to the minority as quickly as possible.

As you know, I feel very strongly that it is in our nation's interest that we work together, and I genuinely appreciate the public and private commitment to bipartisanship that you have expressed. But these expressions will have little meaning unless we resolve these three issues quickly. I hope we will find agreement on these important points and that together we will aggressively investigate all improper fundraising activities.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is fluid and cursive, with the first name being the most prominent.

Henry A. Waxman
Ranking Minority Member

cc: Members of the Committee on Government Reform and Oversight