

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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February 18, 1997

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

Dear Mr. Chairman:

Before our Committee formally organized last week, we met and discussed the procedures the Committee would follow in issuing subpoenas. As you know, I believe there is enough evidence of improper and questionable campaign activities by both parties to warrant serious congressional investigation. It is also my view any investigation should be bipartisan, fair, and comprehensive.

Although it has now been less than a week since we adopted the Committee rules, it is clear to me that the procedures we agreed to are not being followed and that the majority is setting a course that will result in partisan conflict, not bipartisan cooperation. In addition to a clear breach of the policy governing Committee subpoenas, the minority has not been given any information about the budget you are submitting for the Committee's activities, nor have we been assured that we will receive at least a one-third allocation of all resources given to the Committee so that we can fully participate in all investigations and legislation.

In our February 4, 1997, meeting, we discussed the procedure you would follow before authorizing or issuing subpoenas. My staff proposed that in light of problems that arose last Congress, the Committee rules should be changed to require explicitly that you consult with the minority in advance before authorizing and issuing subpoenas. You responded that you did not wish to modify the Committee rules, but that you would not authorize or issue any subpoenas without consulting with me in advance. Indeed, I recall that you said you would track me down for consultation even if I was "off in Rangoon." I told you that given your commitment to consult with me, I would rely on your word and not pursue a change to the Committee rules.

The Committee met to organize on February 12. Prior to the meeting, your staff agreed to a request from my staff that we engage in a colloquy at the meeting to formalize your commitment to consult with me before authorizing or issuing subpoenas. When I raised this issue,

however, you said it would be your policy to provide "notice" to the minority before issuing subpoenas unless "unusual circumstances" were present. This response was different from your prior commitment to me in at least two significant ways. First, "notice" of your intent to issue subpoenas is different than "consultation" about the advisability of issuing the subpoenas. Second, your original commitment to me contained no ambiguous "unusual circumstances" loophole.

I raised these discrepancies privately with you during a break in the meeting. In that conversation, you affirmed your original commitment to consult with the minority before unilaterally issuing subpoenas and explicitly agreed that you would make a "good faith effort" at "consultation" in every instance, without exception. Accordingly, I sought no change in the Committee rules, despite the fact that I think it is a better course in such a sensitive investigation to follow the Senate policy of either having all Committee members vote on whether a subpoena should be issued or obtaining the concurrence of the ranking minority member.

By February 16, however, both the spirit and the letter of the commitment to consult with minority were clearly violated.

The first problem occurred on February 14, when -- without a Committee vote or my concurrence -- you authorized and issued subpoenas to Webster Hubbell, Mark Middleton, Yah Lin Charles Trie, and John Huang. Although I was given prior notice of your intent to issue these subpoenas, my staff was not provided copies of the actual subpoenas to review until approximately two hours before they were to be issued. This extraordinarily limited time for review obviously made it impossible to engage in any meaningful consultation about the appropriateness of the subpoenas or to make suggestions regarding their scope.¹

The second problem became apparent during your February 16 appearance on "Meet the Press." During your interview you announced that you had signed 20 additional subpoenas -- again without a Committee vote or my concurrence -- on February 15. Despite your promise to consult with me, neither you nor your staff contacted me or any of my staff prior to your action. I was not given even prior notice -- much less a meaningful opportunity to consult with you.

This is an especially important issue because the issuance of a subpoena is an exceptionally serious step. It compels the person who receives the subpoena to provide documents to the Committee against his or her will. The person who receives the subpoena often has to expend tremendous resources to comply with its terms and to hire expensive legal counsel. Failure to comply fully with the subpoena can subject the individual to a number of serious legal consequences, including being held in contempt of Congress.

¹I understand that an unanticipated problem arose for the majority staff in preparing the subpoenas. The appropriate and obvious solution to such a problem, however, would have been simply to delay the issuance of the subpoenas until the next day.

For these reasons, Democrats always proceeded with great caution before issuing subpoenas when they controlled the Committee. In fact, the record is very clear that under a Democratic majority, no subpoenas were issued without either (1) a vote of the Committee authorizing the subpoenas or (2) the concurrence of the ranking minority member. These safeguards provided appropriate checks and balances against the potential abuse of a subpoena being unilaterally issued by the chairman. They insured that subpoenas would not be issued to advance a partisan political agenda or to conduct a “fishing expedition.”

Unfortunately, these elementary checks and balances are not being followed in the DNC/RNC campaign finance investigation. Rather than seeking Committee approval or my concurrence, you are exercising your power to issue subpoenas unilaterally. I don’t dispute that you have this power -- indeed, you may be the only House chairman to have this extraordinary grant of authority. I do think, however, that it would be wise not to break from historical precedent and instead adhere to the prior practice of either voting on subpoenas or issuing subpoenas only with the concurrence of the minority.

It is also essential that the Committee establish bipartisan procedures for handling the documents that your subpoenas seek to compel, including procedures for protecting privileged and confidential information. In my view, it is simply premature to compel any person to submit documents to the Committee before these procedures are in place.

I first wrote to you about the need for appropriate procedures on January 24, 1997. As I explained to you in that letter, it is premature to ask for confidential or privileged documents until procedures are in place that assure that such documents will not be leaked to the press or otherwise disclosed without a vote of the Committee. At our February 4 meeting, I gave you proposed procedures for handling documents, including procedures for protecting privileged or confidential documents.

The cornerstone of the procedures I proposed is the principle that privileged or confidential documents cannot be disclosed without a vote of the Committee or the concurrence of the ranking minority member. This principle derives from the House rules and precedent, including House rule XI clause 2(k)(7), which provides that “[n]o evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.” As the Parliamentarian’s office has specifically advised, “the chairman has no unilateral authority, not possessed by any other member, to release such material.” House Practice, Committees sec. 16 (emphasis added).

To date, I have not received any definitive response to either my January 24 letter or to the proposed procedures I personally delivered to you on February 4. However, your staff has informally advised my staff that you intend to take the position that you may make a unilateral decision to release publicly any privileged or confidential information provided to the Committee under a subpoena.

Under these circumstances, it is premature for you to issue any subpoenas to any witnesses, regardless of how justified the subpoenas may otherwise be. There is great doubt whether you actually have the legal authority to issue a subpoena to obtain privileged or confidential documents if your intent is to release these documents unilaterally. Moreover, even if you were to have this extraordinary power, it would be unfair to the recipients of the subpoenas to compel them to submit documents to the Committee before the procedures under which the documents will be handled are clearly delineated.

I am taking the time to share my concerns with you because I have been impressed with your repeated statements of bipartisanship and your assurances of fair investigations -- rhetoric that is in fundamental conflict with the actions of these past five days.

If the Committee is to pursue an investigation into alleged campaign finance abuses, the Committee's Democratic minority will be willing to work with you to insure that the Committee aggressively pursues all legitimate allegations of improper campaign finance activities, no matter where or to whom they lead. With proper procedures in place to handle documents -- including privileged or confidential documents -- I believe we could agree on the appropriateness of issuing subpoenas to witnesses who have relevant information concerning alleged campaign finance abuses, but who have refused to cooperate voluntarily with the Committee. For example, if proper confidentiality procedures were in place, and if the minority had been given a real opportunity to work with you and your staff in advance, I would have supported carefully crafted subpoenas to Webster Hubbell, Mark Middleton, Yah Lin Charles Trie, and John Huang.

I appreciate your consideration of these concerns, and would be grateful if you would share with me specific information about your plans on addressing these issues and the pending budget issues facing our Committee.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, flowing style.

Henry A. Waxman
Ranking Minority Member

cc: Members of the Government Reform and Oversight Committee