

AMENDING THE RULES OF THE HOUSE OF REPRESENTATIVES TO REPEAL
THE EXCEPTION TO THE REQUIREMENT THAT PUBLIC COMMITTEE PRO-
CEEDINGS BE OPEN TO ALL MEDIA

NOVEMBER 5, 1997.—Referred to the House Calendar and ordered to be printed

Mr. SOLOMON, from the Committee on Rules,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 301]

[Including cost estimate of the Congressional Budget Office]

The Committee on Rules, to whom was referred the resolution (H. Res. 301) amending the Rules of the House of Representatives to repeal the exception to the requirement that public committee proceedings be open to all media, having considered the same, report favorably thereon without amendment and recommend that the resolution be agreed to.

PURPOSE OF THE RESOLUTION

The purpose of H. Res. 301 is to amend the Rules of the House of Representatives to repeal the exception to the requirement that public committee proceedings be open to all media.

SUMMARY OF THE RESOLUTION

H. Res. 301 repeals clause 3(f)(2) of House rule XI, and makes technical and conforming changes to the rule.

COMMITTEE CONSIDERATION

H. Res. 298, Amending the Rules of the House of Representatives to repeal the rule allowing subpoenaed witnesses to choose not to be photographed at committee hearings, was introduced on October

30, 1997 by Representative Barr of Georgia and referred to the Committee on Rules.

H. Res. 301, Amending the Rules of the House of Representatives to repeal the exception to the requirement that public committee proceedings be open to all media, was introduced on November 4, 1997 by Rules Committee Chairman Gerald Solomon and referred to the Committee on Rules.

On Tuesday, November 4, the Rules Committee held a hearing on H. Res. 298 and received testimony from: The Honorable Bob Barr (R-GA); The Honorable John Dingell (D-MI); The Honorable Paul Kanjorski (D-PA); Mr. Stan Brand, former House Counsel, U.S. House of Representatives; Mr. Peter Robinson, former Assistant Parliamentarian, U.S. House of Representatives; Mr. Charles Tiefer, Associate Professor of Law, University of Baltimore and former Solicitor and Deputy General Counsel, U.S. House of Representatives; Ms. Barbara Cochran, President, Radio and Television News Directors Association; and Mr. Tim Dillon, Chairman, Standing Committee of Press Photographers.

On Wednesday, November 5, the Committee held a mark-up of the resolution. The Committee favorably reported H. Res. 301 by a 7-2 vote. During the mark-up, no amendments to H. Res. 301 were agreed to.

BACKGROUND AND NEED FOR THE RESOLUTION

Our representative democracy is predicated on an informed and educated citizenry. The First Amendment to the Constitution of the United States underscores our nation's commitment to the rights of free speech and the free press, two fundamental tenets of an open society.

Since the birth of the Republic, the mechanics of governing and reporting on the government have changed dramatically. From printing presses, to photography, to radio, to television and now, to cyberspace, the transmission of news has evolved to take advantage of rapidly changing technologies.

As the "People's House," the House of Representatives has from time to time reviewed its rules and procedures, in an attempt to keep pace with the advances of technology as it works to meet the interest of an informed populace.

One of the milestones in this effort came more than two decades ago, when Congress responded to the changing nature of broadcast media in the U.S., and began allowing live coverage of committee proceedings.

Prior to 1970, it was the practice of the House to not allow committee proceedings to be broadcast. This practice was based on a 1952 ruling by Speaker Sam Rayburn, in which Rayburn imposed a general ban on the broadcast of hearings because he could find no House rule explicitly allowing television coverage.

In 1970, as part of the Legislative Reorganization Act (P.L. 91-510), the House established the so-called House broadcasting rule (which is now clause 3 of rule XI). The rule initially applied only to the broadcasting of committee hearings, but in 1974 it was expanded to authorize broadcast coverage of committee meetings as well.

The change (of clause 3 of rule XI) was founded on the belief that live television and radio coverage would increase public understanding of Congress. The rule provided that the broadcast of open proceedings may be permitted by a majority vote of the committee in accordance with its written rules. As written in the 1970's and implemented for more than 20 years, this rule has afforded the opportunity for broadcast by audio, visual, and on-line media. The rule contemplated the ability to broadcast as a privilege, but not a right.

In 1995, the House revised this rule as part of its opening day reforms (H. Res. 6, 104th Congress) to provide for greater openness of committee proceedings. Rule XI was revised to reflect more limited circumstances under which a committee could vote to close its proceedings and to make broadcast coverage a right rather than a privilege. Under the new rule, any meeting or hearing must be open to all media coverage if the session itself is open to the public. The text of the so-called "sunshine" rule (clause 3(e) of rule XI) now reads:

Whenever a hearing or meeting conducted by any committee or subcommittee of the House is open to the public, those proceedings shall be open to coverage by television, radio, and still photography, except as provided in paragraph (f)(2).

This change was designed to improve the credibility of Congress by making its proceedings more available to the public through the wildest possible media coverage.

The House broadcasting rule contains an exception to the requirement that public committee proceedings be open to all media. The Committee on Rules believes this exception to be an anachronism.

The exception provided in clause 3(f)(2) of rule XI pertains to the conferred right of a subpoenaed witness to terminate radio, television and still coverage of his or her testimony before a committee or subcommittee of the House. The rule reads as follows:

No witness served with a subpoena by the committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of any such witness who does not wish to be subjected to radio, television or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off. This paragraph is supplementary to clause 2(k)(5) of this rule, relating to the protection of the rights of witnesses.

The legislative history of this rule indicates that Members grappled with the rights of witnesses and with the public's need and right to know about proceedings in the Congress. Based on the practical experience of Members, and a concern for preserving decorum, a number of limitations were placed on the implementation of the broadcast rule, including: live broadcast coverage was to be uninterrupted and without commercial sponsorship; conduct of the hearing was to conform to acceptable standards of behavior; cov-

erage by television was to be limited to four fixed cameras not obstructing committee proceedings; equipment was to be installed prior to the hearing; and lighting was to be at the lowest levels possible for adequate coverage. (House Report 91-1215, p. 33)

Included with these practical limitations on broadcast coverage was clause 3(f)(2) of rule XI, stating that no subpoenaed witness shall be photographed or televised or broadcast against his will. This witness protection provision was addressed in the same context as limitations on the broadcast media during the development of the 1970 Act. Indeed, in the “purpose and scope of the bill” section of the report on the 1970 Reorganization Act, the Committee on Rules noted that broadcasting of committee hearings would be permitted, but only “under stringent regulation.”

In the report to accompany the 1970 Reorganization Act, the Committee on Rules did not elaborate on its reasons for including this absolute protection against photographing or televising a subpoenaed witness against his will when it wrote:

Provision has been made for the protection of the rights of witnesses who appear before committees under subpoena. A witness who appears under subpoena may request—and the committees must accede to the request—that he not participate in televised or broadcast coverage of the hearing and that he not be photographed while he is a witness.

This provision of rule XI does not require any journalist to leave the room during a committee proceeding in which it is invoked by a subpoenaed witness. In fact, all journalists, print or broadcast, may continue to attend the session and to take notes or make sketches. In addition, photographers with still and video cameras may photograph witnesses arriving and departing from the committee proceedings. The practical impact of the rule on the modern media has been to restrict the coverage provided by the broadcast media, without in any way restricting that of the print media.

House rules provide several other witness protections and separate procedures to close committee meetings and hearings, which are found in clause 2 of rule XI. Clause 2(g)(1) of rule XI provides that meetings of committees will be open except when there is a majority vote with a full quorum present to close the meeting because of: national security information; sensitive law enforcement information; information that would tend to defame, degrade or incriminate any person; or information that would violate any law or rule of the House. Clause 2(g)(2) of rule XI provides that hearings of House committees may be closed by a majority vote with a full quorum present for similar reasons, except in cases of hearings where it is asserted that testimony or evidence may tend to defame, degrade or incriminate any person under clause 2(k)(5) of rule XI. Finally, clause 2(k)(5) of rule XI provides that whenever it is asserted that testimony at a hearing may tend to defame, degrade, or incriminate any person, such testimony will be taken in closed session if the committee determines by a majority vote of those present, a requisite number being present, that the testimony may tend to defame, degrade, or incriminate any person.

The protection for subpoenaed witness from photographic or broadcast coverage of their testimony provided by clause 3(f)(2) has

been invoked in approximately 14 instances in the years since its inception. Although no comprehensive list appears to exist, recent instances of the use of this rule include (chart compiled from data provided by the House Radio & TV Gallery, a House Memorandum in Opposition to CNN legal challenge to clause 3(f)(2) of rule XI, the Congressional Research Service and press accounts):

Date	Committee	Witness
October 8, 1978	Interstate & Foreign Commerce Subcommittee on Oversight & Investigations	Robert J. Iglesias, Former President Fuelco & VenFuel.
June 4, 1981	Energy & Commerce Subcommittee on Oversight & Investigations	William C. Roen, President Hollywood Needcraft, Inc. Daniel David, Vice President Crown-Tex Corp. Joel Kanefsky, Treasurer A&B Wiper Supply, Inc. Edward S. Wright, President John R. Lyman Co. Admiral John M. Poindexter. ¹
July 15, 1987 ¹	House Select Committee to Investigate Covert Arms Transactions with Iran (joint hearing with Senate) ¹ .	
January 23, 1986; January 29, 1986	Foreign Affairs, Subcommittee on Asian & Pacific Affairs	Barry Knox, Attorney. Hector Tantoco, Manager Sanmar Exporting Co. Victor Politis, Real Estate Executive. Michael Milken, Financier.
April 27 & 28, 1988	Energy & Commerce Subcommittee on Oversight & Investigations	R.K. Patel, Senior Vice President & Assistant Secretary, Par Pharmaceutical, Inc.
September 11, 1989	Energy & Commerce Subcommittee Oversight & Investigations	Jay B. Patel, Former Director of Quality Assurance, Par Pharmaceutical, Inc. Barry Geller, Vice President for Regulatory Affairs, Par Pharmaceutical, Inc. Ashok Patel, Former Senior Vice President & Secretary Regulatory Affairs, Par Pharmaceutical, Inc.
		Dilip Shah, Former President Quad Pharmaceuticals, Inc. Jan T. Sturm, Vice President for Quality Assurance Quad Pharmaceuticals Inc. Steven Colton, Former Vice President for Quality Assurance Vitarine Pharmaceuticals, Inc.
September 25, 1989; October 27, 1989	Government Operations Subcommittee on Employment & Housing	Samuel Pierce, Former HUD Secretary.
September 26, 1989	Government Operations Subcommittee on Employment & Housing	Lance Wilson, Former Assistant to HUD Secretary Pierce.
November 2, 1989	Small Business Subcommittee on Regulation, Business Opportunity & Energy	Michael Walerstein, President of Medical Marketing Services.
November 21, 1989	Banking Committee	Charles Keating, Former President of Lincoln Savings & Loan.
February 5, 1990	Government Operations Subcommittee on Employment & Housing	James Hammernick, Former HUD Official.
March 9, 1990	Government Operations Subcommittee on Employment & Housing	Paul Marguglio, Louise Marguglio, & Donald Pierri, Former Executives of Passaic, New Jersey Housing Authority.
January 17, 1996	Government Reform & Oversight Committee	David Watkins, Former Assistant to the President & Former Director of White House Office of Administration.
October 9, 1997	Government Reform & Oversight Committee	Manlin Fong, Sister of Charlie Trie. Joseph R. Langdon, & David Wang, Friends of Charlie Trie.

¹ Note.—The rule was not invoked because the Select Committee's rules specifically provide for the committee to vote not to accede to a witness' request.

The merits of clause 3(f)(2) came under severe criticism during the 1989 Government Operations Committee hearings on allegations of scandal relating to the Department of Housing and Urban Development (HUD). When former HUD Secretary Samuel Pierce and an assistant invoked their right to reject photographic, radio or television coverage of their subpoenaed testimony, Employment & Housing Subcommittee Chairman Tom Lantos (D-CA) acceded to their demand but expressed his displeasure and his interest in repealing clause 3(f)(2) of House rule XI:

The House Rule giving witnesses the right not to be photographed and to refuse to present testimony during television and radio broadcasting of this hearing was adopted by the House of Representatives during the notorious McCarthy hearings. Times have changed since then. Both the House and the Senate now obviously allow all media coverage of their proceedings. It is my strong view that the Rule Mr. Pierce chooses to invoke no longer serves the American people and their right to know. Nor is the Rule required as a protection to any witness * * * Let me express my very strong view that the decision by Mr. Pierce to invoke this House Rule, which is a very rare occurrence, is a disservice both to him and to the American public * * * The American people also have a right to see and hear Mr. Pierce defend his tenure during the eight years that he was at the helm at the Department of Housing and Urban Development. (Hearing record, Employment & Housing Subcommittee, Tuesday, September 26, 1989)

[The Committee notes that clause 3(f)(2) of rule XI was established in 1970 by the Legislative Reorganization Act.]

At an October 27, 1989 hearing of his subcommittee on the same matter, Chairman Lantos announced his introduction of H. Res. 253, which would have allowed a subpoenaed witness to have the cameras turned off, unless the committee, by a majority vote with a full quorum being present, voted to allow camera coverage of the testimony. H. Res. 253 was not acted upon during that or any subsequent Congress.

On September 9, 1996, Terry Murphy, the chairman of the Executive Committee of Correspondents in the House Radio & Television Gallery, wrote to Rules Committee Chairman Gerald Solomon seeking a repeal of clause 3(f)(2) of rule XI. In a similar letter sent October 15, 1997 by Vic Ratner, the current chairman of the Executive Committee, the correspondents argued for repeal based on the need for coverage of House committee proceedings to be conducted in an "open and fair manner." Both letters outlined a concern that the current rule "appears biased against electronic media." In addition, both Mr. Murphy and Mr. Ratner concluded that the current rule affords only "marginal" protection for witnesses because:

[I]t is possible for any number of cameras to film a witness leaving home, hotel or car, before a congressional hearing. The witness can be filmed up to the moment he or she testifies in public session. Consequently a television camera that would not be allowed to record a witness in a hearing

room would be able to record him or her arriving and departing the committee room.

Mr. Ratner, who points out the fact that the Senate has no similar rule, includes a third reason for repeal in his letter to Chairman Solomon, arguing that the rule is illogical given the newly implemented process whereby committees allow transcript services to plug into the public address system. He writes:

[T]he public is denied the opportunity to hear the witness speak his or her own testimony, and yet there is a verbatim transcript available. This seems illogical.

In his 1988 book, "Congressional Investigations: Law and Practice," John C. Grabow discusses briefly the legal perspective of the protection afforded by clause 3(f)(2) of House rule XI, noting:

The question of what, if any, rights a witness has to refuse to answer questions because of the presence of television or other media in the absence of a specific rule has received only limited judicial treatment. In a 1961 district court case, *United States v. Hintz*, the court stated that it "has no power to impose upon Congress, or coordinate branch of government, either a proscription against or a prescription for radio, television, movies or photographs."

In a 1976 Committee Print of the Joint Committee on Congressional Operations entitled "Leading Cases on Congressional Investigatory Power," the issue received a more detailed discussion:

Two district courts have reached opposite conclusions as to the duty of a witness to answer questions at a televised hearing. One found a witness not guilty of contempt on the ground that the witness was justified in refusing to answer questions in the presence of television cameras, newsreel cameras, news photographers using flashbulbs, and radio microphones in a crowded hearing room which, the Court thought, necessarily distracts any witness to the point that he might say today something that next week he will realize was erroneous (*United States v. Kleinman* 1952).

The other held that the conduct of congressional hearings is within the purview of the Congress and that the courts have no right to dictate either the procedures for Congress to follow in performing its functions or the composition and conduct of the persons and paraphernalia admitted by Congress to its hearings. There is a presumption that Congress, having ventured to act pursuant to its constitutional authority and in furtherance of its investigative functions, has properly exercised that authority and properly performed those functions (*United States v. Hintz* 1961).

In the 105th Congress, several proposals for reform of this House rule have been introduced. H. Res. 275, introduced by Representative Ganske of Iowa would revise clause 3(f)(2) of rule XI to allow the committee, by majority vote, to overrule the witness in his or her request that photographic and broadcast coverage be termi-

nated. H. Res. 298, introduced by Representative Barr of Georgia, would repeal clause (3)(f)(2) of rule XI.

In presenting its rules changes for the 104th and the 105th Congresses, the Republican majority began an evolving process of reform geared toward enhancing the credibility of the institution by opening its proceedings to additional public scrutiny. Those changes made the proceedings of the House more accessible to the public and thus have had the effect of increasing the accountability of all members to the constituents they serve. The majority recognized through those efforts that reform would be an evolutionary process by which the Rules Committee would continue to fulfill its oversight function to assess the rules of the chamber and consider the need for further changes.

The Committee on Rules believes that the repeal of clause 3(f)(2) is a natural follow-through to the sunshine rules adopted by the House in recent years allowing broadcast coverage of open committee proceedings. It is the view of the Committee on Rules that the House should continue to adapt itself to the dictates of modern technology and the interest of the public in observing their government in action. The Committee therefore recommends repeal of this antiquated House rule.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE COMMITTEE VOTE

Clause 2(1)(2)(B) of rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to be reported, to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. On November 5, 1997 the Committee ordered H. Res. 301, reported to the House, by a record vote of 7 to 2, a quorum being present.

Rules Committee Rollcall No. 75

Date: November 5, 1997.

Measure: H. Res. 301, Amending the Rules of the House of Representatives to repeal the exception to the requirement that the public committee proceedings be open to all media.

Motion by: Mr. Goss.

Summary of motion: That the Committee favorably report H. Res. 301 to the House, with the recommendation that the resolution be adopted.

Results: Adopted 7-2.

Vote by Members: Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; Hastings—Yea; Myrick—Yea; Moakley—Nay; Frost—Nay; Solomon—Yea.

COMMITTEE COST ESTIMATE

Clause 2(1)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended and, when practicable

with respect to estimates of new budget authority, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under the current law. Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under the current law.

No cost estimate is required under this section because the resolution does not provide new budget authority, new spending authority, or new credit authority, nor does the resolution provide an increase or decrease in tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(1)(3)(C) of rule XI requires each Committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. No cost estimate was received from the Director of the Congressional Budget Office.

OVERSIGHT FINDINGS

Clause 2(1)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(1)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on rules received no such findings or recommendations from the Committee on Government Reform and Oversight.

COMPARATIVE PRINT

Clause 4(d) of rule XI requires that, whenever the Committee on Rules reports a resolution amending or repealing the Rules of the House of Representatives, the accompanying report must contain a comparative print showing the changes in existing rules proposed to be made by the resolution.

Changes in existing Rules of the House of Representatives made by the resolution, as reported, are shown as follows (existing rules proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing rules in which no change is proposed is shown in roman):

RULES OF THE HOUSE OF REPRESENTATIVES

* * * * *

RULE XI

RULES OF PROCEDURE FOR COMMITTEES

* * * * *

Committee Rules

Adoption of written rules

2. (a) * * *

* * * * *

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, of each standing committee or subcommittee thereof (except the Committee on Standards of Official Conduct) shall be open to the public, including to radio, television, and still photography coverage【, except as provided by clause 3(f)(2)】, except when the committee or subcommittee, in open session and with a majority present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed to the public because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade or incriminate any person, or otherwise would violate any law or rule of the House: *Provided, however,* That no person other than members of the committee and such congressional staff and such departmental representatives as they may authorize shall be present at any business or markup session which has been closed to the public. This paragraph does not apply to open committee hearings which are provided for by clause 4(a)(1) of rule X or by subparagraph (2) of this paragraph.

* * * * *

Broadcasting of Committee Hearings and Meetings

3. (a) * * *

* * * * *

(e) Whenever a hearing or meeting conducted by any committee or subcommittee of the House is open to the public, those proceedings shall be open to coverage by television, radio, and still photography【, except as provided in paragraph (f)(2)】. A committee or subcommittee chairman may not limit the number of television or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

(f) Each committee of the House shall adopt written rules to govern its implementation of this clause. Such rules shall include provisions to the following effect:

(1) * * *

【(2) No witness served with a subpoena by the committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of any such witness who does not wish

to be subjected to radio, television, or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off. This subparagraph is supplementary to clause 2(k)(5) of this rule, relating to the protection of the rights of witnesses.】

【(3)】 (2) The allocation among the television media of the positions of the number of television cameras permitted by a committee or subcommittee chairman in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

【(4)】 (3) Television cameras shall be placed so as not to obstruct in any way the space between any witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

【(5)】 (4) Television cameras shall operate from fixed positions but shall not be placed in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

【(6)】 (5) Equipment necessary for coverage by the television and radio media shall not be installed in, or removed from, the hearing or meeting room while the committee is in session.

【(7)】 (6) Floodlights, spotlights, strobeflights, and flashguns shall not be used in providing any method of coverage of the hearing or meeting, except that the television media may install additional lighting in the hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in the hearing or meeting room to the lowest level necessary to provide adequate television coverage of the hearing or meeting at the then current state of the art of television coverage.

【(8)】 (7) In the allocation of the number of still photographers permitted by a committee or subcommittee chairman in a hearing or meeting room, preference shall be given to photographers from Associated Press Photos and United Press International Newspictures. If requests are made by more of the media than will be permitted by a committee or subcommittee chairman for coverage of the hearing or meeting by still photography, that coverage shall be made on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

【(9)】 (8) Photographers shall not position themselves, at any time during the course of the hearing or meeting, between the witness table and the members of the committee.

【(10)】 (9) Photographers shall not place themselves in positions which obstruct unnecessarily the coverage of the hearing by the other media.

【(11)】 (10) Personnel providing coverage by the television and radio media shall be then currently accredited to the Radio and Television Correspondents' Galleries.

【(12)】 (11) Personnel providing coverage by still photography shall be then currently accredited to the Press Photographers' Gallery.

[(13)] (12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

* * * * *

VIEWS OF COMMITTEE MEMBERS

Clause 2(1)(5) of rule XI requires each committee to afford a two day opportunity for members of the committee to file additional, minority or dissenting views and to include the views in its report. Although this requirement does not apply to the Committee, the Committee always makes the maximum effort to provide its members with such an opportunity. The following views were submitted:

MINORITY VIEWS

Clause 3(f)(2) of rule XI provides that “No witness served with a subpoena by the committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing by radio or television * * *”. This provision is virtually the only guaranteed individual protection given to witnesses under House rules. The resolution which is supported by the Rules Committee majority completely repeals this critical safety valve that is available to protect subpoenaed witnesses. Those members, on both sides of the aisle, who instituted this protection as a result of the shame brought on the House in the McCarthy era, must be wondering if we have all lost our minds as we carelessly toss it aside.

There is no need for such expeditious action on the measure. The hearing and the subsequent markup on what is a matter of original jurisdiction for the Rules Committee came up with very little advance notice, leaving little time for the preparation of a responsible hearing process to study the ramifications of the repeal of the rule.

Regardless of one’s views on this issue, the resolution is an extremely important matter that could deeply affect any individual who may be subpoenaed by a House Committee. It is terribly unfair to rush through a measure that takes away a witness right that has been in place since the 1950’s and in House rules since 1970. There appears to be no justifiable reason why action on this House rules change must happen in this careless and hurried fashion. We would hope that the Rules Committee would have moved in a more deliberative manner and in order to give this proposal the kind of careful scrutiny that it deserves.

This effort is not the first time that Committee Chairmen and members have been frustrated by witnesses invoking their protection under this rule. Attempts were made to repeal the provision. But wisely the House realized that the rule was indeed for the protection of individual rights and it remained in place. Representative Kanjorski (D-PA), in the 104th Congress, urged a witness to reconsider his use of clause 3(f)(2) of rule XI. However, Mr. Kanjorski, in his testimony before the Rules Committee, stated that after the hearing he was glad that the rule was in place because “this event helped me to recognize the balance between protecting an individual and the need for Congress, and the press, to obtain information.” Another witness, former Chairman of the Commerce Committee, Representative John Dingell (D-MI), who has had vast experience in conducting Congressional investigations, stated that he had never found the committee’s information gathering role or the role of the press in anyway compromised. He stated, “Let me be clear about one thing. I favor government in sunshine. I would never encourage a witness to close a hearing to cameras. Bringing the public’s attention to important issues is a key purpose of inves-

tigative hearings. Yet I also care about individual's rights. I find it ironic that the same Republican leadership that devoted weeks of hearings to various individual rights ranging from those of David Koresh at Waco, to taxpayers being harassed by the IRS, finds it so difficult to understand that an unrestrained Congress is very capable of using a heavy hand."

Witnesses coming before Congressional panels, particularly those whose presence is required through a subpoena, are afforded minimal rights and now, by virtue of the action of the Rules Committee majority, they stand to lose what very little they have. This protection for a subpoenaed witness came about in the early 1950's as a result of the notorious McCarthy era and the House Un-American Activities Committee. During that era of runaway investigations and House-sanctioned witch hunts, the rights of subpoenaed witnesses were shamelessly trampled upon. Callous treatment of witnesses was an everyday occurrence in that committee. A tragic incident led to the eventual implementation of this rule. In June 1957 the House Un-American Activities Committee opened hearings in San Francisco. A young cancer researcher named William K. Sherwood was subpoenaed to appear, on camera, before the committee. Two days before his scheduled appearance, he wrote a note expressing his "fierce resentment of being televised" and then jumped from his hotel window to his death. After that grim incident, cameras and live broadcast were banned from the committee hearings from 1957 to 1970 when Congress enacted the Legislative Reorganization Act. Throughout the time when the House debated the manner in which broadcasting would be permitted in legislative proceedings, a bipartisan consensus developed which included a fundamental protection of the rights individuals who have been brought before a committee to testify against their will. It was understood that, though citizens may be compelled to appear before the committee, they were not similarly compelled to appear on television. The 1970 Legislative Reorganization Act codified this long-standing consensus. That is the rule this resolution seeks to repeal.

A hearing is supposed to be a forum for gathering information but instead is often used to intimidate and abuse witnesses, who are afforded no due process rights by the Rules of the House. Members often question witnesses in ways that would not even be allowed in a courtroom. But no one, certainly not the witness, can stop the process. Witnesses do not always have the opportunity to rebut statements made to them by members of the panel. They can't "object" to a question that is misleading or incriminating. They can be held in contempt if they refuse to answer any question, regardless of how inappropriate it may be. They may have a lawyer present, but that lawyer is virtually powerless to halt an unfair line of questioning. Members should not use their own personal beliefs and prejudices to intimidate, threaten or humiliate individuals who are required to appear before a Congressional committee. But, we have all seen instances where they do. To further subject these witnesses to unwanted and unwarranted television and radio coverage is a flagrant abuse of power by Congress. The protection provided in clause 3(f)(2) of rule XI is all that a witness can do to protect him or herself from such exploitation. Now even

that small refuge is to be taken away leaving witnesses at the mercy of an often hostile panel.

The proponents of this repeal say that they favor openness and sunshine. It is important to clarify that when a witness invokes clause 3(f)(2) of rule XI it does not close a hearing from press coverage. No reporter is thrown out of a hearing. It does not shut anyone out of a hearing. All records are public. All reporters can cover a hearing and go out and report on what has taken place. Many, many times when court cases and other public meetings are not televised, reporters themselves describe the testimony, the reaction of the witness, and other relevant activities that took place away from a camera or microphone.

The proponents say they will leave in place a protection for witnesses in clause 2(k)(5) of rule XI. But this provision requires the committee to vote itself into executive session which completely excludes all print and broadcast press coverage, and—everyone else. Moreover, under clause 2(k)(7) “no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.” So instead of supporting openness and sunshine, they are actually encouraging secrecy.

Members of the House of Representatives, the people’s house, are elected to represent each and every individual in his or her district. One of our most important duties is to make certain that the rights and protections given to these individuals are not compromised in any way. Citizens and others who are required by subpoena to appear before a Congressional committee do not deserve to have this one defense taken away. If we allow it to happen, we are abrogating our responsibility to those who sent us here. We will come to regret removing this vital check on the Congressional power to intrude on the lives of American citizens.

JOHN MOAKLEY.
MARTIN FROST.
TONY P. HALL.
LOUISE M. SLAUGHTER.

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